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PAPERS

Why Did South Korea & Japan Not Become Like France and Germany? Questions of Historical Memory, Security, and the Search for Stability

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Abstract: *South Korea and Japan paradoxically struggle with persistent historical conflicts that undermine their bilateral relationship despite economic, political, and cultural incentives alongside a shared US-led alliance in the face of common threats. This paper delves into why these nations have not achieved the stable security relationships seen between post-war European states like France and Germany. I argue that diverging historical memories, the cyclical nature of South Korean politics, misaligned threat perceptions, and a lack of early, binding institutional frameworks prevented a similar outcome. While outright resolution of historical disputes remains elusive, I propose a path for managing these tensions: leveraging fundamental commonalities through low-risk, informal cultural exchanges. Such people-to-people initiatives can foster cross-border affinity, reducing domestic political incentives for antagonism and enabling the strategic compartmentalization of historical grievances. Should this succeed, the resulting institutional 'lock-ins' in the security realm would raise the cost of future policy reversals, forming the bedrock for a more formalized, consolidated, and durable security arrangement.*

Keywords*: South Korea–Japan relations; historical memory; path dependency; alliance theory; cultural diplomacy; institutionalization; reconciliation.*

Introduction

The Republic of Korea (ROK) and Japan have a paradoxical relationship. Economically, both countries have rapidly industrialized to become global leaders, sharing the notions of free trade and capitalism. Politically, they are liberal democracies that are committed to fundamental rights and freedoms and allow for political pluralism. As in much of East Asia, Confucianism and Chinese influence have had a historically profound impact on both nations, while their proximity to each other meant that contacts between the two had been established for centuries. Modern-day cultural exchange represents another notable mutual link. Most importantly, South Korea and Japan are firmly linked by and fully integrated in the United States alliance system, sharing common security threats like the North Korean nuclear program. Given these longstanding uniting factors, the paper asks the following question: Why do historical conflicts

between the countries continue to flare up and undermine bilateral relations, preventing the emergence of a stable security relationship and potentially hindering both countries' national security and economic interests?

European nations successfully overcame their most pressing issues in the post-war period, rallying together to incrementally build close economic and security unions that span large parts of the continent. Germany was able to transform its historical guilt into successful and stable security relationships with its neighbors, such as France and Poland. This paper will scrutinize the efforts taken by European, South Korean, and Japanese leaders to understand why historical conflicts continue to paralyze or outright damage bilateral relations between South Korea and Japan. It identifies diverging historical memory cultures, cyclical South Korean politics, differing threat perceptions, and the absence of binding institutional frameworks as the main obstacles.

In attempting to explain this puzzle, this paper does not claim to offer definitive solutions to these issues that have long frustrated policymakers and defied resolution for decades. It will, however, attempt to find avenues for leveraging fundamental commonalities to alleviate these disputes to an extent that makes future escalation less likely and less desired. It posits that establishing closer links through informal cultural initiatives can foster cross-border affinity, which in turn reduces domestic political incentives for antagonism and enables the compartmentalization of historical conflicts. If achieved, resulting institutional lock-ins increase the cost for deviation in the security realm. These developments can then serve as the basis for a more formalized security arrangement that is consolidated and durable.

Literature Review and Theoretical Approach

Existing literature on European reconciliation focuses on the institutionalization and the way leaders hoped to leverage these for rebuilding. West Germany's post-war Westpolitik sought to prevent Germany from becoming a battleground between the two camps in the Cold War. The United States readily supported rehabilitation efforts, while West Germany saw the inclusion into Western institutions as a way to rebuild its standing. Western European nations regarded Germany's inclusion in its newly set-up institutions as imperative for containing it. With NATO and the precursors to the EU, these included both economic and security institutions. According to Alice Ackermann, German leaders aimed to build consistent foreign policy patterns in this way. For France, the lack of UK and US support for its hardline stance against Germany and the emergence of the Soviet threat after the war produced a willingness to integrate and therefore institutionally contain it. While track-two diplomacy played a role, pragmatic security cooperation accounted for the rapid pace of

reconciliation in post-war Europe. Eventually, the longstanding Franco-German rivalry turned from antagonistic to cooperative. The two largest continental powers in the Western part of the Cold War divide in Europe accordingly reconciled due to a combination of rapid institutionalization to create trust, predictability, and containment, as well as a shared security threat in the East.

In addition, scholars point to earnest bilateral efforts made under Chancellor Konrad Adenauer, illustrating German sincerity in confronting its past. This combination of bilateral and multilateral integration then translated into acceptance of German rearmament and the immediate start of military cooperation. Lily Feldman found that public opinion regarding France only turned optimistic after the Adenauer leadership initiated the reconciliation process. She further points out that when Chancellor Willy Brandt initiated his signature Ostpolitik in the following years, the resulting societal exchanges, for example via the respective churches, played a vital role in fostering a positive environment of goodwill. These policy initiatives further demonstrated Germany's seriousness toward addressing its past. Lastly, in the East, symbolic acts like Brandt's kneeling at the memorial for the Warsaw Ghetto Uprising in December 1970 amplified the restoration of ties. This illustrates how credible foreign policy approaches by both sides and symbolic acts by West German chancellors aided the reconciliation efforts.

The discourse on conflicts between South Korea and Japan follows a different trajectory, usually pointing out the historical backgrounds and reasons for how and why the conflicts remain unsolved. Chris Deacon points out how differing discourses in both countries lead to diverging perceptions and that many scholars regard this as inescapable. Literature has long tried to solve or argue for the difficulty of solving these issues. Deacon himself was mainly concerned with explaining the periodic escalations and persistence of tense relations. Ji Young Kim analyzed the identity clashes that get reproduced between the Japanese political elite and the South Korean public, concluding that attitudes were deeply entrenched and unlikely to change in the near future. Such conflicts have also been attested to the persistence of hierarchical social structures, transferred to inter-state relationships, and amplified in the Japanese case after the successful modernization of the country. Economic realities in the immediate post-war period turned Korea into a place of little concern to the Japanese, whereas education on Japan in Korea remained limited due to the negative impressions from the colonial period. Perceptions of each other were thus hampered by a lack of interest in understanding the other side, leaving sharp contrasts in the respective internalization of history. Jungmin Seo likewise highlighted that identity was relational, and Japanese leaders reproduced the country's image of superiority vis-à-vis South Korea. It has been argued that the synthesis of Korean national identity was in large part a result of anti-Japanese sentiments, whereas Japan's modern identity was a product of

its perceived superior standing over the rest of Asia after the Meiji Restoration. In turn, their national identities are interdependent, making conventional conflict-solving strategies difficult.

The countries' main historical issues concern the Liancourt Rocks (Dokdo/Takeshima), and the memory and compensation of the Comfort Women and forced laborers under Japanese colonial rule. The 1952 San Francisco Peace Treaty left the ownership of the Liancourt Rocks ambiguous, with both sides claiming the islets, but South Korea exercising effective sovereignty over them. According to President Roh Moo-hyun, Dokdo became a symbol of Korea's territorial restoration, and remains a highly contentious issue in bilateral relations, including for economic reasons. Actors on both sides leveraged the issue to attract support. The Comfort Women and forced labor conflicts had more consequential impacts on bilateral relations and will be discussed in succeeding chapters.

Historically, another area of contention has been South Korea's and Japan's security relations. While both states had aligned security interests under their patron, the US, the extent of their threat perceptions differed. Japan, for instance, cooperated economically with North Korea, sparking abandonment concerns in the South. Likewise, Japan faced potential entrapment by committing more to South Korea, fearing strong North Korean responses. In contrast, literature suggests that Western Europe had little incentive to diverge as it shared one clear, common threat. In Europe, a shared institution, NATO, solidified this position, whereas in East Asia, merely sharing a patron in the US did not produce the same effect.

While this literature helps explain why historical issues persist, it underemphasizes the security dynamics that offer space for cooperation despite unresolved history. Identifying gaps in the existing literature must therefore focus on approaches that do not attempt complete resolutions or seek possible emulations of European reconciliation. Rather, one must seek mechanisms that allow for the effective management of these issues and not resort to fatalism and assuming they will resolve over time. Arguing that it is impossible to resolve all historical problems to every stakeholder's satisfaction, as I will later illustrate, the question of why Europeans built enduring security ties while the Republic of Korea and Japan did not remains insufficiently answered.

This paper employs a comparative historical analysis to scrutinize why the post-war trajectories of security relationships between France and Germany and between South Korea and Japan diverged. I offer a security-focused path dependency approach. Path dependency makes course reversals increasingly difficult, which pertains to both converging European and diverging East Asian policy choices and the institutional environment in the post-war period. In

addition, alliance theory can help understand how these early decisions led to different trajectories and what the effects of a future reshape could be. Security perceptions tend to align over the course of an alliance's persistence when facing a common adversary. Alliances also serve as a tether that creates mutual interdependence. Harmonizing a combination of these factors enables policymakers to coordinate relations in a more stable way. Comparing the strength in security relations between major US allies in two vital regions can offer valuable insights into alliance-building and reconciliation.

The causal relationship in this analysis is one of path dependency stemming from initial conditions. Unlike the European experience, differing threat perceptions and diverging historical memories from the outset prevented an early move toward binding institutional frameworks between South Korea and Japan. First, the absence of a shared existential threat and unresolved historical disputes meant there was no powerful incentive to overcome political divisions through institutional integration. Second, without such frameworks, security policies in both countries remained independent and highly susceptible to domestic political factors. Third, this failure to institutionalize early created a path-dependent trajectory in which bilateral ties became locked into cycles of mistrust, reinforced by South Korea's political alternations and factional tensions within Japan's ruling party. In the European example, institutional routines could shape common responses to shared threats, with deviations becoming costly and impractical. Finally, only as security threats increasingly converge around North Korea and China has a new opportunity for institutionalization emerged, provided that cultural stabilizers mitigate the risk of future policy reversals.

In formulating my arguments, I will use the term compartmentalization to mean a development that separates issues that are practically unrelated to one another, such as discussions about how to deal with the past and national security. The term cultural affinity will denote the creation of a mutually positive sentiment in the sense of track-two diplomacy, soft power, and cultural exchanges, serving as the basis for future progress. Lastly, historical memory in this paper refers to the way both countries deal with their past and how their respective narratives shape the surrounding debates.

The Post-War Period

As outlined, the trajectory of Franco-German and ROK-Japan relations diverged soon after the Second World War ended. West German integration into Europe's new institutions was supported by the United States. Ties with France warmed through immediate institutionalization and bloc-building. The shared threat of the Soviet Union and Communism more broadly proved to be an

attractive driver for rapprochement. German apologies westward were instant and credible, and those eastward were symbolic and consistent. The country's economy in the post-war years enhanced its attractiveness and cemented economic interdependence and benefits.

Developments in post-war ROK-Japan relations differed in several important aspects. Unlike France or Poland for Germany, the Korean peninsula was a Japanese colony. This different status meant that South Korea was excluded from significant post-war settlements, including the San Francisco Peace Treaty. Especially after the Communist takeover of China, the United States tried to establish Japan as its regional bastion against the spread of Communism in Asia. This meant that conditions for Japan could not be too harsh and the peace treaty had to be signed quickly, with decisions on rearmament following in quick succession. The US occupation played a major role in Japan's post-war orientation. Compared to Europe, where German rearmament was allowed for with tacit but careful French approval, Japan's post-war security arrangement was largely settled bilaterally between Japan itself and the US. The tumultuous circumstances in Northeast Asia at the time would not allow for any regional integration beyond the US, ROK, and Japan. Within the context of the end of the Chinese Civil War, the start of the Cold War, and the outbreak of the Korean War, institutionalization did not take place, and threat perceptions differed as well. The early Liberal Democratic Party (LDP) leadership — and the United States — were more concerned about the ensuing Cold War and the actions of the Soviet Union in Asia than South Korea. This complicated formulating a shared security agenda.

In contrast to the actions of German and French leaders, Korean and Japanese leaders displayed less goodwill toward each other. Symbolic gestures akin to Brandt's kneeling did not happen, and the exclusion from immediate post-war settlements did not resonate well with a nation that had been under traumatizing colonial rule for 35 years. Sovereignty issues stemming from the division of Korea and unresolved fishery disputes kept relations tense. The ROK's first president, Rhee Syngman, a longstanding independence activist, thus found fertile ground to effectively leverage his anti-Japanese narrative during his tenure from 1948 to 1960. While US support for rapprochement between its two main Asian allies existed, I argue that the lack of institutionalizing their relationship and the unwillingness of their leaders to relent prevented the relationship from evolving successfully, as was the case in Europe. President Rhee's hardline stance, paired with unapologetic statements regarding supposed economic benefits from colonial rule by Japanese negotiators, stalled normalization talks for most of the 1950s. Without official bilateral ties and lingering Japanese questions over the territorial extent of recognition of South Korean sovereignty, stability, continuity, and predictability were difficult to achieve in the early years. Additionally, Germany and France share a land border and

have both historically been sizable economies. Trade of commodities like coal and steel provided incentives for cooperation. However, early Japanese leaders, such as Yoshida Shigeru, did not view South Korea as a vital partner in Japan's post-war reconstruction. The two countries had little economic interaction in the post-war period, as Korea was not yet industrialized and perceived by Japanese elites as having limited strategic or economic value. This contributed to Tokyo's lack of urgency in addressing colonial grievances or building structured ties with Seoul. The United States proved to be much more central to Japanese economic and security considerations and was sufficient for those purposes.

The immediate post-war reconciliation and institutional lock-ins in Europe became so strong that they continue to hold to this day. Conversely, post-war conditions between South Korea and Japan proved so contentious that they led to their paths diverging. These early differences laid the groundwork for path-dependent trajectories in both regions, with Europe consolidating reconciliation through institutions and Northeast Asia lacking comparable mechanisms of trust-building.

Cyclical South Korean Politics and Factional Tensions in the LDP

The removal of President Rhee from office in 1960 and the subsequent coup that brought Park Chung Hee to the presidency finally enabled both states to normalize relations in 1965. Unlike the former, Park had gone through Japanese education, spoke the language, and was eager to leverage Japan's economic capital and experience for his ambitions. These two early leaders foreshadowed the cyclical dynamic that would later define South Korean politics. Modern political debate in the country is shaped by its two major parties that both hold opposing views on how to engage with Japan and pursue historical justice.

As noted, Germany and its European partners demonstrated remarkable continuity in their foreign policy approaches. Ostpolitik and Westpolitik were pursued across party lines by chancellors from both major political parties. For Japan, the LDP ruled for most of the post-war period, with only brief interruptions. This allows for continuity, predictability, and more solid assurances for any agreements made. Despite persistent nationalist elements in the party and among recent prime ministers, Japan has made efforts to address historical issues with the ROK, most notably in the 2015 Comfort Women Agreement.

Without institutional continuity, however, course reversals were possible and

have affected bilateral relations after democratization. This illustrated the pattern set by the anti-Japan President Rhee and the more Japan-friendly President Park. No binding institutional frameworks meant that undoing deals incurred little actual cost. As there are no clear mechanisms in place that provide incentives to invest in stability, the South Korean liberal administrations could easily reverse agreements made in the previous conservative administration. The clearest example of this phenomenon occurred during the Moon Jae-in administration, when he withdrew from the fund the previous government had set up to settle the compensation of former comfort women. In tandem with court rulings against Japan on forced labor compensation, this triggered a trade war. As pointed out, course reversals like these frustrate the LDP leadership, and potentially lead to less willingness among the party to put in the effort to resolve these conflicts, given the inconsistent nature of South Korean policy toward Japan. Crucially, such reversals potentially provide arguments to those elements in Japan that advocate more cautious or hardline stances toward Seoul. Early institutional integration allowed all major German parties to formulate a consistent approach for reconciliation. Japan's relative political continuity could have served as a similar basis, but South Korean shifting administrations left agreements vulnerable to future reversals.

As mentioned above, however, the LDP had historically been constituted of different factions that advocated for different approaches concerning the country's past and neighborly relations. The current prime minister and his four immediate LDP predecessors have all been associated with Nippon Kaigi. This is an ultranationalist group that wields considerable influence over the LDP, as many of the party's members are also affiliated with the group. Nippon Kaigi promotes a nationalist narrative of Japan's past, and advocates for visits to Yasukuni Shrine, which honors the war dead – including high-profile war criminals. While no recent LDP prime minister has yet decided to visit the shrine since Prime Minister Abe in 2013, those who had done so before were confronted with significant backlash from countries like South Korea and China, severely straining relations over this issue. Takaichi Sanae, coming second in the latest LDP leadership election, vowed to visit the shrine as prime minister, demonstrating the risk of relations being undermined from the Japanese side as well.

Therefore, while the two major parties in South Korea represent a clear, cyclical shift in policy, the LDP's internal dynamics represent a persistent factor that determines the degree and tone of Japan's engagement with South Korea. The ongoing friction between these – now mostly dissolved – factions is an equally important domestic factor to consider, as it can both enable and constrain diplomatic progress regardless of who holds the office.

Cultural Affinity as an Informal Stabilizer

A low-risk approach to creating positive environments between two nations proposes people-to-people exchanges, broadly falling under the term of track-two diplomacy. This can include a wide array of societal and cultural contacts built in areas including academia, pop culture, or sports. Joseph Nye has demonstrated the positive effects of soft power: increasing cultural affinity through various existing and potential future avenues lays the groundwork for positive political influence. Returning to the European example, the continent has been bound together by a shared passion for football, with nations and clubs in relatively short proximity playing each other regularly. Together with formats like Eurovision, they enable low-risk cultural engagement across borders.

Tourism between Japan and South Korea has grown exponentially, with tourist numbers exceeding 12 million in 2024. This means that significant shares of both societies have come into close contact with one another, likely fostering familiarity with each other's cultures and the erosion of stereotypes. Noticeable is the relatively lower, yet still significant, number of Japanese tourists to South Korea, which marks potential for growth. Younger demographics are represented proportionately higher, alluding to generational changes. Both countries also put a fast entry system in place to celebrate their sixtieth anniversary of bilateral ties.

Beyond physical exchange, the flow of pop culture represents a key driver in cultural relations. Japanese video games, anime, and manga have become a staple in South Korea despite their longstanding ban having only been fully lifted around the turn of the millennium. Japanese anime has since been a constant feature in Korea. Concurrently, *hallyu* in the form of K-dramas and K-pop albums recorded exponentially growing sales over the past years. Leading South Korean acts performed in Tokyo Dome, which is known for hosting major events in the country. These developments signify bottom-up demand for each other's cultures. If promoted, they generate public constituencies that can serve as domestic buffers to mitigate future trade conflicts and boycotts. Due to geographic proximity and mutual interest, regular joint events in the form of music festivals or pop culture conventions can create opportunities to interact with each other in a positive context.

Academic exchanges constitute another key component. It offers young people a chance to familiarize themselves with each other as well as to learn the language. The large number of South Korean students in Japan is a positive sign. Increasing the relatively low number of Japanese students in South Korea will also be a necessary factor to promote knowledge about the country in Japan.

Another commonality between both countries is their passion for baseball and football. Jointly hosting the 2002 FIFA World Cup had been a major success that can be capitalized on. Bidding for future events can harmonize relations between stakeholders in host cities, sports associations, organizers, and players. Sports provide an opportunity to foster respectful rivalries within a framework of shared passions. Institutionalizing informal programs like annual friendlies between national teams or a Korea-Japan series between the champions of both countries' baseball leagues might be approaches that lead to regular exchanges. Such initiatives aim to contribute to a transformation from antagonistic perception to one of respectful rivalry — a psychological shift that underpins long-term stabilization.

The efficacy of such low-intensity cultural exchanges on bilateral relations can be observed via the following correlation: as the consumption of each other's culture rises, so do the favorable public attitudes. South Koreans' exponential increase in positive attitudes toward Japan, together with rising tourist numbers since 2023, especially among young demographics that are the primary consumers of Japanese pop culture, are notable factors. Young Japanese also seem to be developing a more positive image of South Korea, manifesting in rising export value and sold-out concerts of K-pop artists all over Japan and the increasing popularity of Korean dramas. Though smaller in scale, similar upward developments can be seen in the presence of J-pop in South Korea. Recent Japanese animated movies like Slam Dunk and Suzume drew millions of South Koreans into cinemas, becoming the two most successful movies of their genre in the country, further illustrating this trend. Once relations overcame the trade dispute, the more positive environment seemed to allow for increasing exchanges in culture and tourism, clearly in parallel with improving mutual perceptions.

Institutionalization and Compartmentalization

I argue that the developments and proposals above do not resolve outstanding conflicts themselves, but create affective goodwill, reduce the political capital of antagonism, and lay the foundation for institutional cooperation. The previous trade war likely served as a learning experience for the political elites and society, as a situation not to be repeated. However, the longstanding inability to resolve historical issues makes short-term future settlements unlikely. Consistent positive efforts and time via generational change must serve as central factors. Because no one actor has a monopoly on the interpretation of history, conflicts prove difficult to resolve permanently. In the European case, the Polish conservatives still demand reparations from Germany.

The above findings suggest the viability of a strategy of active management

over forced permanent settlement. I argue that the concepts of track-two diplomacy and soft power serve as arguments for taking said approach. Low-risk and low-input cultural initiatives, private and public sector exchanges, tourism, and the interest in each other's culture and the resulting reduction of stereotypes aid in this process. They can contribute to a political environment less conducive to antagonism, which may result in goodwill in negotiations and reduce the political capital for actors like the Korean liberals to antagonize Japan.

This could then enable the more moderate political elements of both countries to take bolder steps to more formal institutionalization of ties, in areas such as security. As demonstrated, the European case has been difficult to replicate in East Asia. But increased US efforts in formalizing ties, combined with less popular opposition in Japan and South Korea to such developments, can allow Korean conservative administrations to take bolder steps in that direction. Increasing institutionalization may start with elevating the General Security of Military Information Agreement (GSOMIA) into an intelligence alliance or introducing joint contingency planning regarding North Korea.

In turn, once formalized and consolidated, institutional binding will make it increasingly costly for future administrations to overturn such decisions. In such a case, course reversals would not only affect relations with Japan but also the US. Ultimately, as mentioned in this paper's early remarks, threat perceptions among members may well converge in such circumstances. The North Korean nuclear program can serve as the smallest common denominator here, as do recent Chinese assertiveness in the Indo-Pacific and the Russia-North Korea security alliance. This increasingly compels both nations to seek closer security cooperation.

The resulting shared understanding of regional threat, ripple effects from cultural exchange, and a stable institutionalized environment may facilitate conditions in which historical conflicts persist but become unlikely to escalate. Affinity, institutional ties, and increasing mutual security dependence could allow for a climate of compartmentalization of historical conflicts and national interests. This can be seen in Europe: despite the Polish conservatives' reparation demands, they do not undermine European security relations.

Conclusion

Key differences in post-war circumstances account for the different trajectories of security relations and reconciliation in Europe and between South Korea and Japan. Economic incentives, land borders, and political support from most of the political spectrum for reconciliation spurred rapid institutionalization in

Europe. Security concerns about potentially uncontrolled German rearmament and a new, common threat from the Soviet Union further amplified this. South Korea and Japan lacked most of these components in the immediate post-war period, but circumstances today are vastly different. Perceptions on security issues increasingly converge around the North Korean nuclear program, the renewed security alliance between Moscow and Pyongyang, Chinese assertiveness in the Indo-Pacific, and even a potential partial return to isolationism by the US. Both countries could profit from closer relations, for example, by lobbying for South Korean membership in the G7, which would put more emphasis on the region globally. Both are advanced economies and liberal democracies with other challenges, such as demographics, that make cooperation not just desirable but increasingly necessary. Rather than attempting full resolution of memory conflicts, this paper suggests mechanisms for managing them through strategic compartmentalization. By incrementally building on institutional lock-ins made possible through improved cultural affinity, ties can be stabilized, and escalation potential harming national and security interests can be defused. In turn, drastic shifts in bilateral relations will be less likely to occur as costs increase, benefits decline, and views on shared threats converge. The softening of these two variables then paves the way for a potential institutionalization of ties. Lasting reconciliation need not begin with historical issues but with cooperation despite them.

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The United States' Stance on the Joint Statement Initiative on Electronic Commerce

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Abstract: *The members of the Joint Statement Initiative on Electronic Commerce published the stabilized text on the 26th of July 2024, after five years of collaboration. However, not all participating members signed the text; the United States being among them. A statement from the American Ambassador María Pagán confirmed that concerns regarding the national security exception were the basis for the choice to opt out lies. The Joint Statement Initiative on Electronic Commerce focuses on the promotion of digital trade, the reduction of barriers to E-Commerce, the protection of consumer privacy, the elimination of customs duties when purchasing digital products, and transparency from all involved parties over laws and regulations. This paper's findings argue that the United States' to-go-alone ability and isolationist tendencies from the start of the first Trump administration are causing the United States to withdraw from the multilateral trading system, using the national security exception as its basis. The importance placed on the national security exception by the United States can be seen in the evolution and differing format of these specific clauses in the American free trade agreements, which increasingly diverge from GATT 1994 Article XXI. Conclusively, the United States' isolationist "America First" policies cause the nation to move away from multilateral systems, including the Joint Statement Initiative on Electronic Commerce, finding fault in the existing national security exceptions as they no longer serve American interests.*

Keywords: Joint Statement Initiative on Electronic Commerce, GATT 1994 Article XXI, National Security Exception, American isolationism

Introduction

Due to the rapid growth of the global electronic trade market, the Joint Statement Initiative on Electronic Commerce (JSI) was initiated as an agreement with the purpose of creating a unified approach to regulation. The JSI was first introduced at the 11th Ministerial Conference in December 2017, followed by a confirmed commencement of a joint effort in 2019. Five years later, on July 26th, 2024, the stabilized text was brought forward by Australia, Japan, and Singapore, with most of the participating countries supporting the new version.

The stabilized text covers different adaptations to the trade market, focusing on rules for electronic commerce. It seeks to adjust the existing trade rules to accommodate the digital world by creating a framework to fit digital trade into existing schedules. However, the text lacks coverage on new moratoriums and does not detail specifics for online services. The stabilized text also leaves out cross-border data flows and data localization due to a lack of agreement among the members.[1]

The United States (US) is one of the countries that has participated in the discussions of the JSI for the past five years but opted out of the stabilized text, based on the lack of a security exception clause. While previous research, like Peng and Sun, addresses the issues of the security exception and digital trade and is thus relevant to this paper, the issue presented here widens the scope by combining earlier research with an analysis of the JSI and the US' usage of the security exception in its Free Trade Agreements. The objective is to assess why the US did not sign the stabilized text and how this decision is connected to the surrounding political policy environment. This includes a focus on the importance put upon national security and its relation to digital trade issues.

Research Statement

What is the WTO Joint Statement Initiative on Electronic Commerce, and how does the United States approach the JSI? What does this reveal about the United States' view of global digital trade and the e-commerce regulatory environment?

To answer these research questions a literature analysis of the stabilized text, the free trade agreements between the US and other World Trade Organization (WTO) members, as well as relevant research papers is employed.

Methodology

To answer the research questions, this paper builds on literature and comparative analysis. This includes a descriptive overview of the full body of the JSI and the US' proposals from 2018, to showcase both differences and similarities. Furthermore, a similar method is used to present the evolution of the US' formulation of the security exception in all its free trade agreements, starting from the US-Israel FTA in 1985 and continuing through the United States-Mexico-Canada Agreement (USMCA) in 2018**.**

These findings are combined with and supported by an analysis of previous research regarding the history and application of the GATT 1994 Article XI security exception, American trade policies, and the trend of declining multilateralism. To emphasize the connection between trade, national security,

statecraft, and international power politics, Gruber's concept of *to-go-alone ability,* as well as Kim's *Framer Vs. Follower* framework is used to analyze the US' decision to opt out of the finalized text of the JSI.

Power Asymmetry in Trade Practice and Negotiations

The practice of Joint State Initiatives as a part of the WTO system has been criticized for marginalizing developing countries and threatening the foundation of the multilateral trading system. The combination of the practice of single undertakings – where many different agreements are packaged into one and the agreement can only be signed as a whole – together with the need for consensus and each country's veto power, makes the WTO slow to progress. This has made actors like the European Union express a need for reforms and push for plurilateral agreements between like-minded countries to further develop the trade system. However, critics state that this allows developed economies to advance their interests to the detriment of developing countries. This is particularly the case as developing countries lack the ability to participate effectively in the negotiations and make their voices heard.[4]

In *Power Politics and the Free Trade Bandwagon*, Gruber introduces the political concept of a state's institutional *to-go-alone ability.*[5] It signifies the power a state has to thrive within its own regime without others' participation, where the regime is so powerful that reluctant states seek inclusion despite their lack of support, as the cost of being left out would be too high. This contrasts with the mutual-benefit paradigm of international cooperation where the purpose behind states' cooperation is mutual gains and not underlying power persuasion. Gruber concludes, however, that the to-go-alone ability concept does not exist as a mutually exclusive thought, but as a way to elaborate on the existence of power dynamics in joint actions such as free trade agreements. Azmeh argues that these power dynamics are the reason why developing countries join JSI negotiations despite a lack of possible influence, and Gruber follows this assumption by arguing that Mexico and Canada's participation in North American Free Trade Agreement (NAFTA) exemplifies the US' to-go-alone ability.[6]

These underlying power asymmetries are relevant in the formulation of free trade agreements, as the to-go-alone ability concept enables the US to opt out of those that do not promote its interests. The *Framer Vs. Follower* framework presented by Kim can be seen as exemplifying this power asymmetry within Free Trade Agreement's (FTA) formulations.[7] Through an analysis of South Korea's free trade agreements, Kim explains that the provisions which are consistent in both inclusion and wording across its portfolio are those which the nation prioritizes highly enough to put the power behind and secure the framing. This theorizes that through the to-go-alone ability, the US has the

ability to consistently wield its power to act as the framer, ensuring that the nation's prioritized national security gets protected.

Chow presents that with Donald Trump's first ascension to office in 2017, the US adopted an "America First" policy that began a trend of American noncompliance and disengagement from the WTO.[8] This signifies a change in policy direction, as the US was a dominant actor and active participant in the first few decades of the General Agreement on Tariffs and Trade (GATT) regime.[9] Currently, the most important issues for the US are its relations and competition with China. Viola found that from the WTO's founding to the early 2000s, the US viewed China's participation in the WTO as a way to manage its security competition.[10] The US believed that the WTO would encourage a political transformation in China through trade liberalization, leading to a more open China, and the US National Security Advisor Sandy Berge said in his speech in 2000 that if the goal of trade normalization is not reached he was "equally convinced that we will subvert that goal and damage our national security.".[11]

A powerful China without an agreement with the US is deemed a threat. Due to state sovereignty and the power asymmetries that exist in international governance, the same power asymmetry becomes an inherent part of trade relations.[12] A more powerful China would therefore threaten the power position held by the US, explaining the US' choice of withdrawal from the WTO because of the belief that the organization enabled the American geopolitical and economic rival. The weaponization of trade became a part of the US' economic security dilemma, and both the Trump and Biden administrations have stated that American commitment to the WTO now leads to a threat to their national security.[13] This portrays the intrinsic connection between trade policy, statecraft, and politics, where American power and to-go-alone ability provides the US with the possibility to revert to isolationist trade politics.

Joint Statement Initiative on E-commerce and the US Position

What is the Joint Statement Initiative on Electronic Commerce?

Due to the growing importance of global electronic commerce and its constant development, the JSI introduction sought to adapt to the world's current needs. At the July 2024 meeting, Australia, Japan, and Singapore presented the text on behalf of all the participating WTO members, however Brazil, Colombia, Guatemala, Indonesia, Kinmen and Matsu, Paraguay, Penghu, the Separate Customs Territory of Taiwan, Türkiye, and the US were against the proposed body.[14] Not all countries who opted out of the agreement were decidedly against the text. Indonesia is still in ongoing discussions about whether the moratorium is acceptable based on their national documents, and the US

believe the current proposed one is lacking measures for security, while they recognize the importance of the agreement.[15]

The US under the Trump administration presented its communication with regard to the JSI on E-commerce in April 2018, stating that cross-border data flow generated a bigger impact on world Gross Domestic Product (GDP) than global trade in goods, making data mobility a priority.[16] The rules proposed sought to ensure the free flow of data across borders and to prevent data localization, which would otherwise force companies to build digital infrastructure in each country. At the same time, they aimed to protect an open Internet by preventing governments from blocking or filtering online content.

Regarding digital products, the priorities are stated as ensuring duty-free and non-discriminatory treatment for permanently tariff-free electronic transmissions, based on the Moratorium agreement from 1998.[17] The US argues that in the digital economy sector much of the value lies in proprietary data, a position the US has stood by since the announcement of *The Digital Dozen* by the US' Trade Representative in 2016.[18] It therefore proposes safeguarding actors in this sector by protecting source code to prevent companies from having to share their trade secrets or algorithms. The US also opposes forced technology transfers which could deter both foreign and local firms from accessing global technology and information. Additionally, it seeks to ban discriminatory technology requirements, such as mandating the use of national technology as a condition for market access. On digital security, the US pushed for encryption of data and efforts in cybersecurity to protect the trust in digital trade.[19]

Lastly, to ensure access to digital innovations, the main proposals focused on digitally relevant market access by updating the outdated General Agreement on Trade in Services (GATS) commitments so new technologies can fit into the old text, as well as on opening government data, facilitating public access, and establishing liability for non-IP content, holding Internet intermediaries accountable for content created by third parties.[20]

The 2018 communication argues for agreements that enable freer trade. However, later in 2023 under the Biden administration, the US Trade Representative released a statement on the negotiations, retracting their support of provisions regarding data and protection of source code that could conflict with countries' domestic policies. The phrasing used in the statement is "to provide enough policy space", protecting the countries' rights to regulate.[21]

The points discussed in the JSI are enabling electronic commerce, openness and electronic commerce, trust and electronic commerce, transparency, cooperation, development, telecommunications, exceptions, institutional arrangements, and final provisions. The text recognizes that not all issues around

digital trade have been covered, and that some points from the text, such as the permanent ban on import duties and other signatories proposed, are to be revised in five years and two years, respectively.[22]

Some of the key points described are that no party should prohibit any electronic transaction, but may require electronic authentication, electronic invoicing, and the possibility of creating a paperless border between country members. However, while these forms should be provided online, all forms that are to be provided by customs or any government agency should be fully accessible online. The text also recognizes the rapid growth of payments done online. Therefore, it is proposed to support the development of safe, trustworthy, affordable, and accessible cross-border payments by applying international standards to promote innovation and competition among companies that provide international electronic payment services. This should be done in a timely manner in accordance with laws that regulate system risks.[23] It would involve setting the terms through the GATS Schedule of Commitments, where each party records a commitment under Mode 3 (Commercial Presence).

The proposal covers the trust and electronic e-commerce section, which states that suppliers of goods or services should deal fairly and honestly with consumers, providing accurate and transparent information about the goods or services that they provide. To ensure confidence and trust in the use of e-commerce, consumer data must be used properly and protected, and the sending of unsolicited commercial electronic messages minimized. Furthermore, on protection, the importance of risk-based approaches addressing possible threats to be identified and mitigated to minimize possible trade barriers is briefly mentioned in Article 17, Section D.[24]

The JSI provisions on capacity building address structural asymmetries between members. Developed countries and developing countries with sufficient resources would be tasked with assisting less-developed countries, providing technical support and extended timelines, and implementing aid. Through the whole analysis process of other countries' needs, transparency is critical to ensure that the provision of assistance is both adequate and effective. Trade experts have addressed concerns on the exceptions list and the unresolved issues in the body.[25] Particularly, Article 25 on cross-border data flows, which gives states wide discretion to opt out of the obligations.

When comparing the US with countries like Indonesia or Brazil, it can be argued that their refusal also stems from a protectionist perspective, but their positioning reveals asymmetries in areas such as market structure and regulatory capacity. For emerging economies, it supposes dependency on foreign platforms, accepting bans on localization and other protection measures would reduce the scope of regulators. By refusing the text, these countries keep the

instruments to support their own innovation systems and regulate digital risks. Withholding agreement on the provisions strengthens their bargaining leverage, allowing them to extract concessions in areas that would pose difficulties for the country, such as capacity building, phased timetables, or developmental flexibility.

For emerging countries, the issue is not to oppose the e-commerce body, but to be able to preserve control over national security risks like how data circulates, how technologies are governed, and how the benefits from digital trade are distributed.

What is the US stance on the Joint Statement Initiative on electronic commerce?

On the 26th of July 2024, the same day as the stabilized text of the JSI was released, the American ambassador María Pagán posted a statement on behalf of the US explaining Washington's decision to opt out of the stabilized text. While acknowledging the importance of the JSI and clarifying the US' intention to keep working to reach an agreement, the statement declares that the US believes more needs to be done to the text especially in consideration of the "essential security exception".[26]

The essential security exception in question can be found in Article 23: Security exception of the JSI, which states that "for the purposes of this Agreement, Article XXI of the GATT 1994 and Article XIV bis of the GATS shall apply, mutatis mutandis" (WTO, INF/ECOM/87).

The first historical introduction of exceptions in the multilateral trading system was in Article 37 of the International Trade Organization Charter draft on behalf of the US delegation.[27] This exception article was subsequently transformed into Article XX on General Exceptions of the GATT 1947, which would include the security exception that still exists as a part of Article XXI of the GATT 1994. The U.S. delegate John Leddy was at the time quoted saying that "We recognized that there was a great danger of having too wide of an exception [...] because that would permit anything under the sun. [...] We cannot make it too tight, because we cannot prohibit measures which are needed purely for security purposes.".[28]

Alford explains that the challenge with the security exception is that it can be seen and used as a loophole, since the exception is exercised based on the self-judgment of the invoking member state.[29] He continues that "the self-judging security exception has worked reasonably well" and that it "certainly has not undermined the effective functioning of the WTO". However, in the year 2025, this statement no longer rings true.[30]

Table 1. Summarized similarities and differences between the proposed Joint Statement Initiative on Electronic Commerce and the United States' comment in 2018.

JSI body proposal	US comment in 2018
-Enabling Electronic Commerce No Party shall prohibit electronic transactions. Authentication through electronic authentication or electronic signature. Electronic invoicing and paperless trading shall be promoted. Information controlled by customs or government agencies shall be available to the public.	-Free Flows of Information Cross-Border Transfer of Data: Internet users must be able to move data freely. Consumers and companies shall move data across borders without restrictions. Preventing Data Localization: economies of scale reduce costs, improve quality of service, and strengthen cybersecurity. Prohibiting Web Blocking: free and open Internet enable users to take advantage of wealth of information and services anywhere. -Trade Facilitation WTO Members looking to promote digital trade should fully implement the WTO Trade Facilitation Agreement, since digital trade includes the trade in goods purchased over the Internet. A de minis exemption for custom duties and taxes helps packages move smoothly across borders.
-Openness and Electronic Commerce Regional or local government documents shall be available digitally for public access. Publicly accessible data should be machine-readable in open format, searchable, updated in a timely manner, at reasonable or no cost.	-Fair Treatment of Digital Products Duty-Free Treatment of Digital Products: ensure that the agreement from WTO 1998 continues and is permanent for eschewing customs duties on digital products. Non-Discriminatory Treatment of Digital Products, ensure against discrimination when products are digitized and distributed electronically. -Facilitating Internet Services Digitally Relevant Market Access Commitments: agree that old classifications under the GATS can apply to new technologies. Open Government Data: facilitate public access to and use of government for economic and social development. Liability for Non-IP Content: hold Internet intermediaries liable for content created by third parties.

-Trust and Electronic Commerce Transparent measures for consumer trust. Suppliers of goods and services should deal honestly. Promoting confidence and trust in electronic commerce. Address threats while minimizing trade barriers.	-Protection of Proprietary Information Protecting Source Code: ensure that governments do not mandate access to proprietary information or share it with local firms, such as source code, trade secrets or algorithms. Barring Forced Technology Transfer: prohibit requirements to transfer technology, trade secrets or other proprietary information. Barring Discriminatory Technology Requirements: prevent arbitrary mandates to use national technology. -Digital Security Encryption: to guarantee privacy and security. Cybersecurity: ensure that governments build their capabilities to prevent and respond to incidents.
-Transparency, Cooperation, and Development Exchange information on laws and regulations Support developing countries in technical assistance and capacity building. Assist and support countries during the long acquisition time.	
-Telecommunications Ensure the regulatory authority does not hold financial interest. Ensure the assignment of frequency bands is through an open process.	-Competitive Telecom Markets Every WTO member should be ready to adopt the Reference Paper from WTO Telecommunications into their GATS Schedule and provide market access to telecommunications investors.
-Exceptions Based on Articles XX, XXI, and XIV bis of the GATT 1994, mutatis mutandis. Nothing shall prevent a Party from adopting or maintaining measures on the protection of personal data.	
-Institutional Arrangements and Final Provisions Articles XXII and XXIII of GATT 1994 or Articles XXII and XXIII of GATS shall apply to consultations and settlements. A Committee on Trade-Related Aspects of Electronic Commerce is established and shall be open to all Parties. No later than two years after the date of entry, all Parties shall undertake a review of this Agreement.	

As of the 10th of December 2019, the WTO Appellate Body is no longer able to fulfill its role after the US blocked the appointment of new judges in 2017.[31] The state's reason for this is related to the high value put on the state's sovereignty, which is related to the Dispute Settlement Body (DSB) panel's conclusion against the US' claims that Article XXI(b) is self-judging in the *Russia-Measures Concerning Traffics*.[32] The decision to block the judges not only undermines the effective functioning of the WTO as stated by Alfred, it brings a part of the WTO to non-functionality.

The importance of the security exception for the US is evident not only in its blocking of Appellate Body judge appointments and its decision not to support the stabilized text of the JSI, but also in the drafting of its FTAs. The US has FTAs with 20 countries; bilateral ones with Australia, Bahrain, Colombia, Israel, Jordan, Korea, Oman, Panama, Peru, Singapore, and plurilateral ones with Mexico and Canada through the USMCA as well as Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic as part of the Dominican Republic-Central America Free Trade Agreement.[33] The first US FTA was signed with Israel in 1985, and the exception provisions of the agreement state that Articles XX and XXI of the GATT are incorporated with and a part of the agreement.[34] Similarly, the predecessor to the USMCA, NAFTA, has a security article that is closely comparable to Article XXI of GATT.[35]

As seen in Table 2, the GATT 1994, NAFTA, and USMCA all use different names for the security exception that signal varying levels of essentiality, with the USMCA's strongest statement that the security exceptions are not only relevant for the nation but fully essential and fundamental.[36] Both NAFTA and USMCA differ from GATT 1994 in clause (a), as they apply not only to the furnishing of information disclosure but also to the granting of access. NAFTA and USMCA signal the interest in protecting the validity of sovereign states' right to self-judgment in relation to the security exceptions with the usage of "determines" instead of "considers" as in the GATT 1994. The (b) clause of GATT 1994 and NAFTA describes specific instances in which the security exceptions are applicable. These parts do not exist in the USMCA, which instead favors a broader approach by solely stating that the measures applicable are necessary for the fulfillment of its obligations to both the maintenance and restoration of international peace or security, or the protection of its essential security interests. The USMCA does not mention the United Nations Charter, a possible implication of further withdrawing from strong participation in all types of multilateral international organizations, and not only the WTO.

Table 2. Security exceptions in GATT 1994, NAFTA and USMCA.

GATT 1994	NAFTA	USMCA
Article XXI: Security Exceptions	Article 2102: National Security	Article 32.2: Essential Security
Nothing in this Agreement shall be construed (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests (i) relating to fissionable materials or the materials from which they are derived; (ii) relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; (iii) taken in time of war or other emergency in international relations; or (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.	1. Subject to Articles 607 (Energy - National Security Measures) and 1018 (Government Procurement Exceptions), nothing in this Agreement shall be construed: (a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; (b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests (i) relating to the traffic in arms, ammunition, and implements of war and to such traffic and transactions in other goods, materials, services, and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment, (ii) taken in time of war or other emergency in international relations, or (iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or (c) to prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security	1. Nothing in this Agreement shall be construed to: (a) require a Party to furnish or allow access to information the disclosure of which it determines to be contrary to its essential security interests; or (b) preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

All other US FTAs are identical to the security exception of the USMCA, and the only other current FTA of the US that mentions the UN charter besides the US-Israel FTA is the US-Chile agreement.[37] The US-Panama FTA, as well as the US-Peru FTA, also includes a footnote which states that "For greater certainty, if a Party invokes Article 21 in an arbitral proceeding initiated under Chapter […] (Investment) or Chapter […] (Dispute Settlement), the tribunal or panel hearing the matter shall find that the exception applies.". [38]

Table 3. Summarized similarities and differences between the security exceptions of GATT 1994, NAFTA, and USMCA.

	GATT 1994	NAFTA	USMCA
Title name	Security Exceptions	National Security	Essential Security
(a) clause	"Furnish", "considers"	"furnish or allow access", "determines"	"furnish or allow access", "determines"
(b) clause	"for the protection of its essential security interests", (i) "fissionable materials", (ii) traffic in military equipment, (iii) taken in time of war or other emergency	"for the protection of its essential security interests", (i) traffic in military equipment, added "services, and technology" (ii) taken in time of war or other emergency (iii) relating to the implementation of national policies respecting the "non-proliferation of nuclear weapons"	N/A. The comparison of the (b) clause in USMCA better corresponds to the (c) clauses of GATT 1994 and NAFTA
(c) clause	"Obligations under United Nations Charter"	"Obligations under United Nations Charter"	(b) Measures considered necessary for the fulfillment of its "obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests"

Schoenbaum presents an analysis, stating that the Trump administration's "America First" policies led to an abandonment of the US' global leadership role.[39] President Trump's first administration's national security policy states that "we have also continued to make clear that the US will no longer tolerate economic aggression or unfair trading practices." and that the US will continue "[...] building trade relationships based on fairness and reciprocity, and defending America's sovereignty without apology."[40] Instead of participating in the multilateral trading systems, the President established high tariffs and not only retreated from active WTO engagement, but blocked the functionality of the DSB.[41]

The Biden administration that followed continued with a domestic-focused trade policy.[42] The Biden administration's national security policy stated that the goal was to "position the United States to outmaneuver our geopolitical competitors" and that "the United States will continue to defend democracy around the world [...]". This will be done by "partner[ing] with any nation that shares our basic belief that the rules-based order must remain the foundation for global peace and prosperity.".[43] While more positively inclined to working with other countries than the first Trump administration, the national security policy mentions the threat of China and Russia on the national playing field, two countries that are also a part of the WTO.

The second Trump administration has followed the footsteps of the first, with a focus on "America First". The administration has again withdrawn from international organizations such as the United Nations High Commissioner for Refugees, United Nations Relief and Works Agency, the Organization for Economic Cooperation and Development Global Tax Deal, the Paris Climate Agreement, and the World Health Organization, showing further movement away from multilateral efforts.[44] Isolationist policies have led to the levying of high tariffs on countries across the world and renegotiations of trade agreements.[45] These tariffs were imposed by President Trump under the International Emergency Economic Powers Act (IEEPA), providing the president an exception to the rights to handle tariffs that normally lies within the congress. The US Trade Representative states that this aids President Trump in "taking urgent action to protect the national security and economy of the US. [As] The current lack of trade reciprocity […] has weakened our economic and national security.". This continues the discourse of trade issues as potential threats to national security, aligning with Trump's isolationist America First policies, where the use of security exceptions is not only legitimized but also expected. All of this is done under the pretense of protecting the nation while simultaneously supporting trade decisions that promote America's power.

In digital trade, the balance is most tenuous between the legitimate use of security exceptions to protect the nation and their use as blatant protectionism. All nations must coexist within cyberspace, and with free flows of data arises the contentious issue of applicable jurisdictions. Curbing free flows of data as efforts for increased cybersecurity will lead to barriers for free trade.[46] Sun presents that cybersecurity and cybersecurity threats may constitute "essential security interests" and "emergency in international relations" under Article XXI GATT 1994, respectively.[47] This once more highlights the interconnectivity between national policies and trade, with national security at its center. While the self-judging aspect of Article XX is debated, the very existence of the clause within WTO international law signifies an acceptance by members that threats to national security constitute a legitimate exception. The US' arguing that the article is self-judging can be critiqued for being protectionist, but

from the American standpoint, the threat of cyber-attacks and related digital trade issues in trade law are recognized as threats towards national security.

Conclusion

The Joint Statement on E-commerce's stabilized text lost the support of the US, despite the state being an active participant during the negotiation period. The official statement through Maria Pagán in 2024 declares that the US views future participation in the discussion positively, and that while the text generally needs more work, the main problem relates to the essential security exception. The US also requested more internet-based security details to be incorporated, concerning cybersecurity and data encryption. The nation places great importance on protecting its national security, which is evident in several decisions, including its refusal to support the stabilized text of the JSI, the provisions of its FTAs, the national security policy documents of the past two presidential administrations, and its blocking of WTO Appellate Body judge appointments. These decisions can be viewed as the US pulling away from the multilateral trading system, which is in opposition to their previous role as a global leader and proponent for trade liberalization in the beginning decades of the GATT regime. While the proposals in the US' comments for the JSI in 2018 align with a positive view of trade liberalization – such as implementing of the WTO Trade Facilitation Agreement to create a *de minimis* exemption for custom duties and taxes, permanently eschewing customs duties and non-discriminatory treatment on digital products, and prohibiting web blocking to promote a free Internet – the Biden administration's 2023 statement prioritizes domestic regulation and policy space over certain JSI proposals. The 2018 proposals do not fully align with the stabilized text of the JSI, but both share common elements such as the free flow of information, the prohibition of restrictions on electronic transactions, and open access to government data.

Similarly to Chow, this paper argues that the two Trump administrations' "America First" policies serve as a foundation for the US' disengagement from the WTO and its decision not to participate in the stabilized text of the JSI.[48] The "America First" policy puts domestic interest at the forefront, which was a foundational concept in the Biden administration as well. China's participation in the WTO system was believed to be a way to control the security risk that the state posed against the US. The WTO judgement against the US claims that Article XXI(b) is self-judging in the Russia-Measures Concerning Traffic in Transit case, together with the changed American perception of the WTO as enabling China, established the organization as a threat to US sovereignty and security rather than a tool to support American interests. Since the US believes that the WTO does not promote its domestic interests, it sees no profit in participating in the organization and being bound by its commitments.

According to Gruber's concept of to-go-alone power and Kim's *Framer Vs. Follower* framework, the US has enough power in the international political field to not become a follower but instead stay outside of the agreements that do not support the state's interests, and frame the security exceptions in its FTA's in a way that promotes the US' national security policies.[49] The cohesiveness across the security exceptions in the nation's free trade agreements is consistent with Kim's framework, where the security exceptions are worded in a way that the US prefers them to be, acting as the framer. In conclusion, despite the US stating that it views the JSI positively and wants to participate in the negotiations, the priority of domestic protection led to the withdrawal from the stabilized text.

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From Commitment to Vacuum: The Risks of US Military Withdrawal from the Korean Peninsula

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Abstract: *This paper examines the strategic significance of the United States military presence in South Korea, challenging narratives that frame it merely as a financial burden unnecessary for the United States. It argues that the US forces stationed on the peninsula serve as a critical pillar of deterrence, alliance credibility, and regional stability in the Indo-Pacific. Drawing on discourse and content analysis of government documents, strategic assessments, and a comparative case study of the US troop withdrawal from the Philippines in 1992, the paper demonstrates that a withdrawal from South Korea would not only be detrimental to national security on the peninsula but also embolden adversaries such as China and North Korea. The study highlights how forward-deployed US troops reinforce Western influence, prevent regional power vacuums, and symbolize enduring commitments to allies. By illustrating the geopolitical costs of retrenchment, the paper contends that maintaining the US-ROK alliance is not a sunk cost but a long-term investment in peace and stability in East Asia.*

Keywords: US-ROK alliance; deterrence; alliance credibility; military withdrawal; regional security; Indo-Pacific strategy

Introduction

In recent years, debates surrounding the United States military presence abroad have resurfaced with amplified intensity. Throughout his campaign and in the first few months of his second term, US President Donald Trump repeatedly threatened to withdraw US troops from South Korea unless Seoul commits to greater financial contributions to defense cost-sharing. This has been a hot topic following the recent push by the Department of Government Efficiency on government agencies to reduce the US debt. While often treated as a budgetary or transactional matter in US domestic politics, such rhetoric carries weight far beyond cost accounting. In the context of East Asian international relations, even the suggestion of a US troop withdrawal has profound implications for regional stability, alliance dynamics, and the projection of power. Not only is the security of the Indo-Pacific region at risk of being jeopardized with such a withdrawal, but the US will also forfeit significant defense system support without a presence in South Korea.

The US-Republic of Korea (ROK) alliance, formalized through the Mutual Defense Treaty of 1953 following the Korean War, has evolved into a significant strategic military partnership in the region. Today, approximately 28,500 US troops remain stationed in South Korea, serving not only as a defense commitment to Seoul but also as a forward-deployed force central to broader Western interests in the Indo-Pacific region. With the looming threat of North Korea's nuclear program and growing Sino-US tensions, questions surrounding the cost and value of this military presence warrant serious strategic reflection.

This study utilizes a qualitative research design through two complementary approaches: discourse analysis of government policy documents, official statements, and strategic assessments, and content analysis of academic literature and reputable news sources related to US force posture in East Asia. The discourse analysis approach is used to examine the narratives and policy framings that shape perceptions of deterrence, alliance credibility, and regional stability. Content analysis identifies patterns and themes in existing scholarship and media reporting. These approaches are fused into a comparative analysis at the end. This combined approach is appropriate for capturing both the strategic logic and the political-symbolic dimensions of US military presence in South Korea.

This paper seeks to explore a central question: In what ways is the US military presence in South Korea a strategic asset rather than merely a commitment cost? While many in the Trump administration frame US troops on the Korean Peninsula as an outdated Cold War-era financial burden, this perspective misses their enduring strategic utility. This paper argues that the US military presence in South Korea enhances regional security, bolsters deterrence, reinforces alliance credibility, and secures the American forward defense posture in East Asia as a subregion within the broader Indo-Pacific. A withdrawal would not only jeopardize South Korea's national security but also send damaging signals to US allies and adversaries across the Indo-Pacific. This paper's contribution lies in connecting three strands of strategic analysis in deterrence, alliance credibility, and regional stability. Analyzing these specific strategy points within a single, integrated framework allows for their application to a comparative case study of US troop withdrawals to support the aforementioned argument. While prior work, such as John Ikenberry's analysis of alliance credibility[1] and Victor Cha's exploration of power dynamics in East Asia,[2] has addressed individual elements, this study explicitly examines their interdependence and cumulative effects. To support the argument, the study draws parallels between the 1992 US withdrawal from the Philippines and contemporary debates about the Korean Peninsula. The review of the case study highlights overlooked parallels that exacerbate the broader risks of military retrenchment in the Indo-Pacific. While these details have been discussed separately, when combined and integrated with theoretical insights, they generate an original perspective on

the consequences of US force posture decisions.

Historical Context

The origins of the US military presence in South Korea are rooted in the broader dynamics of the Cold War and the start of the Korean War in 1950. Following World War II, Korea was divided along the 38th parallel, with Soviet troops occupying the North and American forces stationed in the South. This division, initially intended as a temporary measure, solidified as tensions increased. When North Korean forces, backed by the Soviet Union and later China, invaded South Korea on June 25, 1950, the US responded under the banner of the United Nations to repel what it viewed as communist expansion.[3] There are multiple perspectives on what was the leading catalyst for the US intervention in the war. The strategic move was driven not only by alliance commitments but also by fears of a "domino effect" in Asia, as articulated in the Truman Doctrine and reinforced by the Chinese transition to communist ideology in 1949.[4] The subsequent conflict set the stage for long-term US military involvement. In 1953, the US and South Korea signed the Mutual Defense Treaty,[5] establishing a formal alliance that committed the US to aid in the defense of South Korea against external aggression. This treaty resulted in an ongoing US military presence, as well as the development of a bilateral command structure under the United Nations Command and the Combined Forces Command. The US-ROK alliance has undergone multiple transformations since its inception in 1953, adapting to threats ranging from conventional invasion to nuclear brinkmanship.[6] Unresolved historical grievances, such as abductions and memory politics, have also shaped alliance trust and public opinion in South Korea.[7]

Initially, the US presence in Korea was intended to deter North Korean aggression and prevent the spread of communism; however, its purpose has since evolved. The US presence is now critical to regional stability and border security when it comes to East Asian international relations. Today, it is reported that about 28,500 US troops are stationed on the Korean Peninsula, with a majority housed at the largest overseas US military base, Camp Humphreys.[8] The military presence not only allows the US to defend South Korea and other neighboring allies but also provides the US with an outlet for power projection. Geography is no longer a weakness for the US as its overseas military bases act as hubs of American influence across different regions of the world. As Ikenberry explains,[9] the US alliance system in Asia, often referred to as the "hub-and-spoke" model, depends on a credible forward presence to ensure that American commitments are perceived as reliable. Even as the "hub-and-spoke" model evolves, this concept remains relevant when discussing US partnerships in Asia. The US-ROK alliance is not only about defending South Korea but

also about anchoring the US strategic posture in a region that includes several nuclear powers and rising great power competition.

Strategic Functions of the US in Korea

The rise of China as a competitor to the US further reinforces the strategic importance of a US presence in Korea. This is exemplified by increased tensions over the Taiwan Strait and growing assertiveness in the East China Sea. Having such a strong presence in the region ensures the US retains access to key areas of operation and infrastructure.[10] This further underscores the argument that the presence of the US in South Korea is not merely a bargaining chip, but rather an asset with broader regional benefits. Historically, the Cold War politics were what shaped the US posture; however, this relationship has evolved over the years due to shifts in international relations. It has now become a multidimensional security platform with a strategy that would be difficult to alter.

The threat from North Korea was a pivotal reason for the US presence in South Korea, and amid growing tensions and unpredictability, this rationale still holds. Victor Cha and David Kang[11] refer to the placement of US troops in South Korea as a "tripwire" strategy, which implies that if North Korean troops were to attack, it would result in casualties of US troops, triggering a larger-scale involvement. This strategy is effective as the US operates on the foundation that it will react to an attack on its land or bases. This complicates North Korea's ability to invade South Korea, meaning any attack they would attempt would be in the form of a proxy war or limited strikes. One critical part of the US presence in South Korea is how the underlying intention is perceived. It is noted by many scholars that deterrence fails when intentions are misunderstood.[12] If the US presence in Korea is questioned, it would likely alert adversaries to make strategic moves whenever circumstances change. It is common military practice to attack at an escalated rate once the enemy is weakened. Thus, a perceived weakening of the alliance could invite aggression and destabilization.

Besides deterring the threat of North Korea, the US forces in Korea are not isolated in their mission and serve a broader mission in the Indo-Pacific. Having multiple military bases in South Korea has positioned the US to strengthen its response capabilities in the region. Many US bases are strategically placed to allow the US to operate under its jurisdiction while overseas.[13] Not only does this support the US when it comes to maintaining its defense systems, but it also stabilizes allied forces by providing defenses along with what the host nation provides in hard power. Based on Xi Jinping's view on the Indo-Pacific, one major strategy point is displacing US influence and reducing the presence in Korea, falling into a strategic trap[14]. Historical narratives and nationalism

have also shaped China's regional posture, particularly in disputes involving Japan and the US alliance system.[15] US credibility is reliant on its physical presence in the regional states, and a withdrawal could lead to a declining commitment to allies in the region.[16]

As mentioned previously, the "hub-and-spoke" alliance system in Asia is heavily dependent on the perception of the US to uphold its end of commitments in the case of a crisis. The US withdrawal or commitment to no longer intervene in foreign affairs would send a message to other allies like Japan and the Philippines. Ikenberry emphasized that alliances are not just hard power instruments but act as symbols of politics, and for the US, represent the nation's commitment to global leadership.[17] Rana Mitter and Elsbeth Johnson support this view by suggesting that China may interpret inconsistencies in the US as declining resolve and see it as an opportunity to start targeting areas such as the Taiwan Strait or the South China Sea.[18] China's coercion tends to increase when collective allied resilience is weakened. The US presence helps deter China indirectly, and a withdrawal could embolden it.[19] The symbolism of the US presence in South Korea should not be taken for granted, as a strong alliance represents something just as much, if not more than, a physical presence. If there are signs of either the physical or perceptual effect getting weaker, it could result in an imbalance of power.

Counterarguments and Rebuttals

There are many who critique the continued US military presence in South Korea, often raising arguments grounded in financial prudence, strategic redundancy, and rising Korean self-sufficiency. One argument is that South Korea is now a well-developed and technologically advanced country that does not require defense support from the US. This view suggests that the US should cut the costs and reduce its military presence or require Seoul to pay more to support additional defenses. Furthermore, recent calls for a more isolationist or "America First" foreign policy have reframed overseas deployments as unjustifiable burdens on US taxpayers. While these concerns reflect legitimate debates about cost and sovereignty, they overlook the broader strategic function of US forces in South Korea: preserving deterrence, reinforcing alliance cohesion, and sustaining a balance of power in the Indo-Pacific. Rather than being burdensome, the US presence communicates resolve and stabilizes the region against potential threats. This fact is repeatedly demonstrated when power vacuums lead to coercion and conflict elsewhere.

Advocates for military retrenchment argue that scaling back or eliminating overseas bases serves long-term strategic and fiscal interests without compromising security. An example of this is presented by Paul MacDonald and

Joseph Parent, who contend that great powers can undergo "graceful decline" by reducing military commitments abroad, reallocating resources to domestic priorities, and avoiding overstretch.[20] Similarly, Barry Posen argues that offshore balancing can maintain deterrence at lower cost by relying on regional partners rather than permanent US military installations.[21] These perspectives challenge the assumption that forward-deployed forces are always indispensable. While these arguments recognize cost and sustainability concerns, they often underplay the signaling value or "mission need" of permanent forces and the speed with which regional power vacuums can emerge when such forces are removed. Historical cases suggest that retrenchment can invite opportunism from adversaries before replacement security arrangements can take hold.

Burden-sharing is a prominent argument among the recent US administration, as there is a push for efficiency and the reduction of the US debt. There is no doubt that US troops in Korea are costly (for comparison, Mike Krumboltz reports that each US soldier deployed in Afghanistan costs the government approximately $2.1 million per year).[22] Factors such as location, soldier's rank, and skillset all affect the costs, not including any support services needed. The claim being made with this counterargument is that the taxpayers' burden is unfair, and the solutions would be either for Seoul to share more of the cost or a withdrawal of US troops. The rebuttal to this is that, according to both Ikenberry[23] and Robert Kagan,[24] the cost of a preemptive presence is less than the cost of responding to a war that may take place in the region. It is also important to note that South Korea does pay a substantial share of hosting costs under the Special Measures Agreement, amounting to around $1 billion annually, depending on the exchange rate. This includes labor, logistics, and construction contributions to ensure that the facilities are livable for those affiliated with the base.[25] In recent years, US troops in South Korea were relocated from Yongsan Garrison to Camp Humphreys as former President Yoon Suk Yeol wanted to convert the land to a park.[26] This transformation has faced some challenges, as there are negotiations on who should bear the cost of environmental damages to the land due to the US presence.[27] It is known that despite the Korean government making compensation claims, their pleas are often disregarded.

Another counterargument that is presented is that South Korea is more capable now of defending itself than it was at the very end of the Korean War. There is no doubt that Korea has developed substantially after the Korean War and has developed advanced defense capabilities. However, to rebut this, it is important to note that despite South Korea's military advancements, it is not a nuclear power like its neighbor, North Korea. Removing US troops would make South Korea more favorable to nuclearization considerations and more advanced militarization, which Cha[28] and Scott Snyder[29] both mention, which in turn could lead to a regional arms race. Furthermore, the US also benefits from the shared intelligence, training, and strategic positioning while in Korea — it is not just

a defense hub.[30] There is little reason to believe that the US is giving more in defense than it is receiving from South Korea in return, as the parameters in multiple agreements outline reciprocal obligations and benefits.

The counterargument that the US should prioritize domestic needs and reduce entanglements in overseas conflicts is the most notable when compared to others. Especially in recent years, there has been more polarization in US politics, which is leading to unrest within its cities in the form of boycotts, protests, and other demonstrations. The US has domestic affairs that need priority-setting independently of external factors. The rebuttal for this claim is centered around the credibility of the US in international relations and how it is critical that even if the US chooses to reduce its presence, the nation needs to remain present in global affairs. Mitch McConnell argues that withdrawal undermines US global credibility as it will end up costing the nation more in the long run, as there will be signs of instability.[31] Moreover, as Kagan specifies, the hegemon status provides the US with the benefit of economic, security, and ideological likeness.[32] However, should the US retreat, it will invite power vacuums that adversaries could fill in, resulting in the loss of the advantages provided by its prolonged involvement.

Case Study: US Troop Removal from the Philippines

The potential consequences of the US troop withdrawal from South Korea can be analyzed through comparison to historical cases. Although the scale is not identical, the 1992 US withdrawal from the Philippines is a relevant one. A closer process-tracing analysis reveals how the US withdrawal from the Philippines reshaped the strategic environment. In the years leading up to 1992, China's maritime posture was comparatively restrained, constrained by limited naval capabilities and ongoing domestic priorities. Following the closure of Subic Bay and Clark Air Base, however, Chinese forces began a steady expansion of presence in the South China Sea, culminating in the 1995 seizure of Mischief Reef. The withdrawal process was accelerated after the Mount Pinatubo eruption in 1991, which damaged the Clark Air Base, contributing to the decision to fully withdraw troops in 1992.[33]

This pullback led to several strategic consequences. After the withdrawal, China became noticeably more assertive in the South China Sea. Carl Baker[34] notes that the withdrawal from Subic Bay had a direct correlation to China's increased assertiveness, as it had left a vacuum that China swiftly filled. The aforementioned Mischief Reef (a territory previously claimed by the Philippines) seizure marked a turning point in China's maritime expansion efforts. It also highlighted how vulnerable the Philippines became once the US military presence had dissolved. In response to this aggression, the Philippines re-en-

gaged with the US, later signing the Visiting Forces Agreement, which allowed for joint exercises and a temporary US presence. In 2014, the Enhanced Defense Cooperation Agreement allowed for rotational deployments of US troops in the Philippines. The US alliance has since evolved with rotational troop agreements and defense cooperation initiatives, reflecting renewed US interest in maintaining a regional presence.[35] To summarize, within three years of the US vacating the Philippines, China quickly took action to insert itself in the region, which demonstrates how quickly a shift can happen if a weakness is evident.

Applying the three dimensions argued in this paper (deterrence, alliance credibility, and regional stability), the case study breaks down parallel situations that could occur in South Korea. The absence of US assets reduced immediate military costs for potential Chinese moves, lowering the threshold for assertive action, which is reflective of deterrence. For alliance credibility, US disengagement signaled uncertainty to other regional allies, including Thailand and Japan, about Washington's willingness to defend peripheral territories. Lastly, the sudden power vacuum heightened competition in contested maritime zones, prompting not only Chinese advances but also a regional arms buildup, affecting regional stability. These outcomes underscore how forced withdrawals specifically undermine different pillars of regional security at the same time.

This case alone is effective in demonstrating how US military retrenchment in one area can have a ripple effect in regional power dynamics. The Mischief Reef incident in 1995 is often cited as a direct consequence of the US departure and is comparable to fears surfacing around the Taiwan Strait if the US withdraws from South Korea. China's move on Mischief Reef in 1995 reflected a long-standing pattern of opportunistic expansionism in the South China Sea.[36] This case underscores the importance of a forward presence for maintaining deterrence. Now that the forces are in place, removing them would create a security gap. As Cha[37] explains in his theory of "powerplay," the US alliance system in Asia was designed to maintain maximum control over allies while deterring adversaries. This also stands for alliance reassurance: China felt that the alliance was weakening, emboldening it to claim the territory. Although the US and the Philippines eventually restored their defense relationship, it took decades to rebuild the trust lost after the US withdrawal.

Conclusion

The US presence in South Korea is not merely financial; it holds strategic value in maintaining international order. The foreign policy direction of the recent US administration is aimed at isolationism and distancing itself from global conflict, and although the US needs to manage its domestic affairs during times

of turbulence, it should uphold its long-standing role of defensive deterrence abroad. A retreat into isolationism would greatly impact not only the US but also allied nations whose development and security have been supported by US engagement. In the future, it will be important for the US to maintain its relationships with countries in Asia through core commitments, especially considering that China is rising in power. If the US is seen as relinquishing agreements and abandoning alliances, it will open a power vacuum that adversaries will be more than willing to exploit. This paper asked: *In what ways is the US military presence in South Korea a strategic asset rather than merely a commitment cost?* Through historical analysis, strategic assessments, alliance theory, and comparative case study, the answer has been made clear – US troops on the Korean Peninsula serve as a vital instrument of deterrence, alliance credibility, and regional stability, and should not be used as an instrument of domestic political debates in the US.

From their role in the Korean War to their current role in balancing North Korean threats and China's assertiveness, these forces represent a forward-deployed pillar of power in East Asia. Far from being outdated, this presence adapts to changing security dynamics and serves the dual purpose of defending a key ally while bolstering American influence in the broader Indo-Pacific. Efforts to withdraw or reduce this commitment risk signaling a decline in US resolve, emboldening adversaries, weakening alliances, and unraveling a regional order that has helped prevent major conflict for decades. As demonstrated by the Philippine case, the costs of retreat are not symbolic but strategic. The vacuum created by a US departure from Subic Bay and Clark Air Base in the early 1990s led to Chinese aggression in the South China Sea and left the Philippines exposed for years to come. A similar move in Korea would send a worrying message to allies like Japan and Taiwan, while incentivizing adversaries to probe for weakness, both militarily and diplomatically.

In a rapidly evolving security environment marked by nuclear proliferation, regional rivalries, and authoritarian assertiveness, maintaining the US presence in South Korea is essential. To withdraw now, or even to threaten withdrawal as a bargaining chip, is to invite instability, erode hard-earned trust, and cede strategic ground in one of the most contested regions in the world.

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From Ratification to Reality: Assessing the Effectiveness of Cambodia's Response to International Anti-Trafficking Obligations

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Abstract: Human trafficking, although a human rights violation, remains a severe and persistent issue globally. Cambodia, in particular, has emerged as a country of origin, transit, and destination for trafficking in persons. According to the 2024 U.S. Trafficking in Persons Report, Cambodia is placed at Tier 3, signifying that the Cambodian government has neither met the minimum standards for the elimination of human trafficking nor demonstrated significant efforts toward achieving compliance. This paper investigates the issue of human trafficking in Cambodia from a legal perspective, focusing on assessing the extent to which the Cambodian government has fulfilled its international anti-trafficking obligations. It critically evaluates the practical effectiveness of these efforts and explores the underlying structural and institutional factors contributing to the persistent implementation gap. In doing so, this study aims to provide a deeper understanding of the structural barriers to anti-trafficking effectiveness in Cambodia and to contribute to broader discussions on regime compliance and human security in Southeast Asia.

Introduction

Human trafficking presents a grave violation of human rights, fueling crime, corruption, and economic distortion. Around 27 million people worldwide are exploited through force, fraud, or coercion, often in agriculture, factories, or domestic work. Traffickers often target the most vulnerable, including the unemployed, people with little or no formal education, and women and children living in poverty who are seeking stability and well-paid jobs. Traffickers target the most vulnerable including the unemployed, women and children in poverty, profiting from their suffering . Developed and labor-scarce countries are major destinations, while developing states often serve as sources and transit hubs, especially in Southeast Asia, where governments have responded with national laws and regional cooperation frameworks. Cambodia exemplifies these dynamics. It has become simultaneously a source, transit, and destination country for trafficking in Southeast Asia. Cambodia has built up a fairly extensive legal and policy framework to combat human trafficking. At the national level,

this includes the Law on the Suppression of Human Trafficking and Sexual Exploitation 2008, relevant provisions in the Criminal Code, as well as a number of sub-decrees, royal decrees, ministerial instructions, policies, and minimum standards. These laws and regulations are further complemented by Cambodia's participation in bilateral and regional cooperation frameworks, such as the 2005 Agreement with Vietnam on eliminating trafficking in women and children, and the Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region. The government has also introduced practical tools for victim protection, for example, the Ministry of Social Affairs' 2007 Guiding Circular on victim identification and service provision.

Nevertheless, Cambodia's anti-trafficking policies remain weak in practice. Limited institutional capacity, lack of specialized expertise among frontline staff, and insufficient enforcement undermine the effectiveness of these instruments.

This study therefore examines the following research questions: 'How has Cambodia fulfilled its international anti-human trafficking obligations, and how effective have these been in reality? What are the primary causes behind the lack of practical effectiveness?' The aim is to provide an in-depth examination of the situation in Cambodia regarding human trafficking.

This paper seeks to analyze Cambodia's implementation of its international anti-trafficking obligations. It evaluates (i) the degree of domestic legal alignment with international standards, (ii) the effectiveness (or lack of effectiveness) of state responses, and (iii) the factors behind the persistent gap between legal compliance and practical implementation and the challenges encountered. The research begins with a literature review examining existing scholarship on human trafficking in Cambodia. The "Theoretical Framework and Methodology" section draws on international instruments such as the Palermo Protocol, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) to define key concepts and guide analysis. Subsequent sections provide a contextual background and assess Cambodia's domestic and international obligations, with particular attention to the rise of online scam-related trafficking. The paper concludes by offering policy recommendations tailored to Cambodia's political and institutional context, aimed at strengthening prevention, protection, and prosecution efforts against human trafficking.

Literature Review

Southeast Asia (SEA), especially Cambodia, is one of the biggest hubs for hu-

man trafficking. Cambodia suffers from multiple forms of human trafficking, with the most prevalent being trafficking for sexual exploitation and forced labor. Since the majority of victims are children and women, many of the first anti-trafficking studies published on human trafficking were conducted by feminist organizations trying to overcome sex trafficking and female exploitation. In the 1970s and 1980s, many organizations focused solely on women and girls as exploited sexual victims, while ignoring the labor trafficking or the fact that victims of trafficking could be men, leaving a significant gap in the study of human trafficking.

It was not until the 1990s that non-governmental organizations (NGOs) conducted studies on labor trafficking encompassing both male and female victims. In SEA, with most of the studies still lacking due to the lack of transparency within governmental systems, the scarcity of specialized NGOs, and low public awareness, it is becoming more and more complicated for researchers to fully study the causes and the situation of human trafficking in the region.

Cambodia is among the most criticized countries in the region for human trafficking. They have been on Tier 3 of the U.S. government's Trafficking in Persons Report for the third year in a row, indicating that the U.S. government evaluates the Cambodian authorities as not fully complying with the minimum standards of the Trafficking Victims Protection Act of 2000 (TVPA) and not making significant efforts to address the issue of human trafficking. Cambodia has become the main focus of numerous studies and advocacy efforts addressing the issue in SEA. Many of these works, like the "Human Trafficking In Southeast Asia: Causes And Policy Implications" by Diana Betz or the "ASEAN and Human Trafficking: Case Studies of Cambodia, Thailand, and Vietnam" By Naparat Kranrattanasuit, attempt to analyze the underlying causes of Cambodia's trafficking problems, highlighting the challenges faced by the government, society, and even neighboring countries. The majority of these analyses point to systemic issues such as weaknesses in leadership and gaps in the domestic legal framework. For instance, Keo et al. (2014) highlight how moral panic and corruption have undermined the effective enforcement of anti-trafficking laws, while Kranrattanasuit (2014) emphasizes the structural legal gaps across Cambodia, Thailand, and Vietnam.

The strength of such studies lies in their ability to examine the problem connected to many non-surface factors. They connect human trafficking not only to Cambodia, but to even broader historical and socio-economic factors: the consequences of post-war recovery, slow economic development, incomplete legal reforms, and governmental incompetence.

In SEA, Thailand, Indonesia, and Cambodia all have a history of human-trafficking. While each of these countries' governments have different approaches

to tackle the human trafficking issue, none of them seem to have significant success, having failed to create a policy addressing the root of the human-trafficking problem in their countries. When compared to the other countries, Cambodia has the least successful anti-trafficking policy creation and enforcement, while Thailand and Indonesia are placed in Tier 2 of US government reports, reflecting significant efforts of the governments to bring their countries into compliance with TVPA standards. Due to the lack of effective governance, the efforts to create a sound policy that addresses the unique concerns of this war-torn country have been hindered.

With the recent trend toward globalization, many problems require a shift in perspective to adapt to the new global context. Studies of human trafficking in Cambodia often lack an international perspective. Cambodia has embraced globalization by joining numerous international organizations, having cooperated with many countries not only in the same region but around the world.

It also became part of the international legal system, which not only opens potential pathways to address human trafficking through international frameworks, but also raises questions about the country's fulfillment of its international obligations. It has been argued that the latest wave of globalization has acted as a catalyst for the recent explosion in human trafficking, a problem from which Cambodia clearly suffers. While many studies emphasize Cambodia's domestic challenges, few link these issues to its international commitments. This study seeks to address that gap by combining an analysis of Cambodia's international legal obligations with an assessment of its political, social, and institutional constraints.

Theoretical Framework

1. The Definition of Human Trafficking

Before analyzing the situation in Cambodia concerning human trafficking, it is important to clarify the concept of the crime, and examine the interpretation of human trafficking in scholarly literature.

Article 3(a) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UNTIP or TIP Protocol) defines 'trafficking in persons' as the recruitment, transportation, transfer, harboring or other forms of coercion, abduction, fraud, deception or the abuse of power, for the purpose of exploitation. The Article further specifies the forms of exploitation, that is, the activities considered an exploitation of the person being trafficked.

Since the UNTIP Protocol is the first global legally binding instrument with an agreed definition of trafficking in persons, it is the most well-known and widely accepted interpretation of human trafficking. The Protocol states clearly that for a situation to be considered trafficking in persons, it must meet three conditions, specifically the act (for example, recruitment or transportation), the means (that is, coercion, abduction or through the use of force) and the purpose (for exploitation). The analysis and assessment conducted in the study will mostly be based on the concept of this specific definition.

This definition is widely accepted in most scholarly literature on the topic. In her thesis titled 'An overview of Human Trafficking in Cambodia: The UN Role to address the problem', Bailey Gilarowski first states the definition as set out in the Protocol, then provides a comparison between human trafficking and human smuggling. According to Gilarowski, prior to 2000, the concept of the two crimes was blurred together, and it was not until the late 1990s that the international community began to differentiate between these two crimes.

Gilarowski uses the definition of human trafficking in the Protocol for comparing the basic characteristics of human trafficking activity with human smuggling activity, however, she does not establish anything deeper than that regarding the meaning of human trafficking. Generally, she seems to accept the interpretation in the Protocol as the foundation for the rest of her thesis.

Takashi Yasunobu takes a slightly different approach in his research paper 'Combating Human Trafficking in Cambodia: Establishing A Legal Environment for the Effective Counter Trafficking Measures'. He starts by stating the definition in the Protocol as a starting point, then proceeds to further explain each stage in the human trafficking process. According to him, there are four stages: recruitment, transport, coercion and exploitation.

The recruitment stage often involves finding and targeting potential victims, who are usually poor and might or might not have an idea of what they would be doing once recruited. These people, according to Takashi, are easily persuaded and are more willing to join, most often because of poverty, unemployment or lack of education. Then in the next stage, the victims would be transported to where they are needed, and the transportation could be domestic or international.

Once they reach the destinations, victims would usually be stripped of their freedom and then coerced or threatened into performing work in the coercion stage. Finally, the exploitation occurs through forced labor with minimal or no compensation under the guise of repaying debts, while traffickers profit substantially. In some cases, victims are exploited through illicit practices such as organ trade, receiving only a fraction of the proceeds from what is taken.

Takashi's approach is most relevant to this study because it has provided useful insights specifically into how human trafficking is conducted in most cases, and therefore lays out a foundation to look at the situation in Cambodia in-depth, providing an understanding of how human trafficking works, from where the development of possible solutions and recommendations can be facilitated.

2. Legal Instruments

2.1. International laws

2.1.1. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (UNTIP or TIP Protocol)

While conducting this research, numerous legal instruments have been utilized to examine the issue of human trafficking in Cambodia and assess the Cambodian government's efforts to comply with the international regulations.

The core document that acts as the foundation for the analysis in this study is the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (UNTIP or TIP Protocol). This Protocol is supplemental to the United Nations Convention against Transnational Organized Crime and the Protocol Thereto, which is the main international instrument governing transnational organized crimes, and shall be interpreted together with the Convention. It was adopted by the General Assembly resolution 55/25 and entered into force in December 2003.

The UNTIP Protocol marks the initial effort at the global level to legally define and address human trafficking through a binding agreement and provides a general framework to combat human trafficking. It requires participating states to take proactive steps to prevent trafficking and underscores the importance of protecting and assisting victims, ensuring their human rights are prioritized. UNTIP encourages states to take measures beyond boundaries and promotes international cooperation through information sharing and joint efforts.

Even though this legal document presents a broad framework for tackling the issue of trafficking in persons, its efficiency ultimately depends on the political will and capacity of individual states and how they interpret and comply with such regulations, raising concerns about inconsistent implementation and accountability across jurisdictions. Therefore, the Protocol will be used in the specific context of Cambodia to compare its effectiveness in theory and in reality.

2.1.2. The International Labour Organization Conventions

The International Labour Organization (ILO) is a specialized UN agency that

sets international labor standards to promote rights at work, encourage decent employment, and enhance social protection. Among its core conventions are those addressing forced or compulsory labour, particularly ILO Convention No. 29. This Convention defines 'forced labour' as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. While ratifying states are obligated to take concrete measures to suppress such practices, the Convention allows for some exceptions.

In theory, the convention supports its objectives by requiring member states to legislate against forced labor and hold offenders accountable through appropriate sanctions. It also stresses the role of enforcement, particularly through the training of law enforcement agencies to recognize and respond to forced labor situations. However, it does not provide a direct link to the problem in Cambodia, and instead just clarifies definitions and provides general measures. Therefore, whether the provisions referred to in this Convention are effective or not relies largely on their practical application by each state, here specifically Cambodia.

Nonetheless, the general guidelines provided by ILO Convention No. 29 may serve as a foundational framework from which more targeted and detailed recommendations can be developed. For this reason, the Convention is incorporated in this study.

2.2. Regional laws

Given that human trafficking in Cambodia transcends national borders, this paper also examines relevant regional legally binding instruments to provide a more comprehensive perspective within the international context. Thus, we have decided to include the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) to compare and evaluate regional anti human trafficking efforts.

The ACTIP is a regional legal instrument adopted by ASEAN Member States to combat human trafficking. Recognizing trafficking as a violation of human rights and an offense to human dignity, ACTIP builds upon existing international and regional commitments, including the UN Convention against Transnational Organized Crime and its Palermo Protocols (UNTOC). Cambodia is also a member of ASEAN and signed the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) in 2015.

Before the establishment of ACTIP, foundational instruments such as the ASEAN Charter, the ASEAN Human Rights Declaration, and the ASEAN Declaration against Trafficking in Persons, Particularly Women and Children (commonly

referred to as the "ASEAN Trafficking Declaration") laid the initial framework for a regional response to human trafficking in Southeast Asia. However, the ASEAN Trafficking Declaration lacked legal enforceability and did not impose binding obligations on member states, hence the establishment of the ACTIP.

In addition to the ACTIP, ASEAN set out the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children, with which the ASEAN aims to provide specific action plans within ASEAN Member States' domestic laws and policies, as well as relevant international obligations, to effectively address regional challenges.

The ACTIP and the ASEAN Plan of Action serve a critical function in our research in analyzing the regional efforts in confronting human trafficking in Southeast Asia in general and in Cambodia in particular.

2.3. Domestic laws

2.3.1. Cambodian Constitution

The Cambodian government established the legal foundation for addressing trafficking in persons and forced labor, including the exploitation occurring within cyber-scam compounds. These constitutional articles reaffirm Cambodia's commitment to international human rights standards and provide a domestic legal basis for protecting victims of trafficking.

The Cambodian Constitution provides a legal basis to combat trafficking in persons and forced labor. Article 31 commits: "The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights". This Article gives constitutional status to international legal instruments such as the ILO Conventions, the Palermo Protocol, and the Convention on the Rights of the Child, all of which prohibit forced labor, slavery, and human trafficking. Articles 38, 45, and 46 protect dignity and prohibit human trafficking, sexual exploitation, and abuse against women. Article 48 enshrines children's rights and protection from exploitation. However, implementation remains weak.

2.3.2. Law on Suppression of Human Trafficking and Sexual Exploitation

Cambodia's legal framework to address human trafficking is primarily built upon the 2008 Law on the Suppression of Human Trafficking and Sexual Exploitation, often referred to as the Anti-Human Trafficking Law. As documented by civil society and international observers, significant gaps remain in the enforcement of this law, particularly concerning labor trafficking, trafficking for

forced criminality, and the complicity of state actors.

In conclusion, while Cambodia is party to comprehensive international legal frameworks to address trafficking, the persistent gaps in implementation, selective enforcement, and corruption continue to undermine these obligations. Analyzing the problem through these legal instruments highlights not only Cambodia's formal commitments but also the urgent need for genuine political will and accountability to translate these frameworks into effective protection for victims.

Methodology

The study aims to have a deeper look at the situation of human trafficking in Cambodia under the legal lens to understand how Cambodia complies with international regulations in combating this issue, assess the practical effectiveness of these measures, and identify root causes behind their limited impact. To achieve that goal, we decided to use a mix of both quantitative and qualitative data in our research. Given the time constraint, the data was mostly secondary data collected by other professionals that we used as a base for analysis.

To adequately address the research question, this study adopted a mixed-methods strategy, integrating quantitative and qualitative data collection techniques. Due to the sensitive context of human trafficking and the possible lack of transparency in related data, publicly available sources were prioritized in the selection of both quantitative and qualitative materials.

Quantitative data was mostly drawn from existing data and statistics, for example, the annual reports from the U.S. State Department's Trafficking in Persons (TIP) Report or the United Nations Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons. These sources were selected based on their credibility, consistency in reporting over time, and relevance to the enforcement and prosecution aspects of trafficking prevention.

Qualitative data were the international legal instruments and regional documents on the matter, as well as the existing research and studies on the problem of human trafficking in Cambodia. Sources were selected based on their relevance to Cambodia's issue, as well as their examination of practical challenges in implementation of the legal framework.

The analytical approach began with a comprehensive review of prior academic studies in order to gain insight into the background of the human trafficking situation in Cambodia and to identify gaps in the existing literature, thus highlighting the relevance of this research. In addition, pertinent international legally binding instruments were examined in detail to provide a legal framework for

the analysis. Quantitative data and statistics were also instrumental in facilitating a comparative evaluation of the Cambodian government's anti-human trafficking initiatives.

Analysis

1. The Current State of Illegal Human Trafficking

Human trafficking remains a persistent and complex transnational issue that goes beyond territorial boundaries, affecting every corner of the world. In this research, we will first provide a background on the current situation with human trafficking on the global and regional scale, then explain why the study chose Cambodia as the main subject of our analysis.

1.1. Global Scale

According to the statistics reported by the United Nations Office on Drugs and Crime (UNODC) in the Global Trafficking in Persons (TIP) Report 2024, the global situation on human trafficking has shown a general upward trend in comparison to the pre-pandemic period. The following indicators further point to a significant intensification of the human trafficking problem in recent years.

First of all, a key indicator of the growing severity of this issue is the rising number of identified victims. The UNODC reports that the total number of victims detected in 2022 increased by 25% compared to 2019 and by 43% in relation to 2020. Among those trafficked, women continued to constitute the largest proportion of victims, followed by men, and subsequently, boys and girls.

More specifically, in 2022, most global regions reported higher numbers of detected victims compared to 2019, with particularly significant increases observed in Sub-Saharan Africa, North America, and Western and Southern Europe. Conversely, regions such as East Asia and the Pacific, as well as North Africa and the Middle East, experienced declines in detection rates when compared to the pre-pandemic period.

Of the 66 countries that reported data for 2023, the majority continued to observe an upward trend in the number of victims detected. Approximately one-third of these countries, however, recorded a decline in victim detection compared to 2022. Notably, rising detection rates were observed in Western and Southern Europe, East Asia and the Pacific, as well as North Africa and the Middle East.

Secondly, the number of children targeted among the trafficked victims also showed a concerning trend. The data collected most recently in 2022, which was based on a total of more than 18.000 victims detected in 81 countries and

territories, has shown that 60% of girls were trafficked for the purpose of sexual exploitation, followed by 21% forced into nonconsensual labour and 19% suffering other forms of exploitation. On the contrary, the percentage of young boys sexually exploited stayed low at 8%, while the majority of them were trafficked for other forms of exploitation and forced labor.

In comparison with the pre-pandemic period, the UNODC stated that the number of young girls sex-trafficked has risen, however, it did not specify the reason for this escalation. The authors suspect one of the reasons for this trend is that the Covid-19 restriction during 2019 and 2020 had inadvertently limited both domestic and cross-border transportation in general, illegal trafficking in persons being one of them. From another perspective, the data collected in the pandemic period might not be sufficient and accurate. Given the state of fear and panic amid the Covid-19 pandemic, victims of human trafficking might not be fully reported or detected, hence the smaller number of young girls being sexually exploited in the two years between 2019 and 2020 compared to those in 2022.

On the other hand, the UNODC suggests that the rising number of boys identified as victims of human trafficking may be associated with the growing presence of unaccompanied migrant children in Western nations.

Thirdly, while trafficking for the purpose of forced labor is on the rise, few convictions are reported. Since 2019, trafficking for forced labor has seen a greater increase in detection than trafficking for sexual exploitation or other purposes, rising by 47% globally compared to the pre-pandemic period. In 2022, 42% of detected victims were trafficked for forced labor, while 35% were exploited for sexual purposes.

Although cases of trafficking for forced labor are now detected more frequently than those for sexual exploitation, the number of convictions related to forced labor trafficking remains significantly lower. This might be due to the fact that trafficking for forced labor purposes involves more victims per perpetrator than sexual exploitation, as explained by UNODC.

Recent reports by the United Nations Office on Drugs and Crime (UNODC) highlight a concerning upward trend in the global prevalence of human trafficking. This issue transcends national development levels, affecting developed, developing, and underdeveloped countries alike. However, regions characterized by a high concentration of developing or underdeveloped nations, or those experiencing ongoing conflict and warfare, tend to be disproportionately affected. In such contexts, women and girls are the most frequent victims. In contrast, in more developed regions, the rise in human trafficking may not necessarily stem from poverty or lack of education. Instead, it may be driven by growing socio-

economic vulnerability and inequality, including unemployment (which does not inherently equate to poverty) and lack of access to equal opportunities, or the emergence of new forms of online trafficking.

It becomes evident that, although human trafficking is not a newly emerging issue, it is becoming increasingly pressing and demands comprehensive measures at national, regional, and international levels. Particularly in the digital age, the development of technology has facilitated new methods of exploiting victims. A notable example is cyber scams, in which traffickers entice individuals with promises of high-paying employment opportunities abroad. Once trust is established, victims are lured to unfamiliar locations where they are ultimately abducted and trafficked.

1.2. Regional Scale

1.2.1. Current Trend

Southeast Asia remains one of the regions most severely affected by human trafficking, serving as both the source and the transit of the crime. Promises of overseas employment are frequently used to deceive victims. Once trafficked, many face conditions of forced labor, sexual exploitation, or are coerced into cybercrime operations. There are currently several trends concerning human trafficking in Southeast Asia as addressed below.

The first trend we observed is that trafficking in persons shows no signs of declining or being effectively controlled, both in scale and in severity. In her research article 'A Hidden Scourge,' Mely Caballero-Anthony uses data and statistics collected in 2016 by the UNODC and Walk Free Foundation to emphasize the alarming trends in trafficking in persons in the region. The UNODC Report does not mention the Southeast Asia region specifically, however it reported the data collected in the East Asia and the Pacific region, which comprise the Southeast Asia region.

According to Caballero-Anthony (2016), over 85% of trafficking victims originated from within the region, with countries such as China, Japan, Malaysia, and Thailand serving as primary destinations for individuals trafficked from neighboring states. Within Southeast Asia, Thailand emerged as the principal destination for victims from Cambodia, Lao People's Democratic Republic (Lao P.D.R.), and Myanmar, whereas Malaysia primarily received victims from Indonesia, the Philippines, and Vietnam. In East Asia, women made up 51% of the victims, while children accounted for approximately 30%.

Meanwhile, the latest UNODC Report has shown that females made up nearly 80% of victims in East Asia and the Pacific. Women and girls made up a large

proportion of sexually exploited victims, which was 82% based on the data on sex and age of 326 victims detected in 16 countries and territories in East Asia and the Pacific.

This supports the second trend observed, whereby women and girls continue to be the primary victims of human trafficking in general, in particular in sex trafficking, although the significant rise in the number of boys being sexually taken advantage of—13% according to UNODC Report 2024—indicates a disturbing trend: this crime is gradually affecting more children of all genders alike.

The disturbingly high percentage of women and girls sexually exploited might be due to gender norms rooted in stereotypical social roles, which are generalized beliefs or expectations about a specific group of people that dictate what are considered 'normal' or as the 'expected' or 'must-have' behaviours and characteristics of that category of people. Beliefs whereby women have lower social status and less education than men and therefore are more prone to succumb to human trafficking are still worryingly common, especially in underdeveloped countries. Many families also follow traditional gender ideologies that prioritize sons over daughters, and as a result, women and little girls are often the ones being sold to traffickers or sex workers.

However, from another perspective, trafficking of boys and young men might just be more difficult to detect. Stereotypical gender norms may discourage boys and young men from disclosing experiences of sexual exploitation, as they may fear being perceived as weak. The prevailing stigma that males should possess the strength to resist traffickers often prevents them from reporting such incidents when they do occur, and consequently, the data concerning male victims of sex trafficking remains insufficient and does not yet represent reality.

Even so, the latest statistics shown by UNODC have emphasized the increase in the number of young boys being trafficked for sexual purposes, hence warning us that this does not indicate a decline in the trafficking of girls, but rather reflects an unfortunate growth in the number of boys falling victim to child trafficking, showing that every child now increasingly faces the same risk of being illegally transported, exploited, abused, and taken advantage of.

The third human trafficking pattern in Southeast Asia, following global trends, is that sexual exploitation is no longer the predominant form of exploitation identified in human trafficking cases; rather, instances of forced labor have been increasingly prevalent. In the 2012-2014 period, more than 60% of the 7.800 identified victims were trafficked for sexual coercion and abuse. Meanwhile, data collected in 2022 showed that only 32% of trafficking is for sexual servitude, just slightly over half of that in 2016, while 38% of trafficking is for forced labor.

1.2.2. The Possible Causes

The causes of human trafficking in Southeast Asia are quite varied. Meli Caballero-Anthony has listed conflicts and natural disasters as possible causes of human trafficking in her article 'A Hidden Scourge,' stating that the offenders also predominantly target those among the massive numbers of people displaced by armed conflicts and natural disasters. She provides an example involving the Typhoon Haiyan, which devastated the Philippines in 2013. Numerous survivors were reportedly coerced into exploitative forms of labor, including domestic servitude, begging, prostitution, and other menial work. Similarly, drought-driven migrants in Cambodia have been trafficked into Thailand, often via unauthorized and perilous routes. In her view, these unsafe migration pathways significantly increase their vulnerability to exploitation by criminal networks.

While recognizing climate change and extreme weather patterns as potential reasons for the increasing forced migration leading to higher risks of being vulnerable to human trafficking, the study would argue that this is not a direct factor of human trafficking. Rather than triggered by climate change, human trafficking is influenced more significantly by socioeconomic and political conditions.

One of the primary factors directly contributing to human trafficking is poverty. In economically disadvantaged areas of the region, individuals may be sold into trafficking by their own family members or relatives as a means of financial survival. In some cases, victims consent to being trafficked—either knowingly or without full awareness of the circumstances or nature of the work involved. Some are forcibly abducted and compelled to engage in labor or sexual exploitation, while many others are deceived by false promises of legitimate, well-paying employment abroad, only to be exploited once trafficked.

Another contributor to the current state of human trafficking in the region is the lack of education. In her thesis 'Human Trafficking in Southeast Asia: Causes and Policy Implications,'Diana Betz had stated that the lack of education that trafficking victims have is perhaps the most straightforward of all the universal causes. She explained that many trafficking victims, driven by poverty and limited opportunities, turn to migration as a means of escape. However, due to a lack of awareness about the risks involved, they often rely on intermediaries who present false promises of legal employment. These brokers—frequently trusted community members rather than organized criminals—recruit victims under deceptive pretenses, only to exploit them en route or upon arrival. Often, victims incur substantial debts to these intermediaries, leaving them vulnerable to forced labor or exploitation with little recourse.

While the study concurs with the perspective that limited education contributes significantly to vulnerability among trafficking victims, it also highlights

an additional dimension of the issue. Specifically, it argues that susceptibility to trafficking is not confined to impoverished or marginalized individuals. Even those from relatively stable and financially secure backgrounds may be deceived by fraudulent offers of lucrative employment. This suggests that a lack of awareness regarding the realities of human trafficking extends beyond disadvantaged communities and affects broader segments of the population.

For example, in Vietnam, the increasing number of 'online kidnapping' cases is sparking concerns. One such case involves M., a university student who was reported as kidnapped by one of his family members. Earlier that day, M.'s mother had received a message via Zalo with a video showing multiple "injuries" on M.'s body, and a demand for a ransom of 370 million VND, threatening that M. would have a finger severed if the amount was not transferred. Upon receiving the report, authorities promptly located M. alone in a hotel. During the investigation, M. confessed to being contacted by individuals impersonating police officers, who accused him of involvement in money laundering and drug trafficking. As M. had no money, the perpetrators instructed him to simulate signs of physical abuse and stage a kidnapping in order to extort money from his family.

This incident underscores a critical gap in awareness and self-protection skills among the public, especially vulnerable youth, against high-tech scams and impersonation and psychological manipulation tactics.

1.3. Cambodia

1.3.1. The Current Situation in Cambodia

Human trafficking in Cambodia has emerged as a highly complex problem and is rapidly causing a human rights crisis in Southeast Asia. Once perceived primarily as an issue of labor trafficking in Sihanoukville, a province of Cambodia, it has evolved into a deeply entrenched system of forced labor, fraud, and transnational crime, transcending Cambodia's borders. By 2025, Cambodia has not only become a major source, transit, and destination country for victims of human trafficking, it has also solidified its position as the global center for cyber fraud operations, particularly those fueled by human trafficking into forced criminality within online scam compounds.

Traffickers exploit victims from across the globe, including Asia, Africa, Europe, and the Americas. According to the U.S. Trafficking in Persons (TIP) Report 2024, in Cambodia, almost all victims living in the country continue to be trafficked for forced labor and sexual exploitation in sectors such as agriculture, construction, fishing, domestic work, and the entertainment industry. With the foreign nationals, they are often deceived by promises of high-paying jobs and are trafficked into Cambodia, where they are confined in heavily guarded scam

compounds operated by transnational criminal networks. These operations are particularly concentrated in coastal areas like Sihanoukville, border zones such as O'Smach, and other regions with deep ties to organized crime.

In the 2024 U.S. TIP Report, Cambodia was placed on Tier 3, indicating that despite the rising concerns about the human trafficking situation in the country, the government's lack of adequate efforts and sufficient attention to the problem as well as the victims was making the situation worse.

Human trafficking in Cambodia presents itself in various forms, primarily categorized into four major types: sexual exploitation, forced labor, child trafficking, and other forms not explicitly defined.

Sex trafficking remains a persistent problem, particularly targeting women and girls. In 2023, the Cambodian government reported 16 cases involving sex trafficking, but no further breakdown was provided for 2023, raising concerns about transparency and the true scale of the problem. The government further reported having identified 214 victims of forced marriage.

Labor trafficking remains a critical concern in Cambodia, with 24 reported cases involving forced labor, particularly in scam compounds located in urban centers and border regions. Victim profiles indicate that the majority were male individuals, predominantly monolingual and possessing incomplete secondary education, making them highly vulnerable to recruitment through deception and coercion.

The government also identified cases involving child trafficking, although official reports lacked clarity on the specific forms of exploitation involved. In addition, authorities documented 48 cases of unspecified trafficking, suggesting the presence of other forms of exploitation that remain uncategorized or insufficiently detailed in public records. The government reported that it convicted 109 traffickers under the trafficking law, however it did not provide disaggregated data for this type of trafficking.

Despite alarming indicators, Cambodia's official anti-trafficking response remains fragmented and opaque. In 2023, the government reported initiating prosecution against approximately 600 suspected traffickers in 354 cases yet failed to disaggregate these by law type or trafficking category.

1.3.2. Why Cambodia as a case?

Data reveals the alarming scale of cross-border victimization. For example, there were a significant number of 1,112 cases involving Indonesian citizens in Cambodia that were associated with online fraud activities in the first quarter of

2025, which prompted the two countries to renew and strengthen their commitment to combat this transnational crime. In early 2025, more than 200 foreigners were rescued from Cambodian scam centres, including 109 Thais (with 54 of them women), 50 Pakistanis, 48 Indians, five Taiwanese and three Indonesians. Meanwhile, Chinese nationals remain the most significant foreign victim group in Cambodia, with 2,695 victims reported in 2024, more than double of the previous year's figures.

The negative repercussions extend beyond the direct suffering of victims. Countries of origin are burdened with the costs of repatriation, victim rehabilitation, and the broader social destabilization these trafficking networks create. The exploitation of foreign nationals in Cambodia is not only a grave human rights concern, it also presents a significant threat to regional stability, economic security, and international cooperation efforts.

Human trafficking constitutes a serious transnational crime that is not confined by national borders, thereby impacting countries across regions, particularly those that share geographic proximity. Vietnam, which borders Cambodia, is significantly affected by this issue. Therefore, the authors, who are Vietnamese, decided to center this study on Cambodia and not any other countries in the region, considering the geographic proximity and close connections between the two countries in the human trafficking problem, where one country may be the source and the other the destination.

Although both countries face similar challenges related to trafficking, their political systems and policy approaches diverge considerably. These differences in governance and institutional capacity may influence how each country responds to trafficking. By narrowing the focus to Cambodia, this study aims to provide deeper insights into context-specific challenges and responses, thereby contributing to a more nuanced understanding of anti-trafficking efforts within the region.

2. Analyzing

2.1. The definition of "Human trafficking" under Cambodian domestic law

TIP under Article 3(a) establishes the international definition of trafficking in persons, requiring the presence of three elements: acts such as recruitment, transportation, transfer, harboring, or receipt of persons, means including force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or the giving/receiving of payments to a person in control, and the purpose of exploitation, including sexual exploitation, forced labor, slavery, servitude, and organ removal.

Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation 2008 (TIPSE) incorporates many of these elements through provisions such as Articles 8, 10, 12, 15, 17, and 19, but alignment remains partial. Articles 8 and 12 criminalize unlawful removal and recruitment using force, threat, deception, abuse of power, or coercion, mirroring much of the Protocol's "means" requirement; however, they omit "abuse of vulnerability" and "payments/benefits," narrowing the scope of prosecutable conduct and leaving certain forms of economic coercion or family-mediated trafficking outside the law's reach. Articles 10, 15, 17, and 19 reflect the acts and purposes of trafficking, criminalizing removal, sale, transport, harboring, and a wide range of exploitative ends such as forced labour, sexual exploitation, servitude, debt bondage, and organ removal, while also recognizing that a victim's consent is irrelevant when coercion is used, consistent with Palermo.

To conclude, Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation 2008 represents significant progress toward compliance, capturing many acts and exploitative purposes of trafficking, but its failure to include abuse of vulnerability, payments/benefits, and a uniform child definition reflects critical gaps that prevent full alignment with TIP's comprehensive standard.

2.2. Criminalization with Human trafficking crime

2.2.1. The requirement of criminalization with Human trafficking crime

Article 5 TIP to Prevent, Suppress and Punish Trafficking in Persons requires each state party to adopt legislative and other necessary measures to establish as criminal offences the conduct set forth in Article 3 TIP, provided that such acts are committed intentionally. In practical terms, this provision obliges states to criminalize, within their domestic legal systems, acts such as the recruitment, transportation, transfer, harboring or receipt of persons, when carried out through means such as threat, use of force, coercion, abduction, fraud, deception, abuse of power, or giving and receiving payments or benefits to achieve the consent of a person having control over another.

TIPSE explicitly states its objective as the implementation of TIP. Substantively, the law criminalizes a wide range of conduct that clearly falls within the scope of Article 3 TIP. For example, the law prohibits the act of recruiting, transporting, transferring, receiving, or harboring persons for the purpose of exploitation, whether through force, deception, abuse of power, or other coercive means. These provisions mirror the definition of trafficking under TIP, ensuring that the core conduct is firmly criminalized in Cambodian law.

Cambodian law also addresses the peripheral offences mandated by Article 5(2) TIP. Article 4 TIPSE provides that "attempt, complicity, instigation, organiza-

tion and direction" shall be subject to the same punishment as principal offenders. This language closely aligns with the TIP obligation to criminalize attempts, accomplices, and organizers. In fact, Cambodia's law arguably goes beyond the minimum standard of the UNTOC by explicitly including "instigation" and "organization" as categories of liability, and by equating the penalty of accomplices and instigators with that of direct perpetrators. Further, TIPSE introduces corporate liability, allowing legal entities to be held responsible when trafficking crimes are committed for their benefit. This inclusion demonstrates Cambodia's effort to expand accountability to cover businesses and organizations that profit from exploitation. Cambodia has therefore met its formal legal obligations under Article 5.

2.2.2. Strengthening the effectiveness of legal procedures, from investigation to prosecution and trial.

Jurisdiction

Arising from the transnational and intricate nature of the crime of human trafficking, TIP clearly issued on states' jurisdiction to ensure accountability, create a stable framework to prosecute the criminal, and effectively protect the victim. Under the Convention, states are required to establish jurisdiction over trafficking crimes committed on their territory or on-board of ships and planes flying their flag. Beyond territorial jurisdiction, Article 15 UNTOC encourages States to consider extraterritorial jurisdiction, particularly where the offence is committed by or against their nationals, or by a stateless person habitually residing on their territory.

Jurisdiction over human trafficking offenses in Cambodia is clearly stipulated in the Law on the Suppression of Human Trafficking and Sexual Exploitation of 2008. Regarding its scope, Article 2 TIPSE establishes that Cambodia's territorial jurisdiction extends to any trafficking offence committed within its territory, including acts committed on vessels or aircraft flying the Cambodian flag. Moreover, the Article also adopts the principle of "constituent acts," whereby the occurrence of any element of the offense within Cambodian territory is sufficient for the offense to be deemed committed in Cambodia. The provision helps law enforcement agencies to more easily handle complex cases with transnational elements. Besides, Article 3 TIPSE extends extraterritorial jurisdiction by allowing for the prosecution of felonies or misdemeanors committed abroad by Khmer citizens, as well as offences committed abroad by foreigners if the victim was a Khmer citizen at the time of the crime. The Cambodian commitment to combating trafficking as a transnational crime is shown in the fully established territorial jurisdiction and limited extraterritorial jurisdiction rules. These align directly with TOC's territorial jurisdiction requirement and recommendation for extraterritorial jurisdiction.

Nevertheless, TIPSE has a major limitation in situations when the crime takes place on Cambodian soil, the jurisdiction does not apply when both the victim and the perpetrator are foreign nationals. This restriction undermines the capacity to prosecute cases of cross-border trafficking in which Cambodia is a stop along the way, creating a legal loophole. Therefore, the effective prevention and prosecution of trafficking requires not only action by the State where the offense occurs but also cooperation with the State of the victim's nationality, through mechanisms such as mutual legal assistance, extradition, and joint investigations.

Confiscation and Seizure of Assets from Human Trafficking

Human trafficking is a transnationally organized crime that increasingly operates across borders in a globalized context. UNTOC addresses this gap through Article 12, and Article 26 recognizes the need for states to assert jurisdiction to ensure accountability. While Article 12 requires state parties to adopt legislative and other measures to confiscate proceeds of crime, including property, equipment, or instrumentalities used in offences, it also calls for tracing, freezing, and seizure to ensure eventual confiscation, even if proceeds have been converted, intermingled, or reinvested. Besides, states must empower courts to access financial and commercial records, overriding bank secrecy if necessary. Article 26 complements this by urging states to encourage members of organized criminal groups to supply useful information, particularly about assets and resources, and provides for possible mitigation of punishment or immunity when substantial cooperation is offered. These provisions together aim to deprive traffickers of economic power, thereby dismantling criminal structures.

Under Articles 45–47 TIPSE, victims may claim compensation and confiscated assets, including financial proceeds and property, may be prioritized for victim restitution. The law also allows for seizure of means used in trafficking crimes, reflecting the requirement, as mentioned in Article 2, to cover both profits and instrumentalities. Cambodian criminal procedure law further permits freezing and seizure of property during investigations, providing the legal mechanism to trace and secure proceeds prior to trial. Importantly, the law does not restrict confiscation to direct proceeds; benefits or assets obtained indirectly through trafficking can also be subject to seizure. These measures show substantive compatibility with Article 12.

In addition, Cambodia's broader criminal code incorporates provisions on accomplices and instigators, which may support the cooperation model envisioned in Article 26. However, the Cambodian framework does not clearly establish incentives such as mitigation of punishment or immunity for offenders who cooperate with authorities. Cambodia's legislation remains punitive in orientation, limiting its ability to leverage insider cooperation to dismantle trafficking net-

works. As a result, while the Cambodian law is substantively consistent with the confiscation requirements of UNTOC, it only partially responds to the co-operation mechanisms that are critical to depriving organized groups of their resources.

2.3. Protect and support victims of human trafficking

2.3.1. Ensure physical safety

TIP establishes clear obligations on states to guarantee the physical safety of victims. Article 6(5) TIP requires them to "take into account the safety of victims of trafficking in persons" while they are within the state's territory. This provision reflects an international standard that victim protection must extend beyond judicial processes to proactively safeguard against retaliation, intimidation, or re-trafficking.

TIPSE incorporates certain protective elements but only partially complies with these international obligations. For example, Article 49 of the TIPSE prohibits the media from disclosing identifying information about victims, thereby indirectly contributing to their safety by preventing public exposure. However, TIPSE lacks explicit provisions on physical protection. It does not mandate secure shelters, family protection, or systematic state measures to shield victims from traffickers during investigations or prosecutions. This creates a significant gap compared to Article 6(5) TIP, which envisions a more comprehensive framework.

The Royal Government of Cambodia adopted the National Minimum Standards for the Protection of the Rights of Victims of Human Trafficking (NMS, 2009) introduced detailed requirements for safe accommodation, including shelter security protocols, confidentiality, and protective measures for both victims and their families. It further ensured access to healthcare, psychological support, and reintegration services, aligning more closely with the holistic recovery envisioned in Article 6(3) and 6(5) TIP. However, because the NMS is a policy instrument rather than binding legislation, its enforcement remains uneven and dependent on NGO support. Thus, Cambodia's framework shows partial but incomplete alignment with TIP obligations on ensuring physical safety.

2.3.2. Protect Privacy and Identification

TIP establishes a clear obligation for state parties to ensure the privacy and confidentiality of victims of trafficking. Specifically, Article 6(1) TIP Protocol stipulates that: "Each State Party shall, in appropriate cases and to the extent possible under its domestic law, protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such

trafficking confidential." This provision sets out two layers of obligations: (i) protection of identity through restrictions on disclosure, and (ii) confidentiality of legal proceedings when necessary to safeguard victims from stigma, intimidation, or re-traumatization. The intention is to encourage victims' cooperation with authorities without fear of public exposure or further victimization.

Article 49 TIPSE Law provides: "Newspapers and all other mass media shall be prohibited from publishing or broadcasting or disseminating any information which can lead to public knowledge of the identities of the victims of offenses stipulated in this law." This reflects alignment with the first dimension of Article 6(1) TIP, as it restricts media from revealing personal details that could identify a victim. The rationale, consistent with international standards, is to shield trafficked victims from social stigmatization, secondary victimization, and community ostracization, while at the same time supporting their willingness to testify in criminal proceedings.

However, several gaps remain when comparing Cambodian national law to the broader scope of the Protocol. While Article 49 TIPSE limits disclosure by the press and media, it does not impose a comprehensive confidentiality obligation on other key justice actors, such as police, prosecutors, judges, or NGO partners. In practice, this creates legal uncertainty about whether investigative and judicial authorities are legally bound to maintain confidentiality beyond their professional ethics. In contrast, the TIP Article 6(1) explicitly anticipates confidentiality in "legal proceedings," which goes beyond media disclosure to include courtroom practice and official record management.

Second, Cambodian law does not contain an explicit statutory requirement for closed hearings in trafficking cases. While the Criminal Procedure Code of Cambodia allows courts to order closed hearings under exceptional circumstances, this is discretionary rather than mandatory in trafficking cases. By contrast, the Palermo Protocol encourages states to provide mandatory safeguards ensuring that trial proceedings do not expose victims to public scrutiny unless they consent. The absence of such a guarantee leaves victims at risk of re-traumatization during trial. In practice, these gaps have been addressed only partially by policy instruments such as the National Minimum Standards for the Protection of the Rights of Victims of Human Trafficking in 2009, which include provisions on confidentiality, safe shelters, and victim-centered services.

Shortly, it falls short of providing a comprehensive framework for protecting privacy and identity throughout the judicial process. The absence of explicit legal provisions on closed hearings, confidentiality obligations for justice actors, and protection of victim information during investigations undermines Cambodia's alignment with international obligations.

2.3.3. Repatriation

Under Article 8 TIP, state parties are obliged to facilitate the safe and prompt repatriation of victims of trafficking, taking into account their safety, dignity, and ongoing legal proceedings. TIP further emphasizes that repatriation should preferably be voluntary and supported by proper documentation.

TIPSE does not provide detailed mechanisms for repatriation, leaving a significant gap in compliance. While the law criminalizes trafficking and offers some victim protection, it lacks explicit procedures for coordinating with other states to return victims safely and without undue delay. This shortfall has been partially addressed through bilateral and regional cooperation instruments. Notably, Cambodia and Thailand finalized Standard Operating Procedures (SOPs) in 2021 for the repatriation and reintegration of Cambodian trafficking victims, followed in 2022 by SOPs on cross-border law enforcement cooperation. These frameworks create practical guidelines for safe return, referral mechanisms, and reintegration support. Nevertheless, SOPs are policy tools rather than binding statutory law, their effectiveness relies heavily on political will, administrative capacity, and cross-border coordination.

2.3.4. Community Reintegration

TIP sets out a broad framework for victim assistance. Article 6(3) obliges states to consider implementing measures to provide for the physical, psychological, and social recovery of victims of trafficking, including housing, counseling, medical and psychological care, and access to education, training, and employment of victims. Furthermore, Article 6(4) requires that in applying these measures, state parties shall take into account the age, gender, and special needs of victims of trafficking in persons, particularly the special needs of children, including appropriate housing, education, and care. These provisions underscore the international expectation that victim protection should extend beyond legal remedies to encompass holistic recovery, reintegration, and long-term social inclusion.

TIPSE addresses some of these obligations but only partially. Article 45 TIPSE provides that a victim of an offence under this law has the right to claim compensation for damages suffered. Article 46 further establishes that confiscated property from offenders shall be used, with priority given to compensate victims, and Article 47 provides that victims may receive restitution in accordance with applicable criminal and civil procedures. These provisions align in part with Article 6(6) of the TIP, which guarantees victims “the possibility of obtaining compensation for damage suffered.” However, the TIPSE Law does not contain detailed provisions on medical care, psychological support, safe housing, or educational access as explicitly required in TIP

To fill this gap, the NMS. These standards provide non-binding but detailed guarantees, including victims' rights to food, safe accommodation, emergency and long-term health care, psychosocial counselling, education, vocational training, and access to livelihoods. For example, Section 3.1 of the NMS requires safe and confidential shelter services, while Section 4.2 obliges service providers to offer counselling and psychological care, and Section 5.1 guarantees educational and vocational opportunities for reintegration. These measures reflect the "holistic recovery" envisioned by Articles 6(3) and 6(4) of the Palermo Protocol.

In practice, this means that Cambodia has established a legal right to compensation under the TIPSE, while broader protections relating to housing, counselling, and rehabilitation remain dependent on administrative implementation and NGO partnerships, leading to inconsistent application across provinces.

2.3.5. Support about the legitimate document

TIP establishes binding obligations to safeguard the rights of trafficking victims. Under Article 6(2), states shall ensure that victims of trafficking in persons are informed of relevant court and administrative proceedings and that their views and concerns are presented and considered during criminal processes. This provision sets out clear procedural rights for victims, recognizing them as active participants rather than passive subjects in the justice system. Article 6(6) requires states to ensure that victims of trafficking in persons have access to compensation for damage suffered, creating a material remedy that complements procedural guarantees.

TIPSE incorporates some but not all of these guarantees. Articles 45–47 of the TIPSE provide that victims are entitled to claim damages against offenders in civil or criminal proceedings, and they are given priority over confiscated property of the offender when such property is liquidated. This framework is broadly consistent with Article 6(6) of the TIP, as it ensures victims have a right to financial compensation and restitution. However, gaps remain significant. First, the TIPSE does not contain explicit provisions ensuring that victims are systematically informed of proceedings or that their views are presented during trials, as required under Article 6(2) TIP. Second, while the Protocol requires measures to protect victims from intimidation or retaliation, the TIPSE Law does not provide specific guarantees of witness protection during testimony. Third, unlike international standards, the TIPSE fails to adopt a non-punishment principle for trafficked persons who may have committed unlawful acts under coercion, such as immigration violations or prostitution-related offenses.

This partial incorporation highlights the need for further legal reform to bring Cambodian law into full conformity with international obligations and to ensure

a genuinely victim-centered approach.

2.3.6. Compensation

The National Minimum Standards for the Protection of the Rights of Victims of Human Trafficking 2009 bridges some of these gaps. It recognizes non-punishment, provides legal assistance during investigations, and ensures that victims may testify in safe environments. However, Cambodia's statutory law remains vague about the scope and mechanisms of compensation, creating imbalance. Without detailed procedures or a dedicated compensation fund, remedies depend on confiscated assets, which are often inaccessible or insufficient. This legal uncertainty undermines consistent enforcement and weakens alignment with Palermo's comprehensive guarantees.

2.4. International cooperation

2.4.1. Information exchange

Article 10 of TIP outlines a cooperative framework for combating human trafficking. It mandates that countries exchange information to identify both victims and perpetrators at international borders and to track the methods of organized criminal groups. The article also requires states to provide training for law enforcement and immigration officials, focusing on prevention, prosecution, and victim protection. This training must be human rights- and gender-sensitive. Finally, countries receiving information must respect any restrictions placed on its use by the transmitting country, ensuring trust and effective collaboration.

Article 11 outlines border measures to combat human trafficking. It requires countries to strengthen border controls and hold commercial carriers accountable for verifying passenger documents. States must impose sanctions for non-compliance, and cooperation among international border agencies is encouraged to deny entry to traffickers.

Before becoming a member of TIP, Cambodia enrolled in ASEAN Senior Officials Meeting on Transnational Crime (SOMTC), a mechanism that acts as an institutional framework combating transnational crimes like human trafficking by implementing strategies and coordinating cooperation among ASEAN's member states. Cambodia has established key bilateral agreements with its neighbors. With Vietnam, Cambodia signed an "Agreement on Bilateral Cooperation for Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking" on 10 October, 2005, amended on 9 September, 2012 and entered a Memorandum of Understanding with Thailand on 31 May, 2003, focusing on "Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking". These agreements are crucial for strength-

ening cross-border collaboration to suppress trafficking networks, ensure the protection of vulnerable populations, and provide a legal framework for joint efforts in prevention, law enforcement, and providing comprehensive support to victims. However, officials note that they often lack clarity on specific roles and procedures. To address this, Cambodia and Thailand have recently developed Standard Operating Procedures (SOPs). In 2021, both governments finalized SOPs on the repatriation and reintegration of Cambodian victims, followed in 2022 by SOPs on law enforcement cooperation against trafficking, marking a crucial step toward operationalizing cross-border collaboration.

UNODC Border Liaison Office (BLO) have been established in Cambodia on the borders with Thailand, Lao PDR and Viet Nam. In total, 108 officers work at the BLOs. Numerous national and regional seminars, study trips, and workshops have been conducted since 2003. Cambodia recently requested UNODC to integrate all available training and modules on counter-human trafficking and chemical precursor control into the Computer-Based Training system.

Besides, the Cambodian government had many high-level visits to cooperate with neighboring countries in human trafficking related crimes, like the 2024 signature of a collaboration plan in Hanoi by Vietnamese Minister of Public Security Luong Tam Quang and Cambodian Deputy Prime Minister and Minister of Interior Sar Sokha, focusing on combating transnational crimes, especially human trafficking, drug trafficking, and online fraud. In the same period, the Cambodian Ministry of the Interior and the Lao Ministry of Public Security signed a 2025 security cooperation agreement in Vientiane. The agreement aims to enhance collaboration in combating transnational crimes, specifically focusing on human trafficking, drug trafficking, online scams, and cybercrimes. Both nations also committed to improving border security and cooperation on training initiatives.

2.4.2. Investigation

UNTOC provides a framework for cross-border collaboration in criminal investigations, including human trafficking. Specifically, Article 19 obliges states to consider bilateral or multilateral agreements enabling joint investigative bodies to be established when crimes span multiple jurisdictions. These joint investigations are intended to overcome the jurisdictional barriers that frequently hamper the prosecution of transnational organized crime. Complementing this, Article 20 focuses on special investigative techniques such as controlled deliveries, electronic surveillance, and undercover operations. It encourages state parties to adopt domestic legislation permitting such methods and to negotiate agreements to apply them across borders. Both provisions are especially critical in the context of human trafficking, where organized criminal groups exploit porous borders, differing legal systems, and gaps in enforcement to perpetuate exploitation.

TIPSE Law aligns partially with these international obligations. While the law criminalizes a wide range of trafficking acts and provides jurisdiction under Articles 2 and 3 for both domestic and extraterritorial offences, it does not expressly regulate joint investigations or the use of special investigative techniques. Instead, Cambodian practice has relied heavily on bilateral and regional cooperation frameworks to operationalize these commitments. For example, Cambodia has concluded Memoranda of Understanding with Vietnam, Thailand, and Laos, which provide mechanisms for case referrals, exchange of intelligence, and coordination in criminal investigations. These Memorandum of Understanding (MoUs), although not legally binding to the extent of national legislation, reflect the spirit of Article 19 UNTOC by establishing practical channels for cooperation. Similarly, Cambodia participates in the Coordinated Mekong Ministerial Initiative against Trafficking Process (COMMIT), a regional framework involving six Mekong countries, which facilitates multi-country task forces and information exchange in line with Palermo's joint investigation model.

Regarding Article 20, Cambodia's domestic law does not explicitly provide for advanced investigative methods such as controlled deliveries or electronic surveillance in trafficking cases. Nevertheless, Cambodia has undertaken measures through regional agreements and SOPs. In 2021, Cambodia and Thailand finalized SOPs for the repatriation and reintegration of victims, and in 2022, the two countries adopted SOPs for law enforcement cooperation against trafficking, which include operational guidance for cross-border information exchange and coordinated investigations. These SOPs demonstrate incremental progress toward Palermo's vision of special investigative cooperation, though they remain policy tools without the binding force of statutory law. Furthermore, Cambodia's participation in ASEAN mechanisms such as Senior Officials Meeting on Transnational Crime (SOMTC) also creates space for technical cooperation and, potentially, the application of special investigative techniques across jurisdictions.

2.4.3. Mutual Legal Assistance

Article 18(1) UNTOC establishes the scope of obligations for states in providing mutual legal assistance. It requires that assistance be afforded in investigations, prosecutions, and judicial proceedings related to crimes defined under the Convention, including those in Articles 5, 6, 8, and 23, when there are reasonable grounds to believe that victims, witnesses, proceeds, instrumentalities, or evidence are located in the requested state party, and the crime involves an organized criminal group. These offences encompass participation in organized criminal groups, laundering of proceeds of crime, corruption in Article 8, and obstruction of justice in Article 23. In addition, Article 18 extends mutual legal assistance obligations to "serious crimes" where transnational elements and organized crime involvement exist, and to all offences covered by the Protocols

supplementing UNTOC, including trafficking in persons. This broad scope ensures that mutual legal assistance is not confined to narrowly defined categories but covers the full range of organized crime activities that transcend borders. Where domestic legislation or existing mutual legal assistance treaties of a state party do not yet cover the offences identified under Article 18(1), UNTOC expects states to amend or supplement their national legal frameworks to guarantee full compliance.

Furthermore, UNTOC expressly recognizes that mutual legal assistance extends to cases involving the liability of legal persons, ensuring that companies or organizations involved in human trafficking are not shielded from accountability. Finally, UNTOC links mutual legal assistance to related areas of cooperation, including provisional measures such as seizure of assets, confiscation of proceeds, and enforcement of criminal judgments, thereby creating a comprehensive legal framework for international cooperation.

Turning to Cambodia's domestic framework, partial alignment with Article 18(1) can be identified. TIPSE law establishes a wide range of offences covering trafficking-related conduct, including unlawful removal, recruitment, transportation, sale, and exploitation for sexual or labor purposes in Articles 8 to 10. These provisions mirror the substantive criminalization required by UNTOC and its Protocols. However, Cambodia relies on the Law on Mutual Legal Assistance in Criminal Matters 2004, which designates the Ministry of Justice as the central authority for mutual legal assistance requests. This law allows Cambodia to cooperate in areas such as taking witness testimony, executing searches and seizures, providing certified documents, tracing and confiscating criminal proceeds, and facilitating the voluntary transfer of persons in custody.

Cambodia has sought to strengthen international cooperation through bilateral and regional agreements. Cambodia has concluded MoUs with Thailand, Vietnam, and Laos, and cooperates with ASEAN member states. It also participates actively in the COMMIT Process. These agreements represent Cambodia's recognition that domestic legislation alone cannot meet the challenges posed by transnational trafficking and that regional cooperation is indispensable for effective implementation.

2.4.4. Extradition

Article 16 UNTOC establishes that trafficking-related crimes, when involving organized criminal groups, must be deemed extraditable offences between state parties, regardless of whether they are explicitly listed in existing bilateral treaties (Art. 16(3)). States that condition extradition on treaties are encouraged to treat UNTOC itself as a sufficient legal basis (Art. 16(4)), and to simplify evidentiary requirements and expedite procedures (Art. 16(8)). Importantly, where

a state refuses extradition of its own nationals, it is obliged under Art. 16(10) to prosecute domestically in accordance with the principle of aut dedere aut judicare. (either extradite or prosecute)

Cambodia incorporates these obligations on a treaty level, as it has actively concluded extradition agreements with key partners. These include the Extradition Treaty with Thailand in 1999, the Extradition Treaty with Vietnam in 2013, and the Extradition Treaty with the Russian Federation. In addition, Cambodia participates in broader regional frameworks such as the ASEAN Mutual Legal Assistance Treaty 2004 and the ASEAN Convention on Counter-Terrorism 2007, both of which facilitate extradition and judicial cooperation in relation to serious transnational crimes, including human trafficking.

However, for Cambodian nationals, the law does not fully implement the principle of aut dedere aut judicare under Article 16(10) UNTOC. This means that, although Cambodia has an expanding network of extradition treaties, its domestic law still leaves open the risk that nationals who commit trafficking crimes abroad may avoid both extradition and effective prosecution.

2.5. Prevent human trafficking

Article 9 TIP, supplementing the UNTOC, establishes a comprehensive framework for prevention. Parties are required to adopt national policies and programs to prevent trafficking and protect victims from re-victimization, particularly women and children. The Article emphasizes proactive measures, including research, public awareness campaigns, and social and economic initiatives aimed at reducing risks such as poverty and lack of equal opportunity. It also highlights the importance of cooperation with civil society and non-governmental organizations, as well as the adoption of legislative, educational, and cultural initiatives to reduce demand for exploitation.

In recent years, Cambodia has strengthened prevention measures through national strategies, bilateral cooperation, and awareness programs. The National Strategic Plan for Counter Trafficking in Persons 2019–2023 focused on the "4 Ps" (Prevention, Protection, Prosecution, and Partnership) and emphasized primary prevention through legal enforcement, public awareness, and community engagement. A new 2024–2028 Strategic Plan is under development, consolidating lessons learned and enhancing local-level implementation. The government also endorsed the Third National Plan of Action for Counter-Trafficking in Persons (2019–2023), which prioritized research, evidence-based policymaking, and coordinated campaigns to reduce trafficking risk factors.

On bilateral and regional levels, Cambodia has signed memoranda of understanding with Thailand, Vietnam, and China, focusing on victim repatriation,

reintegration, and cross-border cooperation. Regionally, it plays an active role in the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT), which fosters joint prevention efforts and harmonizes standards across the Greater Mekong Subregion.

Other notable measures include the National Action Plan to Prevent Violence Against Women (NAPVAW3, 2019–2023), which integrates anti-trafficking efforts with gender-based violence prevention, and specialized guidelines for the identification and care of trafficking victims. The Ministry of Women's Affairs has implemented safe migration campaigns, distributed information leaflets to all 25 provinces, and provided helplines and remote counseling to prevent vulnerable women and migrant workers from falling into trafficking schemes. The government also declared December 12 as National Anti-Human Trafficking Day, using annual events to mobilize public support. The policies complemented these efforts in 2022–2023, authorities cracked down on 330 trafficking-related cases, arresting nearly 396 suspects and rescuing over 834 victims, alongside repatriating hundreds of foreign victims exploited in scam compounds.

Generally, Cambodia's current measures and policies nearly align with UNTOC to prevent human trafficking. However, the effectiveness of the Cambodian legal framework and measures is unclear, particularly in the prevention of human trafficking into online scam centers and other forms of modern-day slavery in Cambodia. According to the U.S. Embassy in Cambodia, law enforcement suffers from insufficient funding, and victim identification guidelines are inadequately implemented, especially with respect to foreign victims. This weakens the overall effectiveness of prevention efforts.

3. Evaluate the effectiveness of Cambodia's implemented measures

3.1. The inadequate domestic legal framework

Cambodia is a source, transit, and destination country for trafficking in persons. For a country that has to fight with full power against human trafficking, Cambodia does not actually utilize the legal procedure, law, or rights to the fullest for tackling the issue. One of the country's main legal instruments is the 2008 Law on Suppression of Human Trafficking and Sexual Exploitation. This law originated from a project supported financially by USAID, which provided $3 million through the Asia Foundation, a U.S-based NGO, for an anti-trafficking program in Cambodia. With the help of an international consultant and pressure from the Bush administration, the Cambodian Ministry of Justice drafted a new anti-trafficking law, which was passed on January 18, 2008. However, despite the international backing, the 2008 law still could not address all the problems of the earlier 1996 Law on Suppression of the Kidnapping, Trafficking, and Exploitation of Human.

The 2008 Law on the Suppression of Human Trafficking and Sexual Exploitation (TSE) did not address the inconsistencies of the 1996 Law but created an even wider range to cover, from prostitution and pornography to indecency against minors. The new law also does not give a clear definition of human trafficking. Many terms such as "exploitation" and "organized group" are left to the interpretation of criminal justice officials instead of providing a clear definition. All of these flaws lead to an incomplete and confusing law for the court to deal with, meaning confusion may cause the prosecution and the procedure to be prolonged, while the protection of victims is not guaranteed.

The insufficient law becomes an obstacle in the long run. According to the Cambodia Center for Human Rights (CCHR) 2010 report, the application of the 2008 law has been "inconsistent at best and incorrect at worst," which implies that the judicial court is ineffective and shows that the punishment may not be applied correctly in many situations. Despite enforcement of the 2008 Law, NGOs reported that in practice the government did not issue criminal penalties under the anti-trafficking law for labor traffickers, instead, it utilized the labor law to issue fines and/or short jail sentences of six days to one month, which did not represent sufficient punishment to deter future crimes or provide justice for victims. The inconsistency of the prosecution can not stop or prevent human trafficking; many victims do not receive the justice they deserve.

The Cambodian criminal procedural code does not provide sufficient procedural guidance, monitoring provisions, or language outlining the responsibilities of law enforcement in ensuring effective judicial supervision, which some defendants use for their advantages. As previously reported, some defendants may flee prior to their trial dates as the police lack resources to monitor them when released. While they were released under judicial supervision, courts tried to convict these kinds of suspected traffickers, even if they are absent. The lack of monitoring of criminals, suspected traffickers or defendants is one of the gaps in the legislative systems that can promote the human trafficking problem. Since most traffickers have contracts overseas, they can easily flee the jurisdiction and hide from the authorities, especially to other countries with which the Cambodian government has not signed any extradition treaties.

The victims of human trafficking also did not receive enough protection from the government. The government can not implement and adhere to the minimum standard of victim protection, especially for foreign victims, they will likely end up being deported immediately with a lack of appropriate services. The Cambodia Ministry of Social Affairs, Veterans, and Youth Rehabilitation's victim identification guidelines also remained disparate and underdeveloped. In December 2023, the government opened a victim support center in Banteay Meanchey province and migrant transit center in the border town of Poipet but never reported about their provided service or identified victims. Training for

the shelter utilized NGO funding and support but doesn't seem to actually make a difference to the evolving situation. The 2008 Law also did not provide any separate guidance for foreign victims of human trafficking.

Despite the revision of domestic laws to better adapt to the new context of globalization, Cambodia's government still shows signs of incompetence, while the unfinished domestic legal system presents another challenge. Too many inconsistencies in the statue lead to inconsistencies in legal interpretation and application. There are too many gaps that criminals can exploit, while the ignorance towards victims of human trafficking lead to the ineffectiveness of the whole country's legal system in combating the ongoing issue. The problem still remains in the governance, the undeveloped law is a sight of systemic dysfunction that is unable to adapt to the realities.

Cambodian domestic law actually aligns with international law in some respects. Both the Cambodian law and the UN Protocol appear deficient in several areas. This reflects the original intention of the 2008 law, as confirmed by the Cambodian Ministry of Justice: "The TSE Law has additional objectives: "to protect the rights and dignity of human beings, to improve the health and welfare of citizens, to preserve and enhance good national customs, and to implement the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime[…]." However, if the domestic law adapts to the international law without improving the source, the domestic implementation still contains the same shortcomings as the Protocol.

Cambodia did not fully incorporate international obligations into the domestic law, the 2008 law has not been effectively applied. Similar to the UN definition of trafficking, they fail to clearly define key terms, which is particularly hazardous for justice and human rights. For instance, the Cambodian anti-trafficking legal framework casts a wide net over poorly defined activities that include and confound trafficking, smuggling, and prostitution.

According to the U.S. Trafficking In Person 2024 Report, the Government of Cambodia does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so. Cambodia developed its anti-trafficking law with the support of the international legal system and relevant organizations. However, when applied to the current situation, the state has failed to commit, neglecting many of its obligations due to the corruption within the governance system.

3.2. International cooperation in solving human trafficking

Cambodia can be considered to be very active in the international field of pre-

venting and handling human trafficking problems through international agreements or bilateral agreements with shared-border countries. Cambodia also pledged to join hands with countries like Japan and Australia.

The authorities signed all three of the Palermo Protocols, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. Cambodia's efforts show its commitment to upholding international standards and fighting against human trafficking. Within the ASEAN region, there has been extensive cooperation through a series of formal legal instruments signed among member states. Most notably, the ASEAN Convention Against Trafficking in Persons, Especially Women and Children was signed by representatives of the following countries: Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

Cambodia has concluded bilateral labor migration and trafficking agreements with Thailand, Vietnam, and China, like the 2019 bilateral agreement on the Standard Operating Procedures (SOPs) on Case Management of Repatriation and Reintegration of Victims of Human Trafficking and Development of the Joint Plan of Action of SOPs with Thailand, the 2009 Standard Operating Procedures for the Identification and Repatriation of Trafficked Victims with Vietnam, and the 2016 Bilateral Agreement between China and Cambodia on Strengthening Cooperation in Counter Trafficking. The collaboration with China brings many positive outcomes. According to the Cambodia Interior Ministry Sar Sokha, from 2023 to the first half of 2024, the two sides have investigated and cracked down on multiple transnational crimes, including cybercrimes, human trafficking and drug-related crimes. China also supports Cambodia in training officials, providing technical equipment to improve the capacity of Cambodia in hunting down human trafficking compounds.

That said, Cambodia and most of the SEA countries' anti-human trafficking measures remain ineffective in keeping up with the growing scale and complexity of the crime. Experts or even governments do not consider SEA areas to be a safe place, they assess the government's efforts as insufficient to effectively address the issue of human trafficking: Many countries like Cambodia are on the watch list of the US government.

Human trafficking is not only a problem of developing countries like Cambodia, but also an issue for more developed countries within the EU. With better resources and a more comprehensive legal framework, the EU shows greater success in combating human trafficking. The EU has taken many measures to fight against human trafficking and is pushing for more efforts to fight human

trafficking. In 2023 alone, 457 arrests were made and €4.1 million were seized thanks to EU action. According to Diane Schmitt, the EU Anti-Trafficking Coordinator, the EU and its member states all follow a comprehensive approach, from prevention of the crime to the prosecution and conviction of criminals, while protecting the victims at all stages. This could be considered a key reason for their more effective action against human trafficking.

While EU member states have the primary responsibility of handling human trafficking within their respective jurisdictions, cooperation among member states is necessary, so law enforcement authorities from all EU countries work together to fight human trafficking through European Multidisciplinary Platform Against Criminal Threats (EMPACT) and with the support of EU agencies such as Europol, Frontex and Eurojust. The numbers illustrate an impactful outcome, as just between 2018 and 2023, about 5,555 arrests were made and 4,690 investigations were carried out with cash seizures totaling more than €39 million. These numbers may serve as a guide and inspiration for Cambodia and other SEA countries to continue their collaboration more efficiently.

Challenges and the Reason for the Ineffective Measures

Cambodia's inadequate domestic legislation is a result of the many challenges that the country encounters. The dysfunctional legal system is both a challenge in itself and evidence of deeper structural problems within Cambodian society and governance. The war-torn country has struggled to address the long-term consequences of an underdeveloped economy with a fragile political system while still undergoing post-war recovery.

1. Corruption and the political complicity

After decades of civil war and political violence, corruption still seems to be an issue for Cambodia's society. The "endemic corruption at many levels of government" is a key barrier to progress in fighting human trafficking. The Cambodian government has failed to adequately investigate widespread human rights abuses at scamming compounds despite being repeatedly made aware of them. While law enforcement agencies are perceived as the most corrupt and inefficient sectors, lacking the independence, resources, and capacity to effectively investigate and prosecute corruption cases. The authorities are reported to be deliberately ignoring a litany of human rights abuses including slavery, human trafficking, child labour and torture being carried out by criminal gangs.

Trafficking in persons could not occur at the large scale that it currently does without the leverage supplied by corruption. Corruption has weakened Cambodia's prosecutorial system to the extent that many trafficking leaders remain beyond the reach of justice because officials and police officers actively protect

them. The Cambodian Ministry of Interior reports 65 arrests for human trafficking and several prosecutions of police officials for trafficking-related corruption charges in 2006. For example, the former Deputy Director of the Police Anti-Human Trafficking and Juvenile Protection Department was convicted for complicity in trafficking and sentenced to five years' imprisonment. Two officials under his supervision were also convicted and sentenced to seven years' imprisonment.

According to The 2024 US report on Trafficking in Persons, corruption and official complicity – including by high-level senior government officials – in trafficking crimes remained widespread and endemic during the reporting period; this included the exploitation of tens of thousands of victims in forced criminality in online scam operations in Cambodia.

Cambodia still stays on the 'Tier 3' list of the US report, stating that: "The Government of Cambodia does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so; therefore, Cambodia remained on Tier 3." The weak and poor management of the justice system has further exacerbated the issue. The Cambodian government appears to turn a blind eye to reality in an attempt to reduce reported numbers, rather than addressing future crimes or effectively handling the current situation.

Beside the corruption, Cambodia's messy politics is also creating a more complicated scenario to fight against human trafficking. Human trafficking in Cambodia not only includes Cambodians but also many foreigners. The trafficking rings operate at an international scale, often led by Chinese nationals, while the victims can be from a wide range of countries in SEA, which means fighting it requires collaboration between the regions in anti-human trafficking campaigns. The domestic political dynamics have strained Cambodia's diplomatic relations and made it harder to pursue joint strategies against trafficking, especially since Cambodia´s diplomatic policy faces several challenges: disputes with countries like Thailand and Vietnam and balancing its relationship with China and the West.

A leaked call between Thai Prime Minister Paetongtarn Shinawatra and former Cambodian leader Hun Sen started some tension between Thailand and Cambodia, Hun Sen admitted to recording and disseminating the call, and later releasing the full 17-minute audio on Facebook. The leadership style of former Prime Minister Hun Sen drew criticism and may have raised concerns among neighboring countries regarding Cambodia's governance and regional cooperation.

2. The lack of resources

In Cambodia, responsibility for addressing trafficking cases falls on the police and other law enforcement authorities, who must detect, investigate, and prose-

cute offenders, while also rescuing victims and working with NGOs to provide them with support and protection. In reality, these agencies have to face major obstacles like limited funding, inadequate facilities, and a lack of professional training. Many officers are not equipped with the specialized knowledge needed to deal with trafficking, such as recognizing the methods of controlling used against victims of traffickers, they don't fully understand the legal rights and protections available to victims under domestic and international frameworks etc. These shortcomings often lead to mishandled cases, insufficient assistance for victims, and weak evidence collection, which in turn undermines the chances of securing convictions.

The gap between the officers and other agencies in the system can also result in more serious problems. For example, the limited funding and the weak collaboration between police and social services or other victim-support-organizations can lead to insufficient access to shelters, medical care, and legal aid. This situation places an additional burden on victims psychologically, yet their testimony remains a crucial component in securing successful prosecution of traffickers. Limited funding has also limited the essential equipment for anti-trafficking operations, thereby delaying interventions and reducing the chances of success.

3. Limited capacity in online crime investigations

As digital technologies reshape societies worldwide, Cambodia finds itself confronting a growing wave of online fraud and human trafficking that experts say is complicated by significant gaps in technological expertise, alongside accusations from some international media and organisations. During the pandemic, illegal online gambling and operations of forced criminality have increased, creating a new human trafficking and forced labour crisis, with estimates suggesting tens of thousands of individuals being held against their will in scam compounds in Cambodia.

The Cambodian government's limited capacity in combating online crime remains one of the key obstacles in the fight. Chou Bun Eng, vice-chairwoman of the National Committee for Counter Trafficking (NCCT) stated that "Cambodia lacks sufficient expertise in modern technologies and remains primarily a user rather than a developer of such technologies," in a press conference held at the Ministry of Interior. She emphasized the country's lack of ability to fight against online scams. With its under-developed technology, Cambodia can not find the most effective way to stop these strong and sophisticated cyber-enabled crimes.

Despite the introduction of a new five-year plan to combat human trafficking, the data from 2024 reported by the NCCT has shown an increase in cybercrime related to human trafficking. It stated that in 2024, compared to last year, the date marked a 20,15 percent rise with 197 cases of suppression recorded by the

authorities. This trend underscores the hard truth that the Cambodian government still does not have the ability to handle this serious problem.

The limited capacity in combating trafficking in humans is not only contained by the limited cyber-infrastructure but also the weak institutions and low information-and-communications-technology awareness. Many of the victims are young adults, often educated professionals, between the age of 20 and 30 years. The organized crime groups are mostly interested in recruiting young people because they are familiar with social media, smart phones, and cryptocurrency. The lack of awareness about the link between cybercrime and human trafficking remains a critical issue, even educated individuals can fall into the hands of criminals or be vulnerable for exploitation. The limited awareness becomes a bigger problem with the internet, which exposes young and inexperienced individuals seeking employment when the economy is showing signs of stagnation.

The Cambodian government consistently failed to screen foreign and Cambodian workers for trafficking indicators and selectively intervened in cases involving foreign victims from online scam operations, often only after foreign governments applied pressure through consistent advocacy for their citizens. Cambodia does not follow the international obligation to cooperate internationally to prevent, investigate, and prosecute trafficking, as stated in Articles 2 & 10 of the Palermo Protocol.

Recommendation

1. Strengthen Law Enforcement

1.1. Strengthening Institutional Integrity

Human trafficking remains a persistent and deeply rooted issue, disproportionately affecting the most vulnerable members of society. Addressing this complex problem must begin with the government and relevant authorities, who possess the necessary legal mandate, financial resources, and institutional power to enact meaningful change.

To effectively tackle this issue, it is recommended that the Cambodian government addresses issues such as institutional corruption and complicity with traffickers among high-level officials. It is evident that, according to the U.S. TIP Report 2024, Cambodia was placed at Tier 3, demonstrating how the Cambodian government failed to meet the minimum standard to confront human trafficking, lacking effort in the fight against this issue.

Cambodian officials have been reported to either ignore or actively facilitate trafficking operations, particularly in relation to criminal compounds involved

in cyber scams and forced labor. Victims, including foreign nationals lured under false pretenses, were often held in inhumane conditions while authorities delayed or avoided intervention—sometimes due to bribery or political connections. The involvement of officials and economic elites in these criminal operations has greatly hindered efficient law enforcement against human trafficking.

A prominent illustration of this problem is highlighted in a report by the United States Institute of Peace (USIP), which references Mr. Ly Yong Phat—an influential senator and advisor to Prime Minister Hun Manet—who owns the infamous O'Smach Resort and Casino located near the Thai border. The report underscores that, despite substantial evidence implicating the establishment is engaging in large-scale fraud, human trafficking, and acts of violence, the likelihood of holding Mr. Phat and other similar elites accountable remain minimal.

The U.S. Department of State has provided some prioritized recommendations to address this political challenge that undermines the effectiveness of the human trafficking enforcement in Cambodia. The Cambodian government must prioritize the identification and removal of complicit or negligent officials, especially those who have direct connections, for instance, those who serve as the operators of scam organizations and other illegal trafficking centers; or those who indirectly gain benefits from these criminal organizations. According to the U.S. TIP Report 2024, corruption among officials in Cambodia remains prevalent and widespread, becoming a persistent wall that inhibits trafficking combating measures. A complete restructuring of the state machinery may be necessary in the long term, however, immediate measures that should be taken into consideration are the enforcement of strict accountability mechanisms and the enhancement of internal oversight within law enforcement and judicial bodies, as well as ensuring that anti-corruption efforts are integrated into the broader strategy to combat human trafficking.

The issue of human trafficking in Cambodia must be addressed at its root. At present, the root cause lies largely in the government's indifference toward the prevention and suppression of trafficking activities, the dismantling of criminal operations, and the prosecution of those involved. This apathy extends even to basic efforts to ensure the safety and protection of victims, both domestic and foreign. Without a genuine commitment to institutional accountability, criminal networks are allowed to operate with impunity.

In particular, it should be a priority to identify and remove government officials who collude with or enable such crimes. Their removal would serve as a necessary deterrent to others within the system. Only through comprehensive institutional reform—starting with the elimination of corrupt actors—can a clean, transparent, and responsible government apparatus be established. It is only then that the considerable authority vested in public officials can be effectively mobi-

lized to combat human trafficking.

Decisive and stringent punitive measures must be enacted, beginning not with the direct perpetrators, but with those in positions of power who willfully ignore the suffering of the population. Holding high-ranking officials accountable is essential to restoring public trust and breaking the cycle of impunity. If those in power who shield or facilitate criminal activity are not prosecuted, the trafficking crisis in Cambodia will persist. In such a scenario, future criminal enterprises will continue to thrive—fueled by individuals who profit from fraudulent and exploitative operations, particularly within scam compounds. Addressing these systemic failures is therefore not just a legal imperative, but a moral and institutional one.

1.2. Increasing investigations

In addition to strengthening internal integrity, Cambodia must significantly increase the scope and effectiveness of trafficking investigations. While legal frameworks such as the 2008 Law on Suppression of Human Trafficking and Sexual Exploitation exist, enforcement has often been weak. According to the 2023 Trafficking in Persons (TIP) Report, investigations into trafficking cases, particularly those involving cyber scam compounds and forced labor, frequently lacked thoroughness and failed to result in substantive legal outcomes. Victims were not consistently identified through formal mechanisms, undermining their access to protection and justice. Furthermore, credible reports have emerged suggesting that some investigations were prematurely closed or never pursued at all due to corruption, political interference, or insufficient institutional will. This culture of impunity enables traffickers to continue operating with minimal risk, perpetuating cycles of exploitation and weakening public confidence in the justice system.

Improving the investigative infrastructure demands a more systematic and well-resourced approach. The establishment of specialized anti-trafficking units within law enforcement agencies is critical, but such units must be backed by sustainable funding and technical support.

As emphasized in the U.S. Cambodia Trafficking in Persons Report, Cambodia's current capacity remains severely limited, with many investigative bodies lacking access to modern forensic tools, cybercrime analysis software, and trained multilingual personnel necessary for handling cases involving foreign victims. These material and human resource deficits severely hinder the ability of law enforcement to collect evidence, pursue leads, and prosecute traffickers effectively. Moreover, the limited technological capacity makes it difficult to dismantle the increasingly sophisticated digital infrastructure supporting trafficking and online scam networks, which often operate transnationally and in-

volve complex money laundering schemes.

Equally essential is the improvement of interagency coordination and institutional accountability. Fragmentation between key institutions—such as the police, labor ministries, immigration departments, and the judiciary—has resulted in significant gaps in enforcement and victim protection. For instance, inadequate communication between labor inspectors and law enforcement has allowed illicit recruitment agencies, unlicensed employment brokers, and exploitative brothels to evade detection.

To address this, the Cambodian government must implement formalized protocols that mandate data sharing, joint investigative operations, and cross-training among relevant agencies. Institutional silos must be broken down to ensure a cohesive national response to trafficking, where information is rapidly disseminated, and operational responsibilities are clearly delineated. Only through such coordinated, well-resourced, and corruption-resistant mechanisms can Cambodia begin to address the scale and complexity of its human trafficking crisis in a meaningful and sustainable way.

2. Enhance Comprehensive Victim Support in Law

2.1. Non-punishment principle

One of the most significant shortcomings of TIPSE is the absence of the non-punishment principle for victims of trafficking. Under international standards, particularly Article 6(6) of the Palermo Protocol and Article 14(7) ACTIP, states are obliged to ensure that victims of trafficking are not punished for unlawful acts they were compelled to commit as a direct consequence of their exploitation. However, Cambodian legislation does not provide such explicit protection. As a result, victims remain vulnerable to prosecution for offenses such as immigration violations, prostitution-related activities, or the use of false documents. This gap not only contravenes Cambodia's international obligations but also discourages victims from cooperating with law enforcement, thereby weakening criminal investigations and prosecutions against traffickers.

Globally, several states party to the TIP have already taken concrete steps to enshrine the non-punishment principle into their domestic legislation. For example, Vietnam's Law on Prevention and Combat of Human Trafficking 2024, under Article 4(5), explicitly provides that: "Depending on the circumstances and in accordance with relevant laws, a victim of trafficking who has committed a violation of law as a direct consequence of being trafficked may not be subject to administrative sanction or criminal prosecution." This provision ensures a clear statutory basis for differentiating victims from offenders.

Similarly, Scotland incorporates the principle through Section 8 of the Human Trafficking and Exploitation (Scotland) Act 2015, which obliges the Lord Advocate to issue prosecution guidelines. The guidelines establish a "strong presumption against prosecution", distinguishing between children and adults: for children under 18, there is an almost absolute presumption not to prosecute, while for adults, prosecution should be avoided if there is credible evidence that the offense was committed under compulsion arising directly from their status as victims of trafficking. Thailand has also adopted this safeguard in Section 41 of its Anti-Trafficking in Persons Act B.E 2551 (2008), which states that victims of trafficking shall not be punished for offenses relating to prostitution or illegal entry into the country.

The mentioned regulations could serve as a valuable reference for Cambodian policymakers as they reconstruct their policies and regulations on this issue. TIPSE could be amended to insert a clear non-punishment clause, modeled on the provisions of Vietnam or Thailand, ensuring that trafficked persons are not prosecuted for acts directly linked to their victimization. Victims of trafficking shall not be subject to criminal or administrative liability for unlawful acts directly resulting from their trafficking situation, including immigration violations, the use of fraudulent documents, or participation in prostitution. Besides, law enforcement and judicial authorities require specialized training to shift the prevailing mindset that often criminalizes victims and instead adopt a human rights-based approach to trafficking cases.

This reform would encourage victims to come forward, support investigations, and strengthen prosecutions against traffickers, while aligning Cambodia with best practices already adopted by its regional and international partners.

2.2. Witness protection and prevention of retaliation.

Article 6(5) TIP requires states to guarantee the physical safety of victims and witnesses, especially during criminal proceedings. Cambodian legislation however remains limited. Article 49 TIPSE prohibits the media from disclosing the identity of victims, but it does not extend protection against intimidation, threats, or reprisals from traffickers and their networks, nor does it mandate closed hearings, protective relocation, or secure communication channels for victims and witnesses. As a result, survivors remain highly vulnerable to retaliation, which undermines their willingness to testify and impedes the prosecution of traffickers.

Comparative practices demonstrate stronger protections in the region. Vietnam's Law on Prevention and Combat of Human Trafficking 2024 incorporates detailed victim support obligations. For instance, Article 15(3) and (4) require families to help victims reintegrate and encourage them to cooperate with au-

thorities, while Article 47 assigns social support centers to provide shelter, counseling, and coordination with law enforcement during investigations. Article 56 further mandates local authorities to ensure community-level security and to protect victims from threats. This approach creates a network of institutional, family, and community responsibility, ensuring that victims are not left alone when facing intimidation.

Similarly, Singapore's Prevention of Human Trafficking Act 2014 empowers the Director of Social Welfare to provide shelter and counseling services, and to delegate these responsibilities to public officers or accredited NGOs. This ensures a state-led, legally binding safety net that shields victims not only from media exposure but also from retaliatory harm.

Based on these examples, Cambodia could establish a formal witness protection program, modeled on Vietnam's community-based approach, ensuring coordination between police, local authorities, and social service providers. Further, Cambodia could cooperate with NGOs or other countries to provide safe housing, relocation, and confidential identity management, supported by government funding and in partnership with NGOs, which would decrease financial burdens.

By legally mandating safety guarantees and confidentiality, Cambodia can strengthen both victim-centered justice and the overall effectiveness of anti-trafficking enforcement.

2.3. Protecting identity and private court proceedings

TIPSE is a limited approach to victim identity protection and confidentiality in legal proceedings. This creates a significant gap compared to international obligations under Article 6(1) TIP, which requires states to ensure privacy and protect the identity of victims "in legal proceedings," not merely against media disclosure. The absence of binding rules undermines victims' confidence in the justice system, making them reluctant to cooperate with authorities out of fear of re-traumatization, stigma, or retaliation.

By contrast, regional and international practices provide more models. In Singapore's Prevention of Human Trafficking Act 2014, Section 18 establishes mandatory confidentiality standards in court proceedings. For child victims, hearings must be held on camera, while for adult victims, the court may order private proceedings. Singapore's Prevention of Human Trafficking Act 2014 also prohibits publication of any information that may reveal the victim's identity or that of a witness whose evidence could indirectly identify the victim. Violations are criminalized, carrying penalties of up to three years of imprisonment or fines. This approach protects victims against secondary harm during trial processes.

Similarly, Vietnam's Law on Prevention and Combat of Human Trafficking 2024 codifies a comprehensive right to confidentiality. Article 6(1)(d) guarantees victims' rights to have personal and family information kept secret, while Article 36 requires all organizations and individuals to protect victims' addresses, workplaces, and private life. Moreover, courts are empowered to hold closed hearings in trafficking cases upon victims' request, ensuring that their dignity and security are preserved. These provisions ensure that victims retain agency in deciding whether proceedings should be public, while placing an affirmative duty on state actors to maintain confidentiality.

It is recommended that Cambodia should amend the TIPSE to include explicit provisions on identity protection and private proceedings such as required on-camera hearings for all cases involving trafficked children, and empowering courts to hold private hearings for adult victims on their request, aligning with Singapore's Section 18 and Vietnam's Article 36. Alternatively, the Cambodian government could establish clear procedural guidelines for maintaining confidentiality during investigations, interviews, and prosecutions, ensuring protection from the first point of contact through trial.

3. International cooperation: bilateral and ASEAN-based collaboration

ASEAN has provided many international cooperation efforts on sharing information on trafficking for forced criminality cases, as well as efforts to coordinate victim rescues and repatriations. These collaborations have involved governments, international organizations, NGOs, and the private sector, showing a positive effort to address the challenges of globalization. Such cooperation demonstrates the willingness of countries to support one another in tackling regional problems and keeping pace with the rapid development of human trafficking, which operates not only across Southeast Asia but also beyond the region.

For example, INTERPOL, the Bali Process, and other organizations have held workshops and meetings that included representatives of governments, international organizations, NGOs, and the private sector to share information on the current situation of forced criminality and cases. They have encouraged coordination between all relevant parties to fight human trafficking. As a result of these workshops and meetings, relevant stakeholders now have improved knowledge of the phenomenon of trafficking for forced criminality and are more cognizant of the mechanisms for reporting suspected cases, as well as rescue and repatriation mechanisms. Importantly, law enforcement agencies have now identified focal points in law enforcement in other Southeast Asian countries in order to facilitate information requests and information sharing.

However, the mechanism requires more significant improvements. The databases to exchange the information of victims, suspects, and locations of human

trafficking remain undeveloped. The incomplete networks limit the abilities of the relevant agencies to quickly respond, or increase the chances of failed investigations, prolong operations and place victims of trafficking in further danger. As a starting point, the databases should include lists of victims and suspects to support agencies in tracking exploitation locations. Building comprehensive databases requires stronger commitment from all countries involved. Although this is a challenging project, enhanced databases would significantly improve the region's capacity to combat human trafficking.

The bilateral standardized operating procedures (SOPs) for rescue and repatriation remain under development. The lack of guidance in rescue and repatriation have weakened cross-border cooperation among frontline responders, undermining the effective identification, rescue, and safe return of victims. ASEAN is still missing an effective initiative like EMPACT in the EU, which is a multidisciplinary cooperation platform of member states, supported by all EU institutions, bodies and agencies (such as Europol, Frontex, Eurojust, CEPOL, OLAF, EU-LISA, EFCA and others) with the association of third countries, international organisations, and other public and private partners.

This level of coordination among ASEAN agencies cannot be achieved overnight. Member countries must take proactive steps now to establish a strong foundation. Doing so will create more opportunities for future regional commitments and strengthen the efforts to combat human trafficking. Human-trafficking is now an international threat to the security and peace of the ASEAN, especially in Cambodia, which has now become a hotspot for traffickers. Given its limited resources to combat this crime, Cambodia requires support from other countries. Countries whose citizens have fallen victim to trafficking in Cambodia have called for stronger regional cooperation, pushing Cambodian authorities to improve prevention, victim protection, and prosecution efforts.

Conclusion

This study has examined how Cambodia has fulfilled its international anti-human trafficking obligations and assessed the effectiveness of these commitments in practice. The analysis reveals a fundamental discrepancy between formal compliance and actual enforcement. While Cambodia has ratified key international instruments and established domestic legal frameworks, the persistence of trafficking—especially involving women and children— highlights serious implementation failures rooted in weak institutional capacity, limited political will, and entrenched corruption.

To move beyond the current impasse, this paper suggests a rethinking of anti-trafficking strategies through a multi-dimensional policy framework. This could include the establishment of independent monitoring bodies, the integra-

tion of anti-trafficking goals into national development planning, and the use of targeted international assistance conditioned on measurable progress. Only by aligning legal obligations with concrete enforcement mechanisms and sustainable development efforts can Cambodia begin to close the gap between policy intent and lived realities. In doing so, it may not only fulfill its international obligations but also contribute more meaningfully to regional and global efforts to eradicate human trafficking.

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