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Securitizing Complacency: State and Economic Security, and the Displacement of Human Security in the Transnational Framework on Human Trafficking — A Case Study of Thailand

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Abstract:
Human trafficking remains one of the most pervasive violations of international human rights law, yet the transnational legal framework designed to combat it is systematically undermined by state complacency. This paper argues that this complacency is best understood through securitization theory: state and economic security are consistently protected as binding legal obligations within the transnational framework, while human security remains discretionary, displaced by a security hierarchy the framework itself constructs. Analysing the Palermo Protocol, the Warsaw Convention, the Geneva Slavery Convention, and the Migrant Smuggling Protocol, this paper argues that enforcement mechanisms remain oriented toward border security rather than victim identification, enabling states to strategically reclassify trafficking victims as irregular migrants. Thailand's economic entanglement with trafficking-adjacent industries, from regional sex tourism to Southeast Asia's forced-labour scam-compound economy, is examined as this paper's central case study of securitized economic priority in practice. The paper further argues that unilateral aid-conditionality mechanisms, such as the United States' Trafficking in Persons tier system, do not remedy this failure but reproduce it, operating within a category of unilateral state action that international law itself treats as largely unlawful. Adopting a qualitative doctrinal methodology, informed by the author's observations during fieldwork in Thailand, this paper concludes that without binding identification obligations and enforceable protection standards, the transnational legal framework will continue to function as a securitized mechanism of state and economic protection rather than a human rights instrument.

Keywords: Human Trafficking, Securitization, Human Security, Economic Security, Thailand, Palermo Protocol, Migrant Smuggling Protocol, Transnational Law.

Introduction

How does the securitization of economic interests as a matter of state security produce a tug of war between economic security and human security within transnational law, enabling states to strategically categorise trafficking victims as irregular migrants through mechanisms of enforcement, punishment, and anti-slavery?

This subject sits as an important intersection of international law's most consequential failures. It also brings up other questions regarding international aid, intervention and regional securitization as a driving force. Can the international community intervene to assist or punish developing nations whose economies indirectly support human trafficking, and sex tourism as a domestic product or tourist attraction? Despite over two decades of multilateral treaty-making, detected victims of human trafficking rose 25 per cent globally between 2019 and 2022, with child victims increasing by 31 per cent and forced labour cases surging by 47 per cent, these figures expose a deepening gap between the law as written and the law as enforced. (UNODC, 2024)

The transnational legal framework combating human trafficking is architecturally ambitious. The Palermo Protocol (2000), the Warsaw Convention (2005), the Geneva Slavery Convention (1926), and the Migrant Smuggling Protocol (2000) together establish a layered system of criminalisation, victim protection, and state cooperation obligations. Yet the cumulative effect of these instruments has been undermined by a structural asymmetry that cuts across all of them: states consistently prioritise enforcement over protection, border security over victim identification, and deportation over support. The trafficked person — legally entitled to recognition, assistance, and remedy — is routinely reclassified as an irregular migrant, stripped of victim status, and removed from the very protections the framework was designed to provide.

This paper argues that such misclassification is not incidental to the framework but is enabled by it. The voluntary cooperation architecture of the Palermo Protocol, the contingency of Warsaw's protections on accurate victim identification, and the conceptual overlap between trafficking and smuggling created by the Migrant Smuggling Protocol together produce a legal environment in which state complacency is structurally rational. Where trafficked persons constitute a source of cheap, controllable labour, and where enforcement infrastructure is compromised by corruption or resource constraints, the incentive structures of receiving states actively militate against compliance.

Reading these dynamics through securitization theory, this paper argues that state and economic security are consistently protected as a matter of binding legal obligation, while human security remains discretionary, contingent, and structurally displaced. Thailand serves as this paper's central case study of this dynamic in practice, examined alongside the doctrine of unilateral coercive measures governing international responses to state complicity.

Methodology

This paper adopts a qualitative, doctrinal legal research methodology, relying entirely on desk-based analysis of primary and secondary international legal sources. Primary sources include treaties, United Nations Charter and domestic laws. Secondary sources comprise of peer-reviewed journal articles, textbooks, and policy reports. Material was systematically sourced via electronic databases using targeted keywords relating to Human Trafficking, Human rights, securitization and transnational law.

This analysis is additionally informed by informal observations made by the author during time spent in Thailand, including brief conversations with individuals working within the country's sex trade. These observations are referenced illustratively where relevant to the discussion of Thailand below and do not constitute a structured methodology; no formal research protocol, ethics clearance, or informed consent process was undertaken, and no identifying details are disclosed.

This analysis carries limitations that define the scope of its conclusions. First, this paper prioritises doctrinal analysis of four transnational instruments — Palermo, Warsaw, Geneva, and the Migrant Smuggling Protocol — rather than an exhaustive survey of every regional or bilateral instrument bearing on human trafficking. Second, its primary case study is Thailand and, by extension, Southeast Asia's forced-labour scam-compound economy; the securitization dynamic identified here may operate differently where a state functions primarily as a securitizing destination rather than a source or transit state, or where different referent objects dominate. A comparative analysis of, for example, Western destination states or the securitization of migration and trafficking in Middle Eastern and African contexts falls outside the scope of this paper and remains a matter for further research. Third, because this paper adopts a qualitative doctrinal methodology, its claims regarding state motivation, complicity, and securitizing intent are necessarily inferential, drawn from treaty text, official reporting, and secondary scholarship, rather than from direct empirical access to state decision-making. These limitations do not undermine the paper's central claim but delineate its boundaries: the securitization dynamic identified here is demonstrated within a defined doctrinal and regional scope, and its broader applicability across other regions and referent objects remains an open question.

Legal Framework

Palermo Protocol

The Palermo Protocol (2000), was established to prevent, suppress and punish trafficking in persons, especially women and children, supplements the UN Convention against transnational organised crime and represents the primary international legal instrument addressing human trafficking (Simmons et al. 2018).

Article 2

Article 2 of the Palermo Protocol establishes two core objectives: to promote cooperation among states parties in combating trafficking, and to protect and assist victims with full respect for their human rights. In principle, this dual mandate creates a framework for both enforcement and protection operating in tandem. In practice, however, a structural asymmetry emerges along developmental lines that undermines the cooperative intent of Article 2. Developed receiving nations tend to prioritise treaty compliance as a performative exercise — ratifying instruments, enacting domestic legislation, and reporting to treaty bodies — while enforcement mechanisms remain oriented toward border security and immigration control rather than victim identification and support (Fitzgerald, 2012).

Less developed nations, lacking the institutional capacity to implement the full protective framework, default to processing trafficking through criminal law: the trafficked person is treated as a criminal to be prosecuted or an irregular migrant to be deported, rather than a victim entitled to protection (Koka and Veshi, 2019).

This divergence is compounded by the economic incentive structures of receiving states. Trafficked persons constitute a source of cheap, controllable labour across domestic work, agriculture, construction, and the sex industry, creating a structural incentive for states to maintain wilful blindness rather than enforce the cooperative obligations Article 2 demands (Aas, 2013). State complacency, in this context, is not simply a failure of implementation — it is a rational response to competing economic interests that the Protocol's voluntary cooperation framework is structurally ill-equipped to address.

Article 3

Article 3 of the Palermo Protocol provides the foundational legal definition of trafficking in persons. Under Article 3(a), trafficking is defined as the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat, force, coercion, abduction, fraud, deception, abuse of power, or abuse of a position of vulnerability, for the purpose of exploitation. Exploitation is defined to include, at minimum, sexual exploitation, forced labour, slavery, practices similar to slavery, servitude, and the removal of organs (Mussi, 2018). Article 3(b) establishes that the consent of a victim is irrelevant where any of the means set out in Article 3(a) have been used. Article 3(c) extends the definition to children, (d) anyone under the age of 18 is defined as a child, providing that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation constitutes trafficking regardless of whether any of the means in Article 3(a) were employed (Schloenhardt, 2021).

As children cannot legally consent, parental consent is equally invalid under this provision — any minor transported for the purpose of exploitation is automatically classified as a victim of trafficking under Article 3, irrespective of the circumstances of their movement. There is an inherent ambiguity between migration and trafficking involving children.

A parent transporting a child through illegal channels may begin as a migration act, but where the child is subsequently subjected to debt bondage, forced labour, or exploitation, the act becomes trafficking retroactively under Article 3(c), regardless of original intent (Baird and van Liempt, 2016). States exploit this ambiguity by classifying such movement as irregular migration rather than trafficking (Triandafyllidou, 2018), thereby stripping the child of victim status and rejecting the protections to which they are entitled (Sanchez, 2017).

Article 5

Article 5 obliges each state party to adopt legislative and other measures necessary to establish the conduct defined under Article 3 as a criminal offence when committed intentionally. Article 5(2) extends this obligation to inchoate and accessory liability, requiring states to criminalise attempts to commit trafficking offences, participation as an accomplice, and the organising or directing of others to commit such offences (Boister, 2018, Ch. 5).

Although the mandatory criminalisation obligation under Article 5 exists, enforcement remains highly inconsistent across jurisdictions. What constitutes a criminal offence in one state may be tolerated or unregulated in another, creating legal safe havens that traffickers exploit across borders (Achilli, 2018). State sovereignty limits the Protocol's enforcement reach, and where government infrastructure is compromised by corruption, criminalisation exists on paper but not in practice; essentially, the law becomes ineffective and non-equitable due to state inaction rather than serving as a mechanism for victim protection (Brachet, 2018).

Article 6 does not impose a comparable mandatory obligation. It requires states to protect victims' privacy 'in appropriate cases and to the extent possible under its domestic law,' and provides only that each state 'shall consider' implementing measures for victims' physical, psychological, and social recovery — housing, education, care, and support are framed as matters for state discretion, not entitlement.

Article 7 extends this framework by requiring states to consider permitting victims to remain in their territory, temporarily or permanently, in appropriate cases. Article 8 addresses the repatriation of victims, requiring that return be conducted with due regard for their safety. Together, these provisions establish a victim-centred protection framework that recognises the complex needs of trafficked persons beyond their status as witnesses or subjects of criminal proceedings.

While this protocol is the international gold standard there are issues with the protocol because often times, states send victims back to their countries of origin without adequate assessment of the risks they face upon return (Fitzgerald 2012) and fail to recognise that the trafficked victims were trafficked or the victims are reclassified as economic migrants meaning that they are ineligible to receive support services or benefits of immigration.

The Budapest Process and Warsaw Convention

The Budapest Process, established in 1993 and comprising over 50 member states predominantly across Europe, operates as a regional consultative forum addressing irregular migration and promoting sustainable systems for orderly migration management. Its primary focus is migration control in countries neighbouring the enlarged EU, with a particular emphasis on the Commonwealth of Independent States (CIS), and it was further envisaged to strengthen relationships with migration policy processes in other regions of the world.

The Council of Europe Convention on Action against Trafficking in Human Beings (2005), known as the Warsaw Convention, is a legally binding international instrument specifically designed to protect the rights of trafficking victims and ensure they receive adequate assistance and support. In contrast to the Palermo Protocol, Warsaw goes beyond Palermo, in its victim protection obligations introducing a mandatory recovery and reflection period for identified victims under Article 13, the possibility of renewable residence permits under Article 14, and stronger identification obligations placed on state parties under Article 10.

Article 12 further obliges states to provide material assistance, access to legal aid, and medical support to victims. The Budapest Process is primarily concerned with migration governance and border management, operating as an enforcement mechanism rather than a victim protection framework (Koka and Veshi 2019). The Warsaw Convention, by contrast, centres the trafficked person as a rights-bearing subject requiring active state support. The major gap is that effectiveness is contingent on accurate victim identification, and where states default to categorising trafficked persons as irregular migrants (Sandy 2018) the protection obligations of Warsaw become inaccessible and the Budapest Process functions instead as a deportation mechanism (Askola 2021).

The Geneva Slavery Convention (1926)

The Geneva Slavery Convention of 1926 is an international legal instrument to define and prohibit slavery; it was the first of its kind. The legal justification includes Articles 1 and 2, which function as follows:

Article 1 defines slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised and defines the slave trade as encompassing all acts involved in the capture, acquisition, or disposal of a person with the intent to reduce them to slavery.

Article 2 places direct obligations on state parties to prevent and suppress the slave trade, and to pursue the progressive and complete abolition of slavery in all its forms.

The Convention is significant in that it establishes state responsibility as the primary mechanism of enforcement, creating a binding legal duty that extends beyond mere condemnation of the practice (Boister, 2018).

These articles are fundamentally foundational, as most victims of human trafficking enter into some form of slavery, whether it is trafficking for sex or forced migrant labour. The primary issue occurs when migrants or trafficked persons are forced to pay back their traffickers with interest and are never able to escape.

The Convention itself establishes state responsibility for those who receive the trafficked victims and creates a legal obligation by the state to the victims (Choi-Fitzpatrick, 2015). While states want to save domestic resources, their primary "vested interest" under international law is avoiding state liability and fulfilling treaty compliance.

State Complicity, Aid Conditionality, and the Case of Thailand

The Geneva Slavery Convention's state responsibility model presumes that liability itself creates an incentive to comply. This presumption breaks down where trafficking is not merely tolerated by a state but is economically embedded within it, and where the state's own institutions are complicit rather than merely negligent. Thailand illustrates this dynamic directly. Since the United States began tracking Thailand's anti-trafficking performance in 2001, Thailand has never been placed in Tier 1 of the US State Department's Trafficking in Persons (TIP) Report, and was downgraded to Tier 3 in both 2014 and 2015 (US Department of State, 2025). As of the 2025 Report, Thailand remains at Tier 2 for the fourth consecutive year, with the Report explicitly stating that Thailand must "investigate and prosecute government officials involved in human trafficking" before it can advance further (US Department of State, 2025). This is a materially different claim than institutional incapacity — it is an assertion of government complicity, not merely government limitation.

The TIP Report is not merely descriptive; it operates as a binding legal mechanism under US domestic law. Pursuant to 22 U.S.C. § 7107, a Tier 3 designation triggers the withholding of non-humanitarian, non-trade-related foreign assistance, and may extend to opposition to multilateral development bank loans (22 U.S.C. § 7107; US Department of State, 2011). This is, in effect, a unilateral aid-conditionality substitute for the binding multilateral enforcement that Palermo, Warsaw, and Geneva each lack. Yet the mechanism reproduces the same structural weakness this paper identifies throughout the multilateral framework: the Secretary of State retains discretionary authority to waive an automatic downgrade where a government presents a credible improvement plan (US Department of State, 2011). Compliance can therefore be performed rather than achieved — precisely the pattern identified in this paper's analysis of Palermo Article 2 — and a single state's foreign policy interests, rather than an independent adjudicative body, determine whether "significant efforts" have been made.

This critique invites an obvious rejoinder from an economic standpoint: is discretionary waiver authority not a necessary safeguard rather than a design flaw? Blunt, automatic sanctions have a documented history of harming the very populations they are intended to protect. The comprehensive sanctions regime imposed on Iraq during the 1990s remains the canonical example: while the precise mortality figures attributed to the sanctions have been contested, the broader finding that non-targeted economic sanctions imposed severe civilian hardship, disproportionate to any pressure exerted on the targeted government, is not seriously disputed (Spagat, 2010). On this view, an automatic Tier 3 downgrade withdrawing non-humanitarian assistance from an already under-resourced state could plausibly deepen the very conditions of poverty and weak institutional capacity that this paper's analysis of Palermo Article 2 identifies as a driver of trafficking in less developed states. Discretion, on this reading, is not merely a loophole enabling state complicity; it may in some cases prevent a sanction from harming the trafficking victims it is meant to protect.

This argument has genuine force, and this paper does not dismiss it. What it does not explain, however, is why that discretion is exercised unilaterally by a single state's executive branch, rather than through an independent, criteria-based mechanism capable of distinguishing a waiver granted to protect vulnerable populations from a waiver granted to protect a bilateral political or economic relationship. The 2011 TIP Report's own waiver language — permitting a determination that assistance 'would promote the purposes of the statute or is otherwise in the United States' national interest' — collapses precisely this distinction, allowing humanitarian and strategic justifications to operate under the same undifferentiated standard of discretion (US Department of State, 2011). The problem this paper identifies is therefore not that discretion exists, but that it is discretion without an accountable process: a mechanism genuinely designed to protect vulnerable populations from blunt sanctions would look different from, and be independently reviewable against, a mechanism that simply allows one state's foreign policy interests to determine another state's tier placement. Bertrand's account of the subaltern's structural exclusion from the position of securitizing actor applies with equal force here: the government and population of a Tier 3 candidate state have no standing to contest a waiver decision made in Washington, regardless of whether that decision is humanitarian or self-interested in motivation (Bertrand, 2018).

Thailand's position within the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) compounds this weakness rather than remedying it. ACTIP, adopted on 21 November 2015 and entering into force in March 2017, is frequently presented as the regional counterpart to the Warsaw Convention (ASEAN, 2015). Structurally, however, it departs from Warsaw in a manner that favours state discretion over victim protection. Where Warsaw's General Provisions establish victim-centred obligations, ACTIP's General Provisions include a standalone Article 4, "Protection of Sovereignty" — a textual choice with no equivalent in Warsaw. ACTIP's dispute settlement provision, Article 27, requires disagreements to be resolved "amicably through consultation and negotiation... through diplomatic channels," with no independent adjudicative body comparable to Warsaw's GRETA monitoring mechanism (ASEAN, 2015). Monitoring under ACTIP Article 24 is limited to self-reporting rather than independent evaluation. The result is a legally binding regional instrument that nonetheless reproduces the voluntary cooperation architecture this paper critiques at the multilateral level, only with sovereignty protection made explicit rather than implicit.

This difficulty is not confined to Thai nationals. During informal conversations conducted by the author in Thailand, individuals working within the sex trade included women who identified as Muslim and had migrated from Iran, a state with a documented record of restricting women's rights and freedoms (Sato, 2025). This encounter complicates a binary victim/agency framing that the transnational legal instruments examined in this paper are structurally unable to resolve. Without a determination this paper is not positioned to make, it is not evident from a brief and informal conversation whether these women's presence in Thailand's sex trade reflects trafficking, smuggling undertaken voluntarily, or migration in pursuit of personal autonomy unavailable to them in their state of origin — nor is it evident which, if any, of these categories the women themselves would apply to their own circumstances. This ambiguity is illustrative rather than evidentiary, but it reflects precisely the identification difficulty this paper has argued the framework's voluntary, self-reported cooperation architecture is ill-equipped to resolve: an individual whose migration may be simultaneously a flight from state-based restriction and an entry into a different, and possibly exploitative, set of constraints does not fit neatly into either the 'victim' or 'irregular migrant' category the framework asks states to assign.

The TVPA aid-conditionality mechanism examined above also sits within a wider, unresolved doctrinal debate regarding the legality of unilateral state action itself. Since 2014, the UN Human Rights Council has maintained a Special Rapporteur mandate on the negative impact of unilateral coercive measures on the enjoyment of human rights, whose resolutions state that such measures are contrary to international law, international humanitarian law, and the UN Charter, including the principles of non-intervention and sovereign equality of states (UN Human Rights Council, 2014; 2023). The current mandate holder has stated that the overwhelming majority of unilateral measures currently applied are unlawful under international law (Douhan, 2021). This casts the TVPA tier system, and the aid-conditionality response it represents, in a more troubling light: it is not simply an imperfect substitute for binding multilateral enforcement, but itself an exercise of the same unilateral, non-consensual authority that international law's own institutions have condemned as illegitimate. The framework this paper critiques for relying on voluntary cooperation cannot be repaired by a mechanism that substitutes one state's unilateral judgment for the multilateral consensus the framework was designed, however imperfectly, to require.

The Migrant Smuggling Protocol (UN, 2000)

The Protocol Against the Smuggling of Migrants by Land, Sea and Air (2000), supplementing the UN Convention against Transnational Organised Crime, entered into force in 2004 and currently has 151 state parties. It is the first global instrument to establish an agreed legal definition of migrant smuggling, addressing the activities of organised criminal networks who facilitate illegal movement primarily for financial gain. Its stated purpose under Article 2 is to prevent and combat the smuggling of migrants, promote cooperation among state parties, and protect the rights of smuggled migrants.

Articles 5, and 6 are of particular relevance to this paper, as they establish the criminalisation framework distinguishing smuggling from economic migration, address exploitation, and direct state obligations toward the punishment of offenders rather than the criminalisation of migrants themselves.

Article 5 provides that migrants shall not become liable to criminal prosecution under the Protocol for the fact of having been the object of the conduct set forth in Article 6 (Boister 2018). This provision establishes a clear non-criminalisation obligation, directing state parties to distinguish between the smuggled migrant and the criminal smuggling network, and ensuring that the victim of smuggling is not prosecuted for the circumstances of their own movement.

In practice however, states consistently disregard the non-criminalization of trafficked migrants and lean towards enforcement rather than protection (Sanchez 2017) which further leads to deportation and the appearance of remaining compliant within the laws set forth within the framework of the protocol.

Article 6 obliges each state party to adopt legislative and other measures necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit: the smuggling of migrants; the production of a fraudulent travel or identity document for the purpose of enabling smuggling; and the procuring, providing or possessing of such a document.

Article 6(1)(c) further criminalises enabling a person who is not a national or permanent resident to remain in a state without complying with the necessary legal requirements for doing so.

Article 6(3) requires state parties to establish as aggravating circumstances those situations that endanger, or are likely to endanger, the lives or safety of the migrants concerned, or that entail inhuman or degrading treatment, including for the purpose of exploitation.

Article 6(4) provides that nothing in the Protocol shall prevent a state party from taking measures against a person whose conduct constitutes an offence under its domestic law.

Under Article 6, the Protocol's criminalisation framework is contingent on a clear distinction between victim and offender. Where states conflate the smuggled migrant with the criminal network, Article 6 becomes a mechanism for prosecuting victims rather than protecting them, rendering the non-criminalisation obligation under Article 5 effectively redundant. This renders the Migrant Smuggling Protocol, as a supplement to the Palermo Protocol, internally contradictory in its application (Gallagher and David 2014). The Protocol's safeguard provisions are frequently invoked to defend it against the criticism advanced in this paper. Article 9 requires states to ensure that measures against migrant smuggling do not prejudice the rights of individuals under international law, and Article 19 preserves states' obligations under international humanitarian law, international human rights law, and specifically the 1951 Refugee Convention, including the principle of non-refoulement (UN, 2000). In principle, these provisions should prevent smuggled migrants — a category that substantially overlaps with trafficking victims, as established above — from being returned to danger or denied protection to which they are otherwise entitled.

The 2015 Andaman Sea crisis demonstrates the gap between this safeguard and state practice. Following the discovery of mass graves at trafficking camps in Thailand's Songkhla province in May 2015 — camps Thai officials are reported to have known of for years — Thai, Malaysian, and Indonesian naval forces responded to the resulting crackdown not by identifying and protecting the roughly 8,000 Rohingya and Bangladeshi nationals stranded at sea, but by intercepting and pushing back their vessels, a practice human rights organisations termed "maritime ping-pong" (Human Rights Watch, 2015; Amnesty International, 2015). Many of those pushed back were fleeing persecution in Myanmar and were simultaneously trafficking victims of the very camps the crackdown targeted. Article 9 and Article 19 existed in force throughout; they did not alter the states' operational response. This is the Protocol's internal contradiction operating exactly as this paper has argued: Article 6(4)'s domestic-law carve-out and the states' border-security posture prevailed over the safeguard clauses' formal guarantees, just as Article 5's non-criminalisation obligation was shown above to be rendered redundant in practice.

The Textual Marginalisation of Individual Security

A closer reading of the instruments examined above reveals a further pattern operating beneath the enforcement failures already identified: a textual, rather than merely applied, hierarchy between state and individual security. Where these instruments impose obligations on states to criminalise, cooperate, or control movement, the operative language is consistently mandatory. Palermo Article 5 obliges states to adopt the legislative measures necessary to establish trafficking as a criminal offence; the Migrant Smuggling Protocol's Article 6 imposes an equivalent mandatory criminalisation obligation. Where the same instruments address the protection of the individual, the language recedes into discretion. Palermo Article 7 does not require states to grant victims residence; it requires only that states consider permitting them to remain, 'in appropriate cases' — a formulation that leaves the determination of appropriateness, and therefore the individual's protection, entirely to the state. The Migrant Smuggling Protocol's Article 5 prohibits the criminalisation of smuggled migrants, yet Article 6(4) preserves each state's domestic law as an independent basis for prosecution, textually reopening the very protection Article 5 appears to establish. ACTIP goes further still, elevating this asymmetry to an express constitutional principle: its Article 4, 'Protection of Sovereignty', has no equivalent article protecting the individual with comparable textual weight. Article 6's own language confirms this pattern rather than departing from it: victim recovery measures are something a state 'shall consider,' not something it must provide. This is not merely a drafting choice with theoretical consequences — it is the textual root of the enforcement gaps traced throughout this paper. Where a state is legally required to criminalise trafficking but only asked to consider assisting its victims, the enforcement priorities documented in Thailand's TIP Tier history, and the deportation-first practices examined under the Budapest Process, are not departures from the treaty text; they are what the treaty text permits.

This asymmetry is not incidental drafting; it reflects a security hierarchy embedded in the architecture of the instruments themselves, independent of how faithfully any given state enforces them. State security, and by extension the economic interests a state chooses to protect as a security concern, is secured in mandatory terms. Individual security is secured, where it is secured at all, in terms that a state may discharge, discount, or decline according to its own assessment of appropriateness. The enforcement failures traced throughout this paper are therefore not solely failures of political will operating upon a neutral legal text; they are the foreseeable operation of instruments that were never drafted to bind states to the individual's protection as firmly as they bind states to one another's cooperation and control.

This asymmetry can be read through Foucault's account of governmentality, in which power operates not primarily through prohibition but through the categorisation, management, and conditional inclusion of populations (Foucault, 2007). But it is Agamben's concept of the state of exception that names the mechanism more precisely. Agamben argues that sovereign power is constituted not by what the law prohibits, but by the sovereign's retained capacity to determine when and for whom the law's ordinary protections apply — an 'inclusive exclusion' through which the individual remains nominally within the law's scope while being denied the certainty of its protection (Agamben, 2005). The discretionary language identified above performs exactly this function: a trafficked person is nominally 'included' within Palermo's protective provisions, yet the determination of whether those provisions apply in their 'appropriate case' remains a sovereign decision the treaty text does not bind. The individual is neither wholly protected nor wholly abandoned by the law; they are held within a zone of state discretion that the instruments themselves construct. It is this exercise of power, operating through the text of international law rather than merely its enforcement, that the securitization analysis below develops further.

Synthesis – Critical Move

The transnational legal framework combating human trafficking is not perfect in principle but rather a failure of architecture. Each instrument examined in this paper establishes obligations that are, individually, legally coherent. Collectively, however, they produce a system in which the structural incentives facing states consistently favour enforcement over protection, and in which the definitional gaps between instruments are wide enough to absorb entire categories of victim. This paper's central case study, Thailand, and the doctrinal tension it exposes around unilateral coercive measures, demonstrates that this failure is not confined to the instruments' text but extends to the informal mechanisms states have developed to compensate for it. As the analysis below demonstrates, this pattern is best explained not merely as a legal failure but as a securitization dynamic, in which the elevation of economic interests to the status of state security displaces the protection of trafficked persons as a matter of human security, and in which the states responsible are structurally shielded from accountability for this displacement.

The most significant gap runs between the Palermo Protocol and the Migrant Smuggling Protocol. Palermo defines trafficking through the lens of exploitation and consent; the Smuggling Protocol defines smuggling through the lens of illegal entry and financial benefit. In practice, these definitions overlap precisely where trafficking victims are most visible — at the border, in possession of fraudulent documents, having paid for their movement (Carling, Gallagher and Horwood, 2015).

A trafficked person who has crossed illegally, whose documents were falsified by their trafficker, and who paid a fee for their transport satisfies the definitional criteria of a smuggled migrant under the Smuggling Protocol. Article 5's non-criminalisation obligation exists on paper, but Article 6(4)'s domestic law carve-out provides states with the legal cover to prosecute regardless. The framework enables the misclassification it was designed to prevent (Dandurand and Jahn, 2019).

This definitional overlap produces its most troubling consequences in the context of children and family migration. As established under Palermo Protocol Article 3, a parent transporting a child through illegal channels may begin as a migration act but becomes trafficking retroactively upon subsequent exploitation.

Under the Smuggling Protocol, that same parent — acting protectively rather than exploitatively — may simultaneously be classified as a smuggler under Article 6. The child is stripped of victim status; the parent is criminalised as an offender.

The framework produces this outcome not despite its provisions but through them, exposing a fundamental incoherence in the legal architecture that states exploit rather than resolve (Dandurand and Jahn, 2019).

This misclassification is not incidental; in fact, it is structurally rational. As established under the Palermo Protocol's Article 2 analysis, trafficked persons represent a source of cheap, controllable labour across multiple industries. The economic incentive for receiving states to maintain wilful blindness is significant, and the voluntary cooperation framework of Palermo provides no binding mechanism to override it (Gallagher, 2002). Warsaw's stronger identification obligations under Article 10 and its mandatory reflection period under Article 13 represent a meaningful step forward, but their protective reach is entirely contingent on accurate victim identification where states default to the Budapest Process's deportation framework instead (ICMPD, 2018).

The Geneva Slavery Convention's state responsibility provisions, foundational as they are, suffer from the same enforcement deficit. The binding legal duty to prevent and suppress slavery in all its forms sits alongside a framework in which trafficked persons are routinely processed as irregular migrants, denied victim status, and removed before any assessment of their circumstances can be made. State liability under the Convention is avoided not through legal argument but through bureaucratic reclassification (ICMPD, 2018).

Thailand illustrates this cumulative failure concretely. Structural economic dependency on trafficking-adjacent industries, a regional instrument that formalises sovereignty protection over independent oversight, and a border-security response to the 2015 Andaman Sea crisis that overrode existing safeguard provisions together demonstrate that the misclassification this paper has traced doctrinally is not a hypothetical risk but an observed pattern. The unilateral aid-conditionality mechanisms states have developed in the absence of binding multilateral enforcement do not resolve this failure; as the Thailand case study demonstrates, such mechanisms remain discretionary, are contested as unlawful unilateral coercive measures under international law, and are themselves symptomatic of the framework's core defect rather than a cure for it.

The cumulative effect is a framework in which each instrument's protective obligations are rendered contingent, optional, or inaccessible by the interaction of the instruments themselves. The gaps are not incidental oversights — they are the product of a framework built on voluntary cooperation, sovereign discretion, and definitional ambiguity that states have learned to exploit (Gallagher, 2002).

Until the framework addresses these structural failures directly, the transnational legal architecture will continue to function as a mechanism of exclusion rather than protection.

Underlying all of these structural failures is a deeper tension that the framework has never resolved: the tug of war between state security and human security. The securitisation of migration frames irregular movement as a threat to national security rather than a symptom of human vulnerability (Buzan et al., 1998), providing the political justification for enforcement-first responses that the framework's voluntary cooperation architecture does nothing to restrain.

This reframing finds direct support in the securitization literature itself. Balzacq argues that an effective securitization is audience-centred, context-dependent, and power-laden, rejecting the Copenhagen School's account of securitization as a purely linguistic speech act governed by fixed felicity conditions (Balzacq, 2005). On this account, securitization is better understood as an exercise of political agency operating within, and shaped by, existing relations of power, rather than a self-contained discursive event. This distinction is not merely semantic: if securitization is a power mechanism rather than a speech act bound by its own internal grammar, then the sectors through which it operates — military, political, societal, economic, environmental — are not neutral domains of analysis but sites through which power is actively distributed, redirected, and protected. It is this power-laden character of securitization that allows a state's economic interests to be elevated to the status of a security referent while human security claims remain unsecuritized, as examined below.

The Copenhagen School's sectoral framework offers further insight into why this complacency is not incidental. Buzan, Wæver, and de Wilde identify economic security as a distinct sector of securitization, alongside the military, political, societal, and environmental sectors (Buzan et al., 1998). Where a developing state's economic viability becomes bound to industries in which trafficking is structurally embedded — labour-intensive export sectors, tourism economies reliant on informal or coerced labour, or migration-dependent remittance flows common across the developing world — rigorous enforcement of anti-trafficking obligations is not merely under-resourced but actively disincentivised. A securitizing move that treats a state's economic viability as an existential interest requiring protection renders any disruption to the industries sustaining that viability, including trafficking enforcement, a threat to state security in its own right. Complacency, on this reading, is not a passive failure of political will; it is the rational output of a securitization process in which economic interests have already been elevated to the status of a referent object requiring protection, while trafficking enforcement has not.

Southeast Asia's forced-scam-compound economy provides the starkest contemporary evidence of this economic security dynamic, and Thailand sits at its centre. The UN Office of the High Commissioner for Human Rights has documented that, as of early 2026, an estimated 300,000 people were held in scam compounds across Cambodia, Myanmar, Laos, and the Philippines, trafficked from at least 66 countries — among them India, whose nationals have been trafficked into Myanmar-based compounds and repatriated via Thailand as recently as November 2025 — and subjected to torture, sexual abuse, and forced criminality, with the industry's revenue estimated at approximately US$64 billion annually (OHCHR, 2026). The UN Office on Drugs and Crime has since found that combined scam losses across the wider region reached as much as US$114.1 billion in 2025 alone, a sum exceeding the GDP of several states in the region, and has stated plainly that the scale of the criminal economy is 'outpacing existing responses' (UNODC, 2026). Critically, this is not a purely private criminal phenomenon operating despite state authority: UN human rights experts have found these networks operate within a context of widespread corruption and impunity, benefiting from collusion with government officials, politicians, local law enforcement, and influential business figures across the region (OHCHR, 2025). Thailand's position within this economy is the clearest illustration of the tension examined throughout this paper: it functions as the principal transit hub through which trafficked persons are recruited and moved into Cambodian and Myanmar compounds, yet its own tourism economy has absorbed direct damage from the same phenomenon, with Chinese tourist arrivals falling by approximately 30 per cent in 2025 amid trafficking-related safety concerns (CSIS, 2025) — a state simultaneously profiting from its transit role and bearing the economic cost of the wider region's securitized complicity.

This regional economy demonstrates why enforcement gaps persist even where the scale of harm is undeniable and internationally documented. The scam-compound industry is sustained by exactly the securitized economic interests this paper has argued displace human security: special economic zones, casino licensing regimes, and cross-border investment structures that host states have themselves elevated to matters of economic priority, and into which criminal networks have deliberately embedded their operations to exploit the same protections (UNODC, 2025). Where enforcement does occur, it has tended to follow political rupture rather than sustained institutional commitment: Thailand's limited military action against compounds along its border with Cambodia coincided with an active bilateral conflict between the two states, not with a coordinated regional enforcement strategy. ACTIP's weaknesses, examined earlier in this paper, compound the difficulty of a coordinated response — and India's position as a major source state entirely outside the ASEAN framework is a reminder that this is not solely a defect of one weak regional instrument, but of the absence of binding, cross-jurisdictional identification obligations examined throughout this paper as the transnational framework's general failure.

This dynamic produces a corresponding failure on the human security side of the ledger. Human security, as a referent object, lacks the institutional concentration that economic security enjoys: it has no equivalent to a finance ministry, a tourism authority, or an export lobby capable of mobilising a securitizing actor with comparable power to elevate it to the same threat-level. Where human security and economic security compete for a developing state's finite political and enforcement attention, human security consistently loses — not because it is judged less important in principle, but because it possesses no comparable securitizing infrastructure through which to compete. The consequence is that trafficked persons are rendered insecure not despite the state's security apparatus but through its ordinary operation: the same securitizing logic that protects a state's economic interests structurally forecloses the elevation of human security to a competing priority. This is the precise mechanism through which state complacency, examined throughout this paper as a legal and enforcement failure, is also a securitization failure — the product of which referent object a developing state has already chosen to secure.

This dynamic is not unique to this paper's analysis; it echoes a documented pattern within the securitization-of-trafficking literature specifically. Aradau demonstrates that trafficked women are subject to a 'perverse continuity' between security and humanitarian articulations, simultaneously constructed as illegal migrants to be policed and as suffering victims to be pitied, with both framings operating as governmental interventions in the Foucauldian sense (Aradau, 2004a). This double construction is not a failure of classification but its intended function: it allows the same state apparatus to address trafficking as a security threat requiring enforcement and as a humanitarian tragedy requiring sympathy, without ever being required to resolve the tension between the two by extending binding protection. The misclassification this paper has traced across the Palermo Protocol, the Migrant Smuggling Protocol, and the Thailand case study is, on this reading, not incidental to the framework's design but a specific instance of a securitization dynamic already identified as constitutive of how trafficking is governed.

This raises a further question the paper has not yet addressed: could securitization function as a tool of enforcement rather than merely a mechanism of displacement? If human security were successfully securitized — elevated to the same existential, protected status this paper has shown economic and state security already occupy — states might be compelled to treat trafficking enforcement with the same binding urgency currently reserved for border control and economic protection. Aradau's broader account of desecuritization cautions against this strategy, however. She argues that securitization, whatever its object, operates through an exceptional politics of speed, urgency, and exclusion, in contrast to democratic politics governed by universal norms and deliberative procedure (Aradau, 2004b). Winning the securitization contest for human security would not escape the structural problem this paper has identified; it would reproduce it, merely redirecting the same exceptional logic toward a different referent object, and leaving unresolved the question of who is authorised to speak human security into being. A securitized human security regime would still require a securitizing actor with standing, and would still risk shielding that actor from ordinary democratic accountability, even where its object is protective rather than exclusionary. The more defensible path, on Aradau's account, is not to win the securitization contest but to remove trafficking enforcement from it altogether: binding legal obligation, rather than successful securitization, is what this paper has argued throughout is actually missing.

This raises a further question: why do the states and populations most affected by this dynamic rarely succeed in contesting it? Bertrand's postcolonial critique of securitization theory offers an answer. She argues that the subaltern — developing states and the populations within them — cannot securitize: they are structurally excluded from the position of securitizing actor, and are instead perpetually 'spoken for' by more powerful actors positioned to define their circumstances on their behalf (Bertrand, 2018). Applied to this paper's argument, this explains why the aid-conditionality mechanisms examined above, such as the TVPA tier system, are unilaterally authored by destination states rather than negotiated with the states and populations they purport to assess: the securitizing actor and the accountable authority are one and the same, while the developing state and its trafficked population possess no equivalent standing to counter-securitize their own circumstances. This is the precise structural condition under which securitizing actors escape accountability — not through active concealment, but through a monopoly on who is permitted to speak security into being.

Through this lens, Foucault's concept of governmentality illuminates the mechanism by which this operates — the state managing and categorising migrant populations through legal and administrative classification rather than overt force (Foucault, 2007), rendering trafficking victims invisible within the very framework designed to protect them. Trafficking victims, irregular migrants, and smuggled persons are processed through the same enforcement machinery and managed as a collective security problem rather than as rights-bearing subjects. The result is a framework that speaks the language of human security while operating entirely within the logic of state security.

Conclusion

The gap between securitised enforcement and state complacency is not an oversight of the transnational legal framework — it is its defining feature. The Palermo Protocol's voluntary cooperation architecture, the Warsaw Convention's identification-contingent protections, the Geneva Slavery Convention's unenforced state responsibility obligations, and the Migrant Smuggling Protocol's internally contradictory criminalisation framework collectively produce a legal environment in which state complacency is structurally rational and misclassification is legally enabled. Thailand's economic entanglement with trafficking-adjacent industries, examined throughout this paper as its central case study, demonstrates this dynamic in concrete terms: complacency is not incidental but the predictable output of a framework that protects state and economic security in binding terms while leaving human security to discretion.

The tug of war between state security and human security, framed through Buzan's securitisation theory and Foucault's governmentality, reveals that trafficking victims are not falling through the gaps of the framework — they are being pushed through them. Border enforcement, deportation, and bureaucratic reclassification are not failures of the system; they are the system functioning as receiving states have chosen to operate it. This is not merely a security dynamic but a power dynamic: as this paper has argued through Balzacq's reframing of securitization as power-laden rather than purely discursive, and through Bertrand's account of the structural inability of developing states and trafficked populations to counter-securitize their own circumstances, the states responsible for this displacement are not merely failing to act — they are shielded from the accountability that would otherwise follow.

This paper's opening question — whether the international community can intervene to assist or punish states whose economies are structurally entangled with trafficking — must, on the doctrinal evidence examined here, be answered cautiously in the negative as the framework currently stands. Unilateral mechanisms such as the United States' TVPA tier system operate outside UN Security Council authorisation and outside any binding multilateral trafficking instrument, falling within a category of state action that the UN Human Rights Council has repeatedly found to be, in the majority of cases, contrary to international law (UN Human Rights Council, 2014; 2023; Douhan, 2021). Intervention of this kind is not a doctrinally sound substitute for the binding identification and enforcement obligations this paper has argued are missing from the transnational framework; it is instead a further symptom of that framework's core failure — a unilateral, discretionary response filling the vacuum left by the absence of enforceable multilateral obligation, whose own legality remains contested.

Any proposal to remedy this asymmetry is itself a securitizing move, and is subject to the same conditions this paper has argued govern securitization generally: it requires an actor with the standing to make the claim, and an audience willing to accept it (Balzacq, 2005). Binding identification obligations, enforceable protection standards, and a reorientation of the framework toward human security are not merely technical fixes awaiting political will; they are proposals that must themselves compete for elevation to the status of a protected referent object, against economic and state security interests that already occupy that position, and against a structural silence that, as Bertrand's account of the subaltern suggests, has historically excluded the states and populations most affected from the position of speaker (Bertrand, 2018). This does not make reform impossible, but it clarifies what reform actually requires: not simply better drafting, but the emergence of an actor capable of successfully securitizing human security against the entrenched priority of the economic and state interests this paper has traced throughout the transnational framework.

Bridging this gap requires more than treaty reform. It requires binding victim identification obligations, enforceable protection standards that operate independently of immigration status, and a fundamental reorientation of the framework away from state security and toward human security. Until that reorientation occurs, the transnational legal architecture will continue to criminalise survival and protect complicity.

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