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***Rethinking Global Governance: The replication of “joined-up government”
on the global scale in the prevention and combatting of trafficking in women
for the purposes of sexual exploitation.***

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Abstract

The paper discusses the Blair Administration’s policy of “joined-up government” beginning in Britain in 1997. The paper then moves to the international sphere to discuss various anti-slavery instruments focusing on the trafficking in women for the purposes of sexual exploitation. The paper identifies global coordination efforts to prevent and combat trafficking in persons. In particular, the establishment of the Inter-Agency Coordination Group Against Trafficking in Persons in 2007 provides a prime example of such efforts. The paper then describes how the policy of joined-up government has been replicated the global scale. The paper names this phenomenon “globally joined-up governance”.

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I. Introduction

Slavery has ancient roots. This may lead some modern commentators to view it as a historical problem to be solved by enlightenment and the expansion of the Rule of Law.¹ Sadly, this is a misperception. New forms of slavery have emerged and spread such as trafficking in women for the purposes of sexual exploitation, which forms the focal point of this paper.² The various forms of slavery can affect the mandates of several human rights treaties.³ A solution to this problem has been suggested, namely, the establishment of a “thematic mechanism” for the fight against modern slavery.⁴ This paper argues that this call has been heeded in particular by the establishment of the Inter-Agency Coordination Group Against Trafficking in Persons (ICAT). In doing so, the paper adopts a descriptive methodology. The nub of the paper is that the national policy of “joined-up government” beginning in 1997 in Britain has been replicated on the global scale by the establishment of the ICAT in 2007 and its ongoing publication of policy papers.

This paper is divided into three main parts proceeding as follows. First, the paper introduces and explains the policy of joined-up government. This part discusses the Blair Administration’s formulation and presentation of the policy. It also briefly discusses academic commentary on the policy.

Second, the paper moves from the national sphere to the international sphere and sets out the international instruments relating to slavery and trafficking in persons. The focus of this part is on the trafficking of women for the purposes of sexual exploitation. The paper will practically illustrate the trafficking process by briefly discussing a recent Australian case. The paper will also provide examples of anti-slavery legislation from the United Kingdom and South Africa as these laws were enacted in order to comply with international obligations. The paper will then discuss anti-trafficking coordination efforts on the global scale focusing on the establishment of (a) the ICAT and (b) the Special Rapporteur on Trafficking in Persons, especially Women and Children (Special Rapporteur).

¹ *The Max Planck Encyclopaedia of Public International Law* (1st ed, 2012) vol 9 Slavery 216 at 224.

² At 224.

³ At 224.

⁴ At 224. Article last updated in June 2007.

Third, the paper will describe how the national policy of joined-up government has been replicated on the global scale. In this part, the paper will briefly discuss the policy-oriented approach to international law and its conceptual framework. The paper will then discuss the concept of global governance and whether the policy of joined-up government can actually be used to describe developments in global governance. It will be concluded that it can. This part also discusses the role of the ICAT as a global governor and describes the ICAT as a joined-up governor. The paper will thereafter offer up a new name for an anti-trafficking phenomenon that has been developing on the global scale; the paper will suggest the name “globally joined-up governance” and will outline its constituent elements.

A. Joined-Up Government

1. The Blair Administration

The British elected a new government in 1997. New Labour came to power with an emphatic victory at the polls. The change in government was followed by a change in policy direction, namely, the modernisation of government. This paper has identified several keywords that formed the basis of this new policy: “joined-up”, “integration”, “coordination”, “cross-cutting” whether describing the type of social issues facing Britain or the thinking required to solve them, “cooperation”, “holistic”, “partnership”, and “collaboration”.

In December 1997 former Prime Minister Tony Blair delivered a speech entitled “Bringing Britain Together” marking the launch of the Social Exclusion Unit.⁵ This Unit was to become a keystone in the government’s approach to tackling social problems in the country. The Prime Minister cautioned that it would take some time before the Unit’s work would yield results. Notably, the Prime Minister justified the establishment of the Unit as follows:⁶

Getting government to act more coherently is the key. Everyone knows that the problems of social exclusion - of failure at school, joblessness, crime – are woven together when you get down to the level of the individual’s daily life, or

⁵ Tony Blair “Bringing Britain Together” (1997). Available on <http://www.britishpoliticalspeech.org/speech-archive.htm>, accessed on 20 April 2015.

⁶ Blair, above n 5.

the life of a housing estate. Yet all too often governments in the past have tried to slice problems up into separate packages - as if you could fix an estate by just painting the houses rather than tackling the lack of jobs or the level of crime. And in many areas dozens of agencies and professions are working in parallel, often doing good things, but sometimes working at cross purposes with far too little coordination and cooperation.

Immediately after this the Prime Minister stated that “[j]oined-up problems demand joined-up solutions”⁷ and he rallied the audience to his cause of bringing Britain together in solving its social problems.

A couple of years after this speech was delivered, the Cabinet Office released its White Paper entitled *Modernising Government*.⁸ The Minister for Cabinet, Jack Cunningham, wrote that the country required a more integrated government.⁹ Cunningham further explained that the government would use modern techniques to achieve this goal.¹⁰ The part of the White Paper dealing with policymaking stressed that policies had to be formulated and implemented in a consistent and effective manner “across institutional boundaries”.¹¹ For too long departments had worked in a fragmented way and new long-term ideas that “cut across organisational boundaries to get to the root of a problem” were required.¹² The White Paper then listed several units that comprised its cross-cutting policy initiative: the Social Exclusion Unit, the Women’s Unit, the Performance and Innovation Unit, and the Anti-Drugs Coordinator, amongst others.¹³

Further to the policy framework discussed above, the Social Exclusion Unit, which had since been moved under the Office of the Deputy Prime Minister, produced a leaflet explaining its role to members of the public.¹⁴ According to this leaflet, social exclusion occurs when people suffer from a combination of linked problems such as unemployment, lack of skills, and family breakdown, amongst others.¹⁵ The leaflet also explained how the Unit worked in practice. It was run by an admixture of civil servants from a number of government departments as well

⁷ Blair, above n 5.

⁸ Cabinet Office *Modernising Government* (1999) CM 4310 White Paper.

⁹ At 5.

¹⁰ At 5.

¹¹ At 15.

¹² At 16.

¹³ At 18.

¹⁴ Office of the Deputy Prime Minister *The Social Exclusion Unit* (2004).

¹⁵ At 2.

as external secondees from various organisations with experience in how to prevent and combat social exclusion.¹⁶ Furthermore, the Prime Minister, in agreement with his ministers, would decide the direction of the Unit and the specific projects that it would undertake “after consultation with” officials and interest groups.¹⁷

The Blair Administration’s new policy agenda also placed emphasis on the role of technology in transforming government. In November 2005 the government released a policy document entitled *Transformational Government: Enabled by Technology*, which, in part, dealt with the relationship between leadership and governance.¹⁸ The policy document stated that coherent and joined-up leadership and governance were essential in ensuring that the government’s programme of change was achieved.¹⁹ Leadership would be required at several different levels such as at the ministerial level in national government and the councillor level at local government; leadership would also have to be aligned with the wider governance of public services.²⁰

The reason for discussing the *Transformational Government* policy is so as to demonstrate that the phrase “joined-up” is as much about governance as it is about government. This paper will return to the distinction between “governance” and “government” further below.

2. Academic Commentary

The Blair Administration’s policy of joined-up government has received some academic attention. Professor Vernon Bogdanor commented on this policy in the introductory chapter of a book entitled *Joined-Up Government*.²¹ A review of this book referred to joined-up government in its title as being “[p]olitics with a little bit of street cred”, which is one way of explaining the general idea behind the policy.²²

¹⁶ At 2.

¹⁷ At 2.

¹⁸ Cabinet Office *Transformational Government: Enabled by Technology* (2005) Cm 6683.

¹⁹ At 14.

²⁰ At 14.

²¹ Vernon Bogdanor “Introduction” in Vernon Bogdanor (ed) *Joined-Up Government* (Oxford University Press, Oxford, 2005).

²² David Omand “Politics with a little bit of street cred” *The Times Higher Education Supplement* 27 January 2006. Available on LexisNexis Academic online, accessed on 23 April 2015.

Professor Bogdanor states that the policy is not only about economics but is also about sociological and cultural theory and the reform of public services.²³ While the slogan “joined-up government” is new, the phenomenon underpinning it is not; the slogan is a new label for the old doctrine of coordination.²⁴ In the early twentieth century the view was that functional organisation was an important principle in public administration.²⁵ In terms of the convention of ministerial responsibility, ministers are responsible for their own departments and not for policies that cut across departmental boundaries.²⁶ But the Blair Administration adopted a systematic and continuous policy approach to joined-up government, which had not been the case in prior administrations.²⁷ The whole point of the policy was to tackle so-called “wicked” issues, which are wicked either because they are hard to define or because there is uncertainty as to the cause of the problem; one such issue is social exclusion.²⁸

The policy of joined-up government can be seen as a response to the managerialism of the 1980s; managerialism’s focus on outcomes and performance often encouraged departments to try and offload their problems onto other departments so as to look good at the next appraisal.²⁹ For example, a social welfare programme might weaken the economic incentive to work, which, in turn, might adversely impact on industrial production. But the minister in charge of social security might simply respond by saying that such an impact is not his or her problem.³⁰

In New Zealand, Sir Geoffrey Palmer’s recent book entitled *Reform: A Memoir* argues that performance agreements between chief executives and their ministers influences a tendency toward departmental silos.³¹ This tendency causes difficulties in attaining a “whole-of-government approach” to social issues.³² Palmer also recalls the days of the Interdepartmental Committee that mostly presented a united approach to cabinet ministers; nowadays departments are kept at “arm’s length to the detriment of the policy process”.³³

²³ Bogdanor, above n 21, at 1.

²⁴ At 2.

²⁵ At 3.

²⁶ At 4.

²⁷ At 6.

²⁸ At 6.

²⁹ At 7 – 8.

³⁰ At 8.

³¹ Geoffrey Palmer *Reform: A Memoir* (Victoria University of Wellington Press, Wellington, 2013) at 718.

³² At 718.

³³ At 718.

Joined-up government was intended to be the “child of the end of ideology” in the sense that it was design to join-up organisations in the public and private sector as well as the voluntary sector.³⁴ But the policy seems to conflict with pluralism in that it presupposes consensus between ideologically incompatible partners.³⁵ Joined-up government may even be seen as a misnomer since it was not a new method of governmental organisation but rather a modification of a government still organised into departments.³⁶ The policy is more about the ethos of government and about flexibility in preventing and combating wicked issues.³⁷

In another academic commentary, Professor Tom Ling identified four “dimensions” of joined-up working in government, namely, “inwards”, “outwards”, “downwards”, and “upwards”.³⁸ The inwards dimension refers to the internal life of each organisation such as its values; the outward dimension deals with issues relating to inter-organisational life such as pooled budgets; the downward dimension concerns the delivery of public services from the government to its clients; and the upward dimension is about accountability and performance targets set from above.³⁹

In concluding this part of the paper, it is clear that the Blair Administration was the first to use the phrase “joined-up” in the context of policy-making by a national government. This paper will now move from the national sphere to the international sphere by discussing the various international instruments dealing with slavery and trafficking in persons for the purposes of sexual exploitation.

B. International Instruments

1. Slavery

This part of the paper briefly discusses the international instruments dedicated to the abolition of slavery generally. The preamble to the Slavery Convention 1926 states that the signatories desire to abolish the “traffic of African slaves”. Article 2 contains an undertaking by state

³⁴ Bogdanor, above n 21, at 8.

³⁵ At 15.

³⁶ At 17.

³⁷ At 17.

³⁸ Tom Ling “Delivering Joined-Up Government in the UK: Dimensions, Issues and Problems” (2002) 80(4) *Public Administration* 615.

³⁹ At 625.

parties to prevent and suppress the slave trade.⁴⁰ The Convention also commits signatories to bring about the abolition of slavery in all its forms.⁴¹ While the Convention advanced the anti-slavery cause by identifying and abolishing slavery in all its forms, it nonetheless failed to provide the means for finding and correcting violations of this emerging anti-slavery norm.⁴² Despite this failure, the Convention provided the basis for further developments in international law.⁴³

The United Nations Declaration on Human Rights 1948 (UNDHR) builds on the language of this Convention by resolutely stating that “[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”⁴⁴ The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956 provides that state parties will take practicable and necessary legislative and other measures to progressively and then completely abolish the institutions of and practices similar to slavery.⁴⁵ In terms of the Supplementary Convention, state parties also undertake to cooperate with each other and the United Nations (UN) to give effect to the provisions of the Convention.⁴⁶

The International Covenant on Civil and Political Rights 1966 continues the anti-slavery idealism of the previous Conventions by restating the commitment contained in the wording of the UNDHR quoted above.⁴⁷ While the International Covenant on Economic, Social and Cultural Rights 1966 does not expressly mention slavery or the slave trade, it nonetheless commits state parties to “recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts”.⁴⁸ Contemporary slavery by its very nature does not afford its victims such freedoms.

One of the more recent instruments is the Rome Statute of the International Criminal Court 1998. This treaty prohibits offences such as “sexual slavery” as a crime against humanity.⁴⁹

⁴⁰ Slavery Convention 1926 (entered into force on 9 March 1927, in accordance with article 12), Art 2(a).

⁴¹ Art 2(b).

⁴² *The Max Planck Encyclopaedia of Public International Law*, above n 1, at 220.

⁴³ At 220.

⁴⁴ UNDHR, Art 4.

⁴⁵ 266 UNTS 3 (entered into force on 30 April 1957, in accordance with article 13), Art 1.

⁴⁶ Art 8.

⁴⁷ 999 UNTS 171 (entered into force on 23 March 1976, in accordance with Article 49), Art 8 para 1 and 2.

⁴⁸ 993 UNTS 3 (entered into force on 3 January 1976, in accordance with Article 27), Art 6(1).

⁴⁹ 2187 UNTS 90 (entered into force on 1 July 2002), Art 7(1)(g).

2. Trafficking in Persons

This part of the paper discusses the international instruments dealing with the human trafficking with particular focus on women. The first is the Convention for the Suppression of the White Slave Traffic 1910.⁵⁰ Notably, the Convention refers to “[t]raffic” in its title. Article 1 reads as follows:

Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.

It is clear from the wording of the above quote that the Convention recognised the transnational nature of the crime of trafficking. It was followed by the Suppression of the Traffic of Women of Full Age Convention 1933, which deals specifically with adult women.⁵¹

The first anti-trafficking treaty adopted under the auspices of the UN was the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949. This Convention called for the punishment of persons exploiting the prostitution of another person, amongst other offences.⁵²

The Convention on the Elimination of Discrimination against Women 1979 (CEDAW)⁵³ commits state parties to take “all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.⁵⁴ While the CEDAW commits state parties to the suppression of trafficking in women, the international community was soon to bolster this commitment by requiring not only the suppression but also the prevention and punishment of trafficking in persons.

⁵⁰ See also *The Max Planck Encyclopaedia of Public International Law*, above n 1, at 221.

⁵¹ At 221.

⁵² 96 UNTS 271 (entered into force on 25 July 1951, in accordance with Article 24), Art 1(2). See also *The Max Planck Encyclopaedia of Public International Law*, above n 1, 221.

⁵³ 1249 UNTS 13 (entered into force on 3 September 1981, in accordance with article 27(1)).

⁵⁴ CEDAW, Art 6.

The main international instrument concerning trafficking in persons is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol).⁵⁵ Currently, there are 166 parties to the Palermo Protocol. The relevant part of Article 3 defines the phrase “trafficking in persons” as follows:

For the purposes of this Protocol:

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article

There are practical illustrations of the exploitative nature of the trafficking process. The issue of sex trafficking of women has come before the courts in several jurisdictions. One such case is *Watcharaporn Nantahkum v R*⁵⁶ in which the Court of Appeal for the Australian Capital Territory reduced the sentence imposed on a convicted trafficker. The Court of Appeal quoted extensively from the lower court’s recitation of the facts. These facts provide a good example of the interrelated nature of a transnational crime like sex trafficking.

⁵⁵ 2237 UNTS 319 (entered into force on 25 December 2003, in accordance with article 17).

⁵⁶ *Watcharaporn Nantahkum v R* [2013] ACTCA 40 (25 October 2013).

The facts in *Watcharaporn Nantahkum* were as follows: one of the victims was looking for work in order to support her family and she met someone who arranged for her to travel to Australia as a sex worker; this victim was forced to incur a debt in order to be eligible as a sex worker; the victim was told that she would have to service five clients a day in order to repay the debt; she also had to deceive the Australian authorities in order to obtain a visa and the visa prohibited her from working in Australia; her conditions of employment were very bad; her passport and return ticket were taken from her; she was not allowed to leave the apartment except in the company of her trafficker; she spoke little English and did not know anybody in the area in which she worked; she was only given minimal instructions on safe sex practices; she worked six days a week; she had to pay a portion of her earnings to her trafficker and this meant that it would take her longer to repay the initial debt incurred; she was forced to service up to 14 clients per day instead of the five she had been told over the phone; she was only allowed to visit a medical practitioner once; she was charged rent, which added to her debt burden; and her visa expired making her an unlawful non-citizen under Australian immigration law. These facts clearly demonstrate how sex trafficking cases can involve many different areas of law ranging from criminal to health to immigration to labour and so on.

The Palermo Protocol leaves it to state parties to adopt legislative and other measures in establishing intentional crimes of trafficking. Article 5 para 1 reads as follows:

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

This paper will briefly discuss two national legislative examples. The first is the United Kingdom’s Modern Slavery Act 2015.⁵⁷ Part 4 of the Act is innovative in the sense that it provides for an Independent Anti-Slavery Commissioner. Within this part, section 43 places an obligation on certain public authorities to cooperate with the Commissioner. The section refers to “specified public authorities” and lists these authorities in Schedule 3 to the Act,⁵⁸ namely, law enforcement and border security officials, local government, health bodies, and regulators.

⁵⁷ Modern Slavery Act 2015 (Chapter 30).

⁵⁸ Section 43(6).

The second is the South African Prevention and Combatting of Trafficking in Persons Act 2013.⁵⁹ Section 41 provides for the coordination of responsibilities, functions and duties regarding the implementation of the Act. This section joins-up the following organs of state in developing a national policy framework, namely, the Director-General of Justice and Constitutional Development, National Commissioner of the Police Services, the National Director of Public Prosecutions, the Director-Generals of Health, Home Affairs, Labour, and Women, Children and People with Disabilities, amongst other departmental stakeholders.⁶⁰

The Palermo Protocol goes further than merely requiring states to adopt legislative and other measures in preventing and combatting human trafficking. The Protocol also provides that state parties must establish comprehensive programmes, policies and other measures in preventing and combatting trafficking in persons.⁶¹ Furthermore, these policies, programmes and other measures shall include “cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.”⁶² State parties are also obliged to adopt or strengthen educational, social or cultural measures in order to discourage the demand that causes much of the problem in the first place.⁶³

While the above international instruments oblige state parties to take steps in preventing and combatting trafficking in persons, the international community has also moved toward the coordination of efforts in tackling this transnational crime. A notable feature of this move is that it operates on a purely global level amongst global agencies.

3. *Coordination Efforts*

(a) ICAT

The beginnings of the ICAT can be seen in a General Assembly Resolution adopted on 8 March 2007 and dedicated to improving the coordination of efforts against trafficking in persons.⁶⁴

⁵⁹ Prevention and Combatting of Trafficking in Persons Act, 2013 (Act No. 7 of 2013).

⁶⁰ Section 41(1).

⁶¹ Palermo Protocol, art 9 para 1(a).

⁶² Art 9 para 3.

⁶³ Art 9 para 5.

⁶⁴ GA Resolution 61 / 180 of 8 March 2007.

The preamble recalled the Economic and Social Council’s Resolution of 27 July 2006 in strengthening international cooperation in the prevention and combatting of human trafficking. The preamble also underlined the need to continue working toward a comprehensive, coordinated, and holistic approach against human trafficking. The GA Resolution then requested the UN Secretary-General to improve the “fledgling” interagency coordination group against trafficking in persons.⁶⁵ The Resolution also stated that the Executive Director of the UN Office of Drugs and Crime would coordinate the activities of the group and that it would be based in Vienna.⁶⁶ The Resolution also encouraged the UNODC to cooperate with other international organisations outside the UN system.⁶⁷

The UN General Assembly adopted another resolution dated 12 August 2010, which annexed the UN *Global Plan of Action to Combat Trafficking in Persons*.⁶⁸ Part 4 of the *Global Plan* deals with the strengthening of partnerships against human trafficking. Within this part, the plan refers to the need for capacity-building amongst the relevant role players;⁶⁹ it also refers to the need to strengthen and support the ICAT in order to improve coordination and cooperation among the relevant UN bodies;⁷⁰ and it further urges the Secretary-General to expedite the strengthening process.⁷¹

Further to the above, the General Assembly’s Resolution of 27 March 2013 encourages various stakeholders in the anti-trafficking movement, including the private sector, to strengthen coordination efforts by several means, which include through the ICAT.⁷² The Resolution also welcomed the efforts of the ICAT to share information, expertise, and optimal anti-trafficking practices with other stakeholders.⁷³

From the above discussion it is clear that the ICAT now plays a central coordination role in the global fight against human trafficking. The ICAT’s policy papers will be discussed further below. In particular, the first policy paper provides primary evidence of the “joined-up” approach to anti-trafficking efforts on the global scale.

⁶⁵ Para 12.

⁶⁶ Para 13.

⁶⁷ Para 14.

⁶⁸ GA Resolution 64 / 293 of 12 August 2010.

⁶⁹ Para 50.

⁷⁰ Para 56.

⁷¹ Para 59.

⁷² GA Resolution 67 / 190 of 27 March 2013, para 6.

⁷³ Para 7.

(b) Special Rapporteur

The preamble of the Human Rights Council’s Resolution of 17 July 2014 took note of the General Assembly’s decision declaring 30 July to be the World Day against Trafficking in Persons.⁷⁴ The Resolution extended the mandate of the Special Rapporteur for a further three years.⁷⁵ One of the reasons for the extension is to enable the Special Rapporteur to work closely and without duplication with other UN bodies including the ICAT and civil society.⁷⁶

The Special Rapporteur’s latest report states that the mandate was first established in 2004 and its focus was on the human rights of victims of human trafficking, especially women and children.⁷⁷ The mandate has been renewed three times, namely, in 2008, 2011, and 2014 as discussed immediately above.⁷⁸ The mandate empowers the Special Rapporteur to do the following: seek and receive information and respond to such information, submit reports, examine the human rights impact of anti-trafficking measures and suggest ways to ameliorate any adverse impact, and work closely with other role players in the UN system as well as regional organisations and the victims and their representatives.⁷⁹ The report sets out two key principles. The first is that the human rights of victim(s) are central to all anti-trafficking efforts. The second is that an anti-trafficking measure should not adversely affect the human rights and dignity of all concerned.⁸⁰ The report then sets out the 11 pillars on which the mandate is based; five of the pillars are protection, prosecution, prevention, punishment, and promotion of international cooperation; a further three of the pillars are redress, rehabilitation, and reintegration; and the remaining three pillars are capacity, coordination, and cooperation.⁸¹

The report identifies one of the thematic issues underpinning the prevention and combatting of human trafficking as being the need for regional and sub-regional cooperation in promoting a human rights approach to the anti-trafficking agenda.⁸² The report also identifies five areas of “cross-cutting” concern, namely, (a) the rights of victims to assistance, protection and support,

⁷⁴ HRC Resolution 26 / 8 of 17 July 2014.

⁷⁵ Para 2.

⁷⁶ Para 2(h).

⁷⁷ Special Rapporteur’s Report (A/69/33797) of 28 July 2014 at 7.

⁷⁸ At 7.

⁷⁹ At 8.

⁸⁰ At 8.

⁸¹ At 9.

⁸² At 10.

(b) the rights of victims to a remedy, (c) the role of human rights in the criminal justice system, (d) the adoption of strategies designed to prevent human trafficking, and (e) human trafficking for the purpose of organ removal.⁸³ One such strategy is for non-state actors such as business to engage with the Special Rapporteur in order to “ensure that supply chains are free of trafficking”.⁸⁴

The report sets out various challenges facing the international community in preventing and combatting trafficking in persons. The report notes that “human trafficking continues to be endemic in all parts of the world”.⁸⁵ Interestingly, the report argues that although the media can be a powerful influence in both raising awareness about human trafficking and informing vulnerable persons of the risks involved, the media is not only guilty of “sensationalism” but also of “a prurient and overly narrow focus on sexual exploitation”.⁸⁶ This paper would caution against such apparently offhand criticism. The sexual exploitation of women is reprehensible and deserving of as much public attention as possible. As stated further above, the Rome Statute prohibits sexual slavery as a crime against humanity. Contemporary slavery in the form of sexual exploitation is arguably even worse than its predecessor chattel slavery; the slave owners of yesteryear often made major investments in their slaves as they wanted a “productive asset”; in contrast, the victims of sexual exploitation today are “used” until they are no longer fit for purpose and then discarded.⁸⁷ The facts of *Watcharaporn Nantahkum*, *supra*, provide clear evidence in support of this conclusion.

C. Replication of the Joined-Up Approach on the Global Scale

1. Policy-oriented approach to international law

The policy-oriented approach involves the application to international law of a decision-making conceptual framework.⁸⁸ This approach rejects the view of international law as a static body of rules operating outside of any social and political context.⁸⁹ Instead, according to the policy-oriented approach, international law must be seen as an evolving and dynamic social

⁸³ At 18.

⁸⁴ At 27.

⁸⁵ At 30.

⁸⁶ At 31.

⁸⁷ *The Max Planck Encyclopaedia of Public International Law*, above n 1, at 224.

⁸⁸ Boleslaw A. Boczec *International Law: A Dictionary* (The Scarecrow Press Inc., Maryland, 2005) at 22.

⁸⁹ At 22.

process of authoritative decision-making in terms of which government and other stakeholders constantly formulate and reformulate policies in a series of claims and counterclaims.⁹⁰ In essence, international law is an instrument of policy with which to promote a better world order.⁹¹ As will be seen further below, the ICAT has published policy papers and is due to publish more papers in the near future. It is submitted that these papers have already made a vital contribution toward achieving a coherent and coordinated global policy response against trafficking in persons. But the ICAT’s work is not yet done. The process of formulating and reformulating policy is ongoing.

The policy-oriented approach offers analytical tools in order to help shape decisions according to human needs.⁹² The main need is human dignity. Although human dignity may be interpreted differently, it is nonetheless considered to be a universally accepted value.⁹³ This paper has already discussed the role of the Special Rapporteur and its latest report, which, in part, stressed the need to focus on the human dignity of the victims of human trafficking.

The analytical tools take the form of a conceptual framework, which consists of five elements. First, decision-makers and scholars establish and present an observational standpoint as free of bias as humanly possible.⁹⁴ Second, the process of framing problems is facilitated by eight basic values: well-being, affection, respect, power, wealth, enlightenment, skill, and rectitude.⁹⁵ These values are supplemented by sub-categories designed to clarify policy. Third, the focus of inquiry is delimited to authoritative decisions incorporating the concepts of authority and control; the former refers to the normative expectations of social actors in a community and the latter to the effectiveness in practice of preferred choices.⁹⁶ Fourth, there must be “explicit postulation” of public order goals, which concern the protection of community values such as human dignity and a free society.⁹⁷ Fifth, there must be performance of interrelated intellectual tasks, including the clarification of goals and the formulation and evaluation of policy alternatives.⁹⁸

⁹⁰ At 22.

⁹¹ At 22.

⁹² *The Max Planck Encyclopaedia of Public International Law* (1st ed, 2012) vol 4 International Protection of Human Dignity 1013 at 1019.

⁹³ At 1019.

⁹⁴ Boczek, above n 88, at 22.

⁹⁵ At 22.

⁹⁶ At 23.

⁹⁷ At 23.

⁹⁸ At 23.

The policy-oriented approach has been criticised as being “esoteric”.⁹⁹ It is also complex and cumbersome as it arguably contains an over-supply of concepts in its framework.¹⁰⁰ The approach is also susceptible to subjective manipulation considering the prominent role played by value-laden concepts such as human dignity.¹⁰¹ But it is submitted that this approach nonetheless provides useful background theory against which to view the policy role of the ICAT.

The policy-oriented approach is linked to the “phenomenological approach” to international law.¹⁰² The phenomenological approach stresses the psychological experience of phenomena.¹⁰³ It also places emphasis on case studies of not only judicial decisions but also debates within international organisations in order to clarify issues.¹⁰⁴ This paper has already discussed the *Watcharaporn Nantahkum* case as a practical illustration of the sex trafficking process and the harrowing effect that it has on its victims.

2. ICAT as global governor

Hall and Bevir’s article entitled *Global Governance* argues that global governance concerns an interest in the management of transnational issues by international organisations as well as state and non-state actors.¹⁰⁵ The authors identify three main purposes of global governance, namely, (a) reorganising theoretical perspectives in international relations, (b) comprehending new practices and political responses, and (c) setting policy agendas for change in the global order.¹⁰⁶ The authors also discuss the rise of networks in international relations. This rise can be explained by the rise of “wicked problems” and the cause of these problems requires multiple explanations.¹⁰⁷ The authors’ use of the phrase “wicked problems” recalls the discussion further above regarding the policy of joined-up government, which was designed to

⁹⁹ At 23.

¹⁰⁰ At 23.

¹⁰¹ At 23.

¹⁰² John P Grant and J Craig Barker Parry & Grant’s *Encyclopaedic Dictionary of International Law* (3rd ed, Oxford University Press, Oxford, 2009) at 470.

¹⁰³ At 465.

¹⁰⁴ At 465.

¹⁰⁵ Ian Hall and Mark Bevir “Global Governance” in *SAGE Handbook of Governance* (SAGE Publications Ltd, London, 2011) 352 at 352.

¹⁰⁶ At 352.

¹⁰⁷ At 361.

tackle wicked issues. The authors also argue that planning theorists make the claim that wicked problems explain the failure of hierarchical bureaucracies. This is so because departmental silos undermine coordination efforts in governance; agencies must learn to work across organisational boundaries in order to be more effective in tackling wicked social issues.¹⁰⁸ The authors also argue that recent shifts in global governance reflect a new direction toward networks joining-up in solving wicked problems.¹⁰⁹

The above article provides strong support for the view that the phrase “joined-up” can be used in the context of global governance. But can the phrase “joined-up”, which was conceived as a national government policy, really be appropriated for conceptual use in the context of global governance, which exists beyond the nation state? Can “joined-up government” really be used to describe “global governance”? This paper argues that it can. As discussed further above, the Blair Administration’s policy document on transformational government also referred to “governance” and so arguably the phrase “joined-up” can apply to governance as much as it does to government. Furthermore, Hall and Bevir’s article deals with networks “joining-up” in confronting wicked problems on the global scale. Last, the phrase “joined-up” has already been used in the global arena in the prescriptive sense at least twice.¹¹⁰ But it has never been used to describe global anti-trafficking coordination efforts.

This paper now turns to the concept of a “global governor” with a view to describing the ICAT as being such a governor. Avant, Finnemore and Sell’s article *Who Governs the Globe?* argue that the global policy arena is filled with a variety of actors such as international organisations, corporations, and professional associations, and all of these actors are seeking to govern in some way.¹¹¹ In short, global governors are agents of global governance; authorities exercise power across national boundaries in order to affect policy in international relations; governors create issues, set agendas, establish and implement rules, and evaluate and adjudicate

¹⁰⁸ At 361.

¹⁰⁹ At 362.

¹¹⁰ See Global Witness “A Joined-Up Approach to Tackling Natural Resource-Related Corruption, and How There Isn’t One!” in Rose-Ackerman & Carrington (eds) *Anti-Corruption Policy: Can International Actors Play a Constructive Role?* (Carolina Academic Press, North Carolina, 2013) at 113. See also Ralph Wilde “International Law Weekend Proceedings: Accountability and International Actors in Bosnia and Herzegovina, Kosovo and East Timor” (2001) 7 *ILSA Journal of International & Comparative Law* 455 at 460 where the author refers to the “joined-up thinking” behind the International Criminal Court.

¹¹¹ Deborah D Avant, Martha Finnemore and Susan K Sell *Who Governs the Globe?* (Cambridge University Press, Cambridge, 2010) at 1.

outcomes.¹¹² The authors state that “global governance describes the different policymaking activities that produce coordinated action in the absence of world government”.¹¹³ The authors argue that the question whether governors cooperate or compete directly affects the reach of their efforts and the degree to which their governance appears to be effective; cooperation enhances the reach of governance efforts; tensions restrict them; and competition undermines them.¹¹⁴

The ICAT’s first policy document is entitled *The International Legal Frameworks concerning Trafficking in Persons* and was published in October 2012.¹¹⁵ The ICAT describes itself as a “policy forum” and it states its aims as being “to facilitate a holistic and comprehensive approach by the international community to preventing and combating trafficking in persons including protection and support of victims of trafficking.”¹¹⁶ The ICAT’s mandate is to publish a series of five issue papers. Each paper is to focus on a key issue identified and agreed to by its membership as being a “critical challenge” in preventing and combatting human trafficking in the decade ahead.¹¹⁷

The ICAT’s second policy document is entitled *Preventing Trafficking in Persons by Addressing Demand* and it was published in September 2014.¹¹⁸ This document focuses on labour exploitation and expressly states that it does not address demand for human trafficking for the purposes of sexual exploitation.¹¹⁹ The document falls therefore outside the scope of this paper.

From the above it is clear that the ICAT can be seen as a global governor. In particular, the ICAT sets new policy agendas by publishing policy documents on key themes arising from human trafficking.

¹¹² At 2.

¹¹³ At 14.

¹¹⁴ At 24.

¹¹⁵ ICAT *The International Legal Frameworks concerning Trafficking in Persons* (Issue 1, ICAT Paper Series, Vienna, 2012).

¹¹⁶ At 1.

¹¹⁷ At 1.

¹¹⁸ ICAT *Preventing Trafficking in Persons by Addressing Demand* (Issue 2, ICAT Paper Series, Vienna, 2014).

¹¹⁹ At 2.

3. ICAT joined-up

According to the first policy document discussed above, the ICAT has a Working Group drawn from its membership list. The members of the Working Group are as follows: International Labour Organization (ILO), International Organization for Migration (IOM), Office of the United Nations High Commissioner for Human Rights (OHCHR), Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Children’s Fund (UNICEF), and the United Nations Office on Drugs and Crime (UNODC).¹²⁰ The ICAT’s membership comprises the organisations just listed as well as the following organisations: Department of Peacekeeping Operations of the Secretariat, International Civil Aviation Organization (ICAO), International Criminal Police Organization (INTERPOL), Joint United Nations Programme on HIV/AIDS (UNAIDS), United Nations Development Programme (UNDP), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), United Nations Interregional Crime and Justice Research Institute (UNICRI), United Nations Population Fund (UNFPA), and the World Bank.¹²¹

The joining-up of the above bodies would cover most if not all of the wicked issues affecting the transnational crime of human trafficking. Interestingly, the policy document criticises the perception of human trafficking as being primarily a criminal justice issue.¹²² The criminal justice system is truncated and specialised. The document argues that the “non-coordinated criminal justice focus” results in too much focus on “vice crimes” such as prostitution to the detriment of other issues such as the violation of labour law.¹²³ While this criticism is justified to some extent, it is important not to lose too much focus on the criminal process. A failure to build adequate criminal process capacity in preventing and combatting human trafficking can be disastrous. For example, the South African case of *Sayed and Another v Levitt NO and Another*¹²⁴ dealt with the issue of gross irregularity during a criminal trial. An ad hoc interpreter had been called to interpret the evidence given by two Thai-speaking sex traffickers. The interpreter had not been properly sworn in and no examination as to her competence had been conducted. The interpreter was not fluent in English and the court did not understand much of

¹²⁰ ICAT *International Legal Frameworks*, above n 115, at 1.

¹²¹ At 1.

¹²² At 2.

¹²³ At 2.

¹²⁴ *Sayed and Another v Levitt NO and Another* [2012] ZAKZPHC 38.

the interpreted evidence. The traffickers successfully applied for review of their convictions. The convictions were set aside and the review court ordered that the trial commence afresh before another regional magistrate.

The ICAT’s policy document refers to the divergence in legislative approaches taken by state parties in preventing and combatting human trafficking.¹²⁵ This paper has already discussed the UK Modern Slavery Act 2015 and the South African Prevention and Combatting of Trafficking in Persons Act 2013. But both Acts are entirely dedicated to contemporary slavery issues whereas countries like New Zealand deal with such issues in a chapter contained in the generic Crimes Act 1961. This illustrates one of many differences in legislative approach adopted by state parties to the Palermo Protocol.

The crux of the policy document appears in its discussion of the respective roles of national and international actors interacting with each other in a cooperative manner. The document states as follows:¹²⁶

At both the international and national levels, for multiple reasons including structural necessities, the application of a holistic approach to trafficking in persons will remain challenging. Given their specialised nature, many international organizations, for example, have pursued the aspects of the issue that are specifically relevant to their own mandates, focusing, for example, on particular victims who are trafficked (such as children or women) or on particular methods on which they have expertise (e.g., the criminal justice system or systems of labour inspection and implementation of labour law). At the national level, ministries and departments also have specific mandates and face challenges similar to those of international organisations. These challenges are in some ways reinforced when those ministries, for example, working closely with a specific international legal regime or cooperating with a particular international organization, while benefiting from that international organization’s expertise, are also limited by the mandate-specific expertise of the organization. This in turn sometimes results in a fragmented approach by

¹²⁵ ICAT *International Legal Frameworks*, above n 115, at 2 – 3.

¹²⁶ At 11.

different government ministries and departments. Furthermore, limited resources also have a part to play as a contributing factor. In any case, the end result is that organizations remain in their own silos, unaware of or unable to take in the obligations of States outside their own mandates, which in turn impacts on the development of meaningful cooperation with others, and the consequent failure to adequately impact the multiple and inter-related dimensions of human trafficking.

This paper argues that the wording of the above quote mirrors the policy concerns over slicing problems into separate packages identified by the Blair Administration in 1997. The ICAT’s policy document suggests that nation states should create an independent national coordinator to oversee the implementation of a comprehensive anti-trafficking response by the state concerned.¹²⁷ As discussed further above, the UK has done this with the creation of an Independent Anti-Slavery Commissioner.

In sum, the Blair Administration’s policy of joined-up government, which was first presented in 1997, has been replicated on the global scale by the ICAT, which was first formed in 2007. In the context of a wicked issue such as sex trafficking, the symmetry of national policy to global policy took ten years to achieve. A global governor has followed a national government.

4. Naming “globally joined-up governance”

The naming of a phenomenon creates a new thing.¹²⁸ The process of naming something is more than just about labelling it. Naming a social phenomenon changes what is named.¹²⁹ The newly named thing will hopefully prompt new enquiries and spur further debate about its nature and extent.¹³⁰

This paper seeks to name a phenomenon that has been happening on the global scale for some time now. The proposed name is that of “globally joined-up governance”. The constituent elements of this new name are, first, that the governing entity must be exclusively global in the

¹²⁷ At 11.

¹²⁸ Susan Marks “Naming Global Administrative Law” (2005) 37 *New York University Journal of International Law and Politics* 995 at 996.

¹²⁹ At 1001.

¹³⁰ At 1001.

sense that it is comprised entirely of global bodies. The ICAT is one such entity since its entire membership base consists of UN bodies. Second, the governing entity must be joined-up in its operations. The ICAT is joined-up as it plays a significant coordinating role in fulfilling its mandate of publishing policy documents. Third, the governing entity should also be in the business of governance. The ICAT is a governor as it sets new policy agendas in the context of human trafficking.

II. Conclusion

This paper has sought to do many things. First, the paper introduced and explained the policy of joined-up government in Britain. This part was designed to lay the foundations for the argument that the joined-up approach has been replicated globally. Second, the paper moved from the national sphere to the international sphere and set out the international instruments relating to slavery and trafficking in persons. This part focused on the trafficking of women for the purposes of sexual exploitation. The paper also practically illustrated the trafficking process by briefly discussing the *Watcharaporn Nantahkum* case. The paper also provided examples of anti-slavery legislation from the United Kingdom and South Africa in order to demonstrate how nation states comply with their international obligations. The paper then discussed global anti-trafficking coordination efforts focusing on the establishment of (a) the ICAT and (b) the Special Rapporteur. Third, the paper drew on the introductory account of joined-up government presented in the first part of the paper and described how this national policy has been replicated on the global scale. The paper discussed the policy-oriented approach to international law and its conceptual framework. The paper then discussed the concept of global governance and whether the policy of joined-up government could actually be used to describe developments in global governance. It was concluded that it can. The paper discussed the role of the ICAT as a global governor and described the ICAT as a joined-up governor. The paper thereafter named an anti-trafficking phenomenon that has been developing on the global scale. The paper suggested the name “globally joined-up governance” and outlined its constituent elements.

Slavery is both ancient and modern. It appears to be an intractable problem. But the world community has not stood idle. It has joined-up and established the ICAT. Globally joined-up governance may yet mark the beginning of the end of contemporary slavery.

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