



Study Group Information



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# **Strategies Against Human Trafficking: The Role of the Security Sector**

Vienna and Geneva, September 2009

**Impressum:**

Study Group Information

**Publishers:**

National Defence Academy and  
Austrian Ministry of Defence and Sports  
Rossauer Lände 1, 1090 Wien  
in co-operation with  
Geneva Centre for the Democratic Control of Armed Forces

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**Printing and Finishing:**

Reprocenter Vienna  
1070 Vienna, Stiftgasse 2a  
ISBN: 978-3-902670-19-9  
ReproZ Vienna

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## Foreword

In 2000, the international community adopted the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Since then, 124 countries have ratified the Protocol, and many of these have adopted legal instruments to help them in the fight against trafficking.

Yet the scourge persists. Millions of people worldwide—men, women and children—continue to be exploited for their labour, for sexual purposes, for their organs.

Security sector personnel are well-placed to assist in the fight against human trafficking: by identifying victims; investigating networks; disrupting operations; and prosecuting traffickers. Moreover, trafficking, like many crimes, flourishes where the rule of law is weak, such as in post-conflict situations. Restoring security based on the rule of law can reduce vulnerability to human trafficking and other types of organised crime.

*Strategies Against Human Trafficking: The Role of the Security Sector* provides practical guidance on how practitioners in the security sector can take measures against modern-day slavery.

Two points stand out. First, policy and intervention depend on evidence. Thus far, the fight against human trafficking has been handicapped by a lack of data. UNODC is working with governments and social scientists to fill this void. In 2009 we published the first *Global Report on Trafficking in Persons*. But the picture remains impressionistic. Security sector professionals can provide the information needed to profile victims and identify traffickers.

The second major point highlighted in this study is the need for cooperation. This fight is a shared responsibility. It requires inter-agency cooperation among law enforcement personnel as well as trans-national cooperation. It also depends on effective joint work among a wide range of stakeholders, including criminal justice experts, the private sector, civil society, and concerned citizens. Disjointed efforts—however well-meaning—will have little impact on sophisticated criminal networks. This publication offers strong recommendations on how to make cooperation work.

*Strategies Against Human Trafficking: The Role of the Security Sector* is the result of good cooperation between UNODC and the Geneva Centre for the Democratic Control of Armed Forces, as well as the input of experts on the security sector and organised crime. It should contribute to a more strategic fight against a crime that shames us all.

Antonio Maria Costa  
*Executive Director*  
*United Nations Office on Drugs and Crime (UNODC)*

## Foreword

Human trafficking is one of the most heinous crimes of our time. Across the globe, millions of people live in slave-like conditions, generating billions of dollars in profit for their traffickers. Human trafficking undermines the security of states because it is related to organised crime and corruption, and because some traffickers deal not only in people but also in drugs, weapons, and other goods. But most obviously, trafficking violates the human rights of trafficked persons who are exploited, raped, and sometimes killed.

The topic has been on the contemporary international security agenda since the late 1990s. Much progress has been made since: new laws have been created, awareness has been raised, government officials have been trained, and cooperation agreements have been struck between the various state and non-state counter-trafficking actors. However, there are few signs that trafficking is diminishing. Instead, there are many signs that it is increasing.

This book focuses on the role of security actors. Their first obligation is to fight human trafficking. Police, border guards, the armed forces, prosecutors and judges (among others) must prosecute traffickers, protect victims, and prevent trafficking. Their second obligation is to do no harm. Many trafficked persons have been subject to double victimisation, by traffickers as well as security actors. This is the case when the police raid brothels and then treat people forced into prostitution as criminals; when state migration officials decide to deport victims of trafficking, who are then picked up at the airport in their country of origin by those who trafficked them in the first place; or when peacekeepers, who are supposed to protect people, exploit them.

DCAF has decided to produce this book since counter-trafficking epitomises the need for an effective and democratically accountable security sector—the creation of which is DCAF’s aim. The book acknowledges that many of the factors which allow trafficking to thrive are beyond the remit of the security sector alone. However, while not sufficient, the authors of this book argue that proper security sector responses to human trafficking are *necessary*.

Much has been written about human trafficking over recent years. While this book rehearses the main points, it also fills gaps. The chapters, written by prominent experts in their fields, contribute to counter-trafficking by providing concrete recommendations for how to improve policy implementation, networking among the various counter-trafficking stakeholders, and research and evaluation. Crucially, the authors argue against oversimplified “solutions”,

revealing that counter-trafficking is rife with trade-offs and unintended consequences. By problematising common assumptions, the book thus underlines the complexity of trafficking and the trickiness of counter-trafficking, while still highlighting how progress can be made.

A major argument running through all of the chapters is that prosecution, protection, and prevention complement one another. We need more law enforcement, as well as law enforcers that better cooperate with their counterparts in other countries to fight this partly transnational problem. This book also stresses the requirement of close cooperation between actors focusing on prosecution and those, including international organisations and NGOs, who specialise in protection and prevention. Yet no matter who cooperates with whom and how, concerns for the human rights of trafficked persons and other vulnerable groups should be at the centre of all counter-trafficking efforts.

This book, presenting a sober analysis of a dramatic reality, addresses primarily policymakers and security practitioners. But its conclusions are relevant for a broader audience as well. Everybody can contribute to counter-trafficking, by not buying services provided by trafficked persons, by supporting institutions fighting trafficking, or by informing others about the problem. We hope that this book promotes practices and discourses that are both passionate and rational. Millions of enslaved people are waiting.

Theodor H. Winkler

*Director*

*Geneva Centre for the Democratic Control of Armed Forces (DCAF)*



## Acknowledgements

The publication of this book would not have been possible without the support of numerous individuals. Theodor H. Winkler, Ernst M. Felberbauer, and especially Anja H. Ebnöther provided continuous support, motivation, and feedback. Benjamin S. Buckland played an essential role in this project, as researcher, chapter author, coordinator, and copy-editor. It has been a privilege to work with you.

Mike Dottridge and Louise Shelley sent detailed comments on each chapter, which much enhanced the quality of the book. Many others shared their views with us on trafficking and counter-trafficking. These contributions are acknowledged in the respective chapters. Most importantly, thanks is due to all of the authors, for agreeing to contribute their insights to this book and for showing so much tenacity in producing several drafts of their chapters.

Cornelius Friesendorf

*Fellow, Special Programmes*

*Geneva Centre for the Democratic Control of Armed Forces (DCAF)*



## List of Acronyms

ACP	African, Caribbean and Pacific Group of States
ASEAN	Association of South-East Asian Nations
AWF	Analysis Work Files
CATW	Coalition Against Trafficking in Women
CCTV	Closed Circuit Television
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CEOOR	Centre for Equal Opportunities and Opposition to Racism
CIS	Commonwealth of Independent States
CoE	Council of Europe
CompStat	Comparative Statistics
COSPOL	Comprehensive Operational Strategic Planning for the Police
CRC	Convention on the Rights of the Child
CTM	Counter-Trafficking Module
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DoD	Department of Defence
DODIG	Department of Defence Inspector General
DRC	Democratic Republic of Congo
ECCAS	Economic Community of Central African States
ECIM	European Criminal Intelligence Model
ECOSOC	UN Economic and Social Council
ECOWAS	Economic Community of West African States
EIS	Europol Information System
EMN	European Migration Network
ESDP	European Security and Defence Policy
EU	European Union
EURODAC	European Dactyloscopie

Eurojust	European Investigation and Prosecutorial Cooperation Mechanism
Europol	European Police Office
EUROSUR	European Border Surveillance System
FADO	False and Authentic Documents Online
FATF	Financial Action Task Force
FIND	Fixed INTERPOL Network Database
Frontex	European External Borders Agency
FYROM	Former Yugoslav Republic of Macedonia
GAATW	Global Alliance Against Trafficking in Women
GAO	Government Accountability Office
GCC	Gulf Cooperation Council
GNIB	Garda National Immigration Bureau
GO	Governmental Organisation
GPAT	Global Programme against Trafficking in Human Beings
GRETA	Group of Experts on Action Against Trafficking in Human Beings
HIV/AIDS	Human Immunodeficiency Virus / Acquired Immunodeficiency Syndrome
ICC	International Criminal Court
ICCPR	International Covenant of Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMPD	International Centre for Migration Policy Development
ICRMW	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
ICT	Information and Communication Technology
ICTY	International Criminal Tribunal for the former Yugoslavia
ILO	International Labour Organization
ILP	Intelligence-led policing
IND	Immigration and Naturalisation Service

Interpol	International Criminal Police Organization
IO	International Organisation
IOM	International Organization for Migration
IRCP	International Research on Criminal Policy
IT	Information Technology
JHA	Justice and Home Affairs
LEA	Law Enforcement Agency
MASINT	Measurement and Signature Intelligence
MIND	Mobile INTERPOL Network Database
MOA	Memorandum of Agreement
NATO	North Atlantic Treaty Organization
NBC	Nuclear, Biological and Chemical Weapons
NCB	National Central Bureau
NCIS	National Criminal Intelligence Service
NGO	Non-Governmental Organisation
NRM	National Referral Mechanism
OCHA	United Nations Office for the Coordination of Humanitarian
OCR	Organized Crime Report
OCTA	Organized Crime Threat Assessment
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
OLAF	European Anti-Fraud Office
OSCE	Organization for Security and Cooperation in Europe
PACO	Programme against Corruption and Organised Crime
PJC	Police and Judicial Cooperation Matters
PKO	Peacekeeping Operation
PSO	Peace Support Operation
R&D	Research and Development

RABIT	Rapid Border Intervention Teams
RCM	Regional Conference on Migration
RCP	Regional Clearing Point
RCPs	Regional Consultative Processes
RCM	Regional Conference on Migration
RFID	Radio Frequency Identification Device
RNCOM	Regional Network for Civil Organizations on Migration
SAP	(EU) Stabilisation and Association Process for South Eastern Europe
SAP-FL	Special Action Programme to combat Forced Labour
SBGS	State Border Guards Service
SC	Security Council
SCCOPOL	Section Centrale de Coopération Opérationnelle de Police
SECI	Southeast European Cooperative Initiative
SEE	South Eastern Europe
SISCESCO	Information system to follow up on crimes relating to sexual exploitation of children and trafficking in children for sexual purposes
SOCA	Serious and Organised Crime Agency
SOP	Standard Operating Procedure
SPTF	Stability Pact Task Force on Combating Trafficking in Human Beings
SRSR	Special Representative of the Secretary General
SSG	Security Sector Governance
SSR	Security Sector Reform
STD	Sexually Transmitted Disease
TCC	Troop Contributing Country
THB	Trafficking in Human Beings
TIP Report	Trafficking in Persons Report
TOC	Transnational Organised Crime

TRM	Transnational Referral Mechanism
UAE	United Arab Emirates
UAV	Unmanned Aerial Vehicle
UK	United Kingdom
UN TOCC	United Nations Convention against Transnational Organised Crime
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Program
UNDPKO	United Nations Department for Peacekeeping Operations
UNHCR	United Nations High Commissioner for Refugees
UNIAP	United Nations Inter-Agency Project on Human Trafficking
UNICEF	United Nations Children's Fund
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNMIK	United Nations Mission in Kosovo
UNMISSET	United Nations Mission of Support to East Timor
UNODC	United Nations Office on Drugs and Crime
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
US	United States of America
USAID	US Agency for International Development
VIS	Visa Information System
VoT	Victim of Trafficking
WMD	Weapons of Mass Destruction





# INTRODUCTION

## The Security Sector and Counter-Trafficking

Cornelius Friesendorf

### Introduction

Over recent years, many states have stepped up efforts against human trafficking.<sup>1</sup> However, counter-trafficking continues to suffer from shortcomings. There is still a lack of political will, operational capacity, and knowledge on trafficking and on what counter-strategies work best. As a consequence, human trafficking continues to thrive. By focusing on the role of the security sector, this book offers ways of making progress against a pressing contemporary problem that undermines the security of states, societies, and individuals. This introduction first highlights the contribution of the security sector to counter-trafficking. It then examines the scope and nature of trafficking and discusses different perspectives on the problem. Finally, this introduction summarises the chapters of the book.

### 1. Conceptualising the Role of the Security Sector

The fight against human trafficking has three components: the prosecution of traffickers, the protection of trafficked persons, and the prevention of trafficking. In addition, and cutting through these “three Ps”, national and international cooperation among the various actors constituting the counter-trafficking security sector is needed.

Who are these actors? There is no common definition of the security sector. A narrow definition includes core security actors such as the police and military, but does not include, for example, NGOs and the media.<sup>2</sup> The narrowest

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<sup>1</sup> For discussions on trafficking and counter-trafficking I thank the chapter authors, Beate Andrees, Mike Dottridge, Louise Shelley, and many other researchers and practitioners. Special thanks go to Benjamin S. Buckland. The views expressed in this introduction may be different from those of institutions and individuals contributing to this book.

<sup>2</sup> Organisation for Economic Co-Operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice* (Paris: OECD, 2007), 22.

definition would not even include the judiciary, but focus instead on “power ministries” such as the Ministry of Interior and Defence, and their respective agencies.

When looking at counter-trafficking, the security sector should be defined broadly.<sup>3</sup> For the purpose of this book, it encompasses: core security actors (such as the armed forces, regular police, border police and immigration services), judicial personnel (especially prosecutors and judges), security management and oversight bodies that hold security agencies accountable, and non-statutory security forces (such as private military companies).

Moreover, a definition of the counter-trafficking security sector must take into account the essential role of state-run social service and protection agencies, as well as NGOs. Including these “non-coercive” actors in the definition of the security sector is not intended to “securitise” counter-trafficking efforts.<sup>4</sup> Securitisation tends to give rise to inappropriate coercive practices that lack democratic oversight and a proper balance of prosecution with protection and prevention.

Most of the actors in this list operate primarily on the national level. However, human trafficking is very much a transnational problem. International Organisations (IOs) have become crucial in promoting and implementing counter-trafficking policies, and are therefore included in the definition of the counter-trafficking security sector.

This book pays special attention to the role of “coercive actors”, such as the police, judiciary, and armed forces.<sup>5</sup> These actors not only put pressure on traffickers, but also have a stake in protecting trafficked persons and in preventing trafficking. However, to reduce trafficking, more is needed than improving law enforcement or preventing the involvement of peacekeepers in trafficking. Good security sector responses must combine the activities of “coercive actors” with those of other government agencies, IOs, NGOs, parliaments, private businesses, and the media.<sup>6</sup>

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<sup>3</sup> See also Heiner Hänggi, “Making Sense of Security Sector Governance,” in *Challenges of Security Sector Governance*, ed. Heiner Hänggi and Theodor H. Winkler (Geneva: DCAF, 2003): 3-23, here p. 10.

<sup>4</sup> On securitisation see Barry Buzan, Ole Waever and Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder: Lynne Rienner, 1998).

<sup>5</sup> This book does not discuss in depth the role of parliamentary oversight committees, private businesses, the media, or prison guards. This is not meant to deny these actors’ potential or actual contribution to counter-trafficking.

<sup>6</sup> On private actors in international affairs, see Alan Bryden and Marina Caparini, ed., *Private Actors and Security Governance* (Münster: LIT and DCAF, 2006).

By analyzing counter-trafficking responses both on a national and international level, this book draws on three, overlapping, concepts that inform all activities of the Geneva Centre for the Democratic Control of Armed Forces (DCAF). First, proper counter-trafficking responses require Security Sector Reform (SSR). A poorly governed security sector represents a decisive obstacle to sustainable development, democracy, and security. SSR is aimed at developing a security apparatus that provides security to the state and its people within a framework of democratic accountability. SSR-oriented counter-trafficking efforts are needed, not only in countries that emerge from violent conflict, but also in more stable settings. For example, police forces, border guards, or prosecutors need training to identify and properly treat victims of trafficking, no matter where.<sup>7</sup>

Secondly, to ensure cooperation among the various counter-trafficking stakeholders on a national level, as well as democratically accountable state responses to trafficking, Security Sector Governance (SSG) needs to be enhanced.

Yet SSR and SSG are insufficient, both as conceptual tools and as practical guidance for counter-trafficking. SSR and SSG must be complemented, thirdly, with Security Governance. This concept takes into account the transnational nature of contemporary security problems. Effective, efficient, and legitimate responses against human traffickers demand cooperation among national actors and their foreign counterparts. In counter-trafficking and other realms, states can no longer act (if they ever did) as monolithic entities—they need to create horizontal policy networks that quickly and flexibly reach across borders. These networks should comprise state agencies such as the police and border guards, but also IOs and NGOs.<sup>8</sup>

Because counter-trafficking efforts integrate the know-how and material resources of many actors, they are a prime example of the shift from government to governance.<sup>9</sup> They also underline the need to broaden traditional security concepts and practices hitherto focused on state security and the military. A move towards the concept of human security, whereby the security

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<sup>7</sup> The term victim is here used in a legal sense (a victim of a crime); it does not deny that people make choices, even under difficult circumstances.

<sup>8</sup> On networked security governance, see Anne-Marie Slaughter, *A New World Order* (Princeton and Oxford: Princeton University Press, 2004); Elke Krahnemann, “Security Governance and Networks: New Theoretical Perspectives in Transatlantic Security,” *Cambridge Review of International Affairs* 18, no.1 (2005): 15-30.

<sup>9</sup> See Ernst-Otto Czempiel and James N. Rosenau, ed., *Governance Without Government: Order and Change in World Politics* (Cambridge: Cambridge University Press, 1992).

of individuals is the main reference point of security activities, is warranted in the field of counter-trafficking, as in other fields. Since the 1990s, when many programmes were initiated, efforts against human trafficking have often been skewed toward inappropriate law enforcement strategies that have undermined both the human rights of victims and the ability of states to prosecute traffickers.<sup>10</sup> Trafficking is too complex to lend itself to simplified assumptions and counter-strategies.<sup>11</sup>

By focusing on “coercive” actors, this book does not intend to contribute to the prolongation of practices such as the deportation of trafficked persons that are problematic both normatively and functionally. Instead, we argue that a human security approach, which emphasizes the rights and needs of trafficked persons, also defends state interests, such as the arrest of traffickers.

Our focus on the security sector disregards crucial aspects of counter-trafficking. Even if all actors discussed in this book (ranging from the police to NGOs and IOs) properly engaged in counter-trafficking (which is not the case yet), trafficking would continue. Progress against trafficking hinges on the presence and amenability of conditions as diverse as poverty, gender-based discrimination, a lack of legal migration and employment opportunities, the Internet as a facilitator of migration and commercial sexual services, the demand for cheap, unregulated labour, advances in transport technology, violence against women as a tactic of war, and many other phenomena.

Security actors can mitigate some of the causes and consequences of trafficking, but not all of them. For example, institutions looking after victims of trafficking have little leverage over discrimination, poverty, and other conditions that push people to migrate under risky circumstances. Security sector responses are therefore only one element in a larger puzzle. But they are an important one.

The authors of this book also acknowledge that there are no technical solutions to trafficking (even though there is much room in the ways technical programs

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<sup>10</sup> Cornelius Friesendorf, “Pathologies of Security Governance: Efforts Against Human Trafficking in Europe,” *Security Dialogue* 38, no.3 (2007): 379–402.

<sup>11</sup> It is widely acknowledged, for instance, that trafficking affects particularly women. But appreciating the gendered impact of trafficking must go beyond simplified assumptions. In Central Asia, some of the men who migrated and then got trafficked were unable to send money home (although not all men who failed to send money home were trafficked). This process increased trafficking risks for their wives, leading some of them to be exploited in the agricultural sector (although not all women exploited in agriculture in this particular country were victims of trafficking, and not all wives of men who did not send money home were trafficked). Thus, there is a link between gender and trafficking, yet it is a complex one. Source: Interview with an official from a Geneva-based international organisation, Geneva, March 2008.

are implemented). Counter-trafficking efforts are political in nature—and often mired in ideological disputes. Counter-trafficking responses reflect a mix of power, as well as constantly changing norms and perceptions.<sup>12</sup> They also involve trade-offs and are prone to causing negative unintended consequences, even if intentions are good. Yet pointing out diverse views on trafficking and the problems related to security sector responses is a precondition for improvement.

By discussing the opportunities and problems of counter-trafficking, and offering recommendations to policy-makers and practitioners, this volume contributes to more effective, efficient, and legitimate counter-trafficking efforts.

## 2. What Is Human Trafficking?

In May 2008, a daffodil harvester in the United Kingdom (UK) was stripped of his licence.<sup>13</sup> Accused of imposing debts on his workers, as well as threatening them and their families, the Gangmaster Licensing Authority (GLA) cited “abhorrent” living and working conditions as evidence that they had “uncovered a disgraceful story of forced labour in 21st-century Britain.”<sup>14</sup> The story of the around 500 Polish workers employed by the gangmaster may be less horrific than the accounts of forced prostitution that have made the headlines since the late 1990s. It is, however, an important story because it hints at three of the major themes that will run through this book.

Firstly, it illustrates the diversity of trafficking—a diversity that is sometimes hidden by the overwhelming focus on sex trafficking. Daffodil pickers in Suffolk are just some of the estimated 2.4 million people trafficked every year into numerous sectors and industries, including prostitution, construction,

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<sup>12</sup> See Peter Andreas and Ethan Nadelmann, *Policing the Globe: Criminalization and Crime Control in International Relations* (Oxford: Oxford University Press, 2006), Chapter 1.

<sup>13</sup> I thank Benjamin S. Buckland for his significant contribution in researching and writing this section and the following one.

<sup>14</sup> Paul Lewis, “Daffodil Harvester Stripped of Gangmaster Licence and Accused of Using Forced Labour,” *The Guardian*, May 8, 2008, available at: [www.guardian.co.uk/uk/2008/may/08/immigration.immigrationandpublicservices](http://www.guardian.co.uk/uk/2008/may/08/immigration.immigrationandpublicservices) (accessed December 5, 2008).

agriculture, fisheries, sport, begging, service, domestic labour, entertainment, and war.<sup>15</sup>

Secondly, the story underlines the heterogeneity of traffickers. The billions of dollars in profits generated by trafficking every year are shared, not only by sophisticated organised crime groups, but by all those who transfer, harbour, receive, or exploit trafficked people—many of whom are disorganised, small-time, or one-off operators.

Lastly, the comments of other flower growers and those in the industry, cited in the newspaper article, reveal some of the multiple driving forces of human trafficking in countries of origin, transit, and destination. They talk of an industry already short of workers, of supermarket chains holding down prices, and of labour markets creating demand for cheap foreign workers.

So what is human trafficking? A trafficked person is someone who is transferred across borders or within a state for the purposes of slavery or servitude. Trafficking is characterised by the recruitment, transportation, transfer, harbouring or reception of persons when this is accompanied by the threat or use of force, fraud, deception, or other means and when the purpose is to exploit a person. These definitional elements are drawn from Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, opened for signature in Palermo, Italy, in 2000. The exact definition is as follows:

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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 the victim of trafficking in persons to the intended exploitation set forth in the subparagraph (a) of this article shall be

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<sup>15</sup> International Labour Organization, *A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva: ILO, 2005), 10.

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;
- (d) “Child” shall mean any person under 18 years of age.<sup>16</sup>

Since the mid-1990s, trafficking had been steadily climbing the international security agenda. Yet even before discussions on the Protocol began in Vienna in 1998, counter-trafficking efforts suffered from competing definitions.<sup>17</sup> With no agreed definition, some actors stuck with that contained in the 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, which contains no specific definition of the term “traffic in persons” but which covers women in prostitution. Others worked with an expanded concept that covered trafficking into all forms of forced labour. Conceptual competition was harmful to early data-gathering efforts and, by extension, to the counter-trafficking programmes, laws, and strategies that this data was designed to inform.

The Protocol definition represented improvement. However, it soon became clear that its convoluted structure is not easy to translate into national laws or training guidelines. Where it has been directly transcribed, uncertainty remained, undermining proper data gathering. Yet efforts by states to create their own definitions have been problematic as well. Brazil, for instance, has incorporated the Protocol definition into national law. Yet it sits on the statute books alongside definitions drawn from the earlier 1949 instrument. This situation has led to confusion on the part of lawmakers, enforcers, and trafficked people themselves,<sup>18</sup> and has made it difficult either to estimate the number of people being trafficked in Brazil itself or to compare trafficking in Brazil with the scope of the problem in other countries.

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<sup>16</sup> The Protocol is available at <http://untreaty.un.org/English/notpubl/18-12-a.E.doc>.

<sup>17</sup> See Melissa Ditmore and Marjan Wijers, “The Negotiations on the UN Protocol on Trafficking in Persons,” *Nemesis* 4 (2003): 79–88.

<sup>18</sup> Global Alliance Against Trafficking in Women, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World* (Bangkok: GAATW, 2007), 88–89.

Thus, estimating the global scope of human trafficking is difficult.<sup>19</sup> The US Government has suggested that between 600,000 and 800,000 persons are trafficked worldwide each year, 80 per cent of whom are women.<sup>20</sup> Yet this figure does not include trafficking that occurs within the borders of a country, generally known as “internal” or “domestic” trafficking, which may well account for more people than those trafficked across borders. The best global figure available comes from the International Labour Organization (ILO), which in 2005 estimated the total number of people trafficked at around 2.4 million people (and the annual turnover of the industry at around \$32 billion).<sup>21</sup> However, the real figure could be much lower or higher.

A lack of primary data on the scope, loci, and most prevalent types of trafficking is obviously a major challenge: the less visible a phenomenon is, the harder it is to formulate and implement effective counter-policies. This holds true with regard to drug trafficking, terrorism, or insurgency, and also human trafficking.

Existing data on human trafficking is weak because researchers have had to project total values from relatively small numbers of known cases. The fog surrounding human trafficking is a result of various factors. While trafficking is an almost universal phenomenon,<sup>22</sup> countries may understate the extent of trafficking because of embarrassment, or because they lack legislation, enforcement, or capacity to collect data and information. Moreover, collected data is often not properly collated or shared, but remains quarantined on the files of state agencies, IOs, and NGOs.

The very nature of human trafficking compounds these problems of collecting good and comprehensive data. Trafficking is a clandestine activity hidden by traffickers. Moreover, while it is not a “victimless crime”, as is the case with the illicit drug industry where both buyers and sellers usually lack incentives to contact the police, even victims of trafficking are often reluctant to speak out. They may hide their predicament for fear of reprisals by traffickers, or because they fear returning home and facing communities who often shun those whose migration projects have failed, especially those who have worked in

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<sup>19</sup> For an overview of data on human trafficking and data problems, see the first chapter in this book. See also Frank Laczko and Elzbieta Gozdzia, “Data and Research on Human Trafficking: A Global Survey,” Special Issue, *International Migration* 43, no.1–2 (2005).

<sup>20</sup> US Department of State, *Trafficking in Persons Report* (Washington D.C.: US Department of State, June 2007), 8.

<sup>21</sup> International Labour Organization, “A Global Alliance Against Forced Labour,” 10.

<sup>22</sup> United Nations Office on Drugs and Crime, *Trafficking in Persons: Global Patterns* (Vienna: UNODC, April 2006), 17.



prostitution. Also, trafficked persons may not realise they have been trafficked, viewing their situation perhaps as terrible and exploitative, yet “better” than it was at home. The notion of exploitation is thus more ambiguous than commonly suggested.<sup>23</sup>

Moreover, even though the Protocol underlines that trafficked people should not be made liable for immigration offences committed as part of the trafficking process, many trafficked people do not know this and are afraid of contacting the authorities. This fear is not unjustified, given that countries of destination often simply deport victims, a practice that both violates human rights and hampers the successful prosecution of traffickers.<sup>24</sup> This book underlines that flawed law enforcement, i.e., practices that are not based on a human rights approach, aggravates the problem of trafficking.

### 3. Disputing the Nature of the Problem

Trafficking has been approached from a number of angles, each representing the perceptions and interests of various parties. The Abolitionist view takes some of its cues from the 1949 Convention. Informed by elements of radical feminism and developed more recently by NGOs such as the Coalition Against Trafficking in Women (CATW), it disputes that there can be truly consensual prostitution. Abolitionists argue that the abolition of prostitution and criminalisation of demand are the most promising solutions to the problem.<sup>25</sup>

States such as Sweden have subscribed to this view, claiming to have made great strides against trafficking by criminalising demand for commercial sex. The administration of George W. Bush also leant in this direction, arguing that legal prostitution fuels trafficking by increasing demand.

This book includes few comments on the highly-charged debate about the pros and cons of different prostitution regimes. However, it is obvious that many men, women, and children are trafficked into sectors other than the sex

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<sup>23</sup> See Vanessa E. Munro, “Of Rights and Rhetoric: Discourses of Degradation and Exploitation in the Context of Sex Trafficking,” *Journal of Law and Society* 35, no.2 (June 2008): 240–264.

<sup>24</sup> Dina F. Haynes, “Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers,” *Human Rights Quarterly* 26, no.2 (May 2004): 221–272.

<sup>25</sup> See, for example, Donna M. Hughes, “The ‘Natasha’ Trade: The Transnational Shadow Market of Trafficking in Women,” *Journal of International Affairs* 53, no.2 (Spring 2000): 625–651.

industry.<sup>26</sup> Moreover, various factors drive both migration and trafficking. Last, it is not clear yet whether criminalizing (the demand for) commercial sexual services has produced positive results.<sup>27</sup>

Governments view trafficking primarily as a problem of transnational organised crime. This standpoint has informed the drafters of the UN Protocol. It fits human trafficking within the same conceptual framework as trafficking in arms and drugs, and consequently assumes that measures against organised crime can work against human trafficking as well. Human trafficking has become a profitable activity of organised crime groups. Moreover, trafficking meshes with other organised crime operations in various ways. For example, trafficking can occur along the same routes as trafficking in drugs or weapons; in “combined retailing” schemes,<sup>28</sup> traffickers may sell both drugs and sexual services provided by trafficked persons; or, a person may be used as a “drug mule” en route, before ending up in forced labour in a destination country.

It must be noted, however, that the focus on transnational organised crime networks engaged in human trafficking has been problematic. Much trafficking is run by small-time, disorganised, unsophisticated, and only loosely networked groups, as well as by individuals acting alone. Moreover, this framework has given rise to coercive law enforcement strategies that, while not always contributing to successful prosecution, have been detrimental to the interests of migrants in general and trafficked persons in particular.

A related framework views trafficking primarily as a migration problem. This analysis stresses that it is not the very poorest who leave their homes. Instead, slight increases in economic development, combined with a growing knowledge of relative poverty, drive people to migrate. Rejecting the assumption that the majority of trafficked people are bundled up and

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<sup>26</sup> Due to space constraints and to the quite different policy recommendations they entail, this book does not examine in depth child trafficking, forced marriage and the organ trade, except where they directly overlap with sex and labour trafficking.

<sup>27</sup> The Swedish government says the policy works. The Swedish National Rapporteur on Trafficking in Human Beings, as well as a former special advisor to the Swedish government on prostitution and human trafficking, claim that the policy, among other effects, has decreased the percentage of men purchasing sexual services and prevented the trafficking of foreign women to Sweden by organised crime networks (Gunilla Ekberg, e-mail communication with the author, December 2008). Other sources are more sceptical, however. See, for example, US Government Accountability Office (GAO) *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Anti-trafficking Efforts Abroad*, report no. GAO-06-825 to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives. Washington DC, July 2006, 25.

<sup>28</sup> Phil Williams “Drugs, Human Trafficking, and Fraud as a Security Threat” (presentation, Geneva Centre for Security Policy, June 25, 2007).

transported to their destinations, this conceptual framework asserts rather that trafficking is driven by increasing mobility and a desire to migrate. Trafficking results from the interplay of ever-tighter migration controls attempting to frustrate migration of people without valid travel or work documents, the desire of people to migrate (for reason ranging from the need to escape persecution to a desire for adventure), and the presence of criminals willing to exploit the paradox of migration controls in the era of globalisation.

More recently, a fourth approach for conceptualising trafficking has focused on human rights. This framework developed in parallel and in response to the security trope that has dominated much trafficking discourse and practice. Human rights violations, according to this analysis, are perpetrated in two directions. In one direction, they are the acts of violence, coercion and exploitation exacted by traffickers. In the other, they are the acts of states who, seeking to secure their borders, may violate the human rights of trafficked people and other vulnerable groups, especially asylum seekers.

While the human rights approach has gained traction among an increasing number of counter-trafficking actors, commitments, especially by governments of net destination countries, are often not translated into practice. This publication takes a close look at trade-offs and unintended consequences of counter-trafficking efforts. The human rights consequences of security sector responses against trafficking run all the way through the chapters.

The final framework to inform counter-trafficking has been the labour market approach. Viewing trafficking as only one element of forced labour, this approach examines the factors that drive demand for labour, as well as the regulatory frameworks that allow the dark side of a globalized labour market to flourish. Championed especially by the ILO, this approach seeks to engage governments, trade unions, workplace inspectors, and other actors. The forced labour approach looks at both legal and political methods of improving conditions for foreign and migrant workers generally and trafficked people in particular.

The focus of this book on security sector actors precludes an in-depth discussion of labour market forces. But some of the authors have a great deal of sympathy for the hypothesis that trafficking is a labour market phenomenon, the solutions to which must involve the main market actors.

#### 4. The Structure of the Book

This book is intended to contribute to better security sector responses to human trafficking. Geographically, the chapters refer to many examples of trafficking and counter-trafficking from Europe and North America. But we also discuss human trafficking patterns and counter-efforts elsewhere, especially in the countries of origin for many of those trafficked to Europe and North America (noting, of course, that states may be countries of origin, transit, and destination simultaneously).

This book is both a scholarly work and a practical tool containing concrete recommendations for security policymakers and practitioners. Our recommendations take into account both regional and issue-specific idiosyncrasies, but are, to a large extent, also universally applicable. Moreover, they are concrete and focused on implementation (without, as noted above, pretending to offer technical “solutions”).<sup>29</sup> This book does not duplicate existing works on trafficking (of which there has been a veritable explosion over recent years), but rather complements them. It does so by cross-referencing existing toolkits,<sup>30</sup> manuals, and scholarly writings as much as possible. The book adds value to existing works on trafficking for several reasons, as an overview of the respective chapters shows.

##### Part I: Issues

First, we discuss issues related to trafficking that are often mentioned, yet rarely discussed systematically. Francesca Bosco, Vittoria Luda di Cortemiglia, and Anvar Serojtdinov begin Part I with an overview of global trafficking patterns. The authors discuss the scope of trafficking, data problems, and which forms of trafficking occur where. They also examine causes and consequences of human trafficking.

In chapter two, Leslie Holmes explores the links between trafficking and corruption. This link is often assumed to exist, yet this study is among the first to explore, in detail, how corruption facilitates trafficking, and what policy responses might help to mitigate the problem. Looking at what forms of

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<sup>29</sup> On the need for recommendations that take into account implementation challenges, see Gordon Peake and Otwin Marenin, “Their Reports Are Not Read and Their Recommendations Are Resisted: The Challenge for the Global Police Policy Community,” *Police Practice and Research* 9, no.1 (March 2008): 59–69.

<sup>30</sup> One of the best toolkits available is the: United Nations Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons* (UNODC: Vienna, 2006), [http://www.unodc.org/pdf/Trafficking\\_toolkit\\_Oct06.pdf](http://www.unodc.org/pdf/Trafficking_toolkit_Oct06.pdf) (accessed January 18, 2009).

corruption facilitate trafficking, this chapter draws on both empirical examples and theoretical debates. Without neglecting the limits, trade-offs, and unintended consequences of counter-corruption policies, Holmes provides recommendations for reducing trafficking-related corruption.

Links between trafficking and organised crime are not as clear and simple as they seem. Chapter three, written by John T. Picarelli, critically examines the extent to which organised crime groups have been involved in human trafficking. Comparing current and historical trends, he shows that there is much diversity with regard to the individuals and groups involved in human trafficking. One of his main conclusions is that counter-traffickers need to better understand their adversaries.

Trafficking and smuggling in people each have their own protocol to the UN Convention Against Transnational Organized Crime. Smuggling is defined as the illegal transfer of migrants across international boundaries. While trafficked people are posited as victims, this is not the case for smuggled persons. In contrast to this legal divide, Benjamin S. Buckland argues that there is much cross-over and overlap between the two groups. Buckland suggests that, while the categories of “smuggled” and “trafficked” may be clear-cut at the extremes, there is a trafficking-smuggling continuum at the middle of which definitions blur to the point that they often become unworkable.

## Part II: Actors

The second part of the book also seeks to fill a gap in the literature. It does so by looking at the role of specific security sector actors, providing concrete recommendations for appropriate responses. The chapters also analyse the trade-offs and unintended consequences of security actors’ participation in counter-trafficking efforts. Jana Arsovska and Stef Janssens open this section by discussing a central contributor to counter-trafficking: the police. Issues examined include the practical and political difficulties of apprehending traffickers and the challenges of transnational police cooperation.

Fred Schreier, in his chapter, argues that counter-trafficking activities should be intelligence-led. The author highlights challenges of forging intelligence-led coalitions and bridging institutional and national boundaries, as well as issues of accountability and oversight in applying intelligence-led strategies against organised crime in general and human trafficking in particular.

In chapter seven, Richard Danziger, Jonathan Martens and Mariela Guajardo discuss the contribution of migration management to counter-trafficking. As

well as examining the roles of a variety of actors, the authors explain that migration management strategies can have a detrimental impact on the rights of trafficked persons and migrants more generally, and propose strategies for avoiding negative consequences of counter-trafficking efforts, particularly those focusing on “source” countries.

International staff participating in peace operations have exacerbated problems of exploitation and abuse, including trafficking. Soldiers, private military contractors, police, and NGO staff have all been involved in exploitation and abuse. This has not only led to human rights violations, but also undermined stabilisation and peacebuilding objectives. In his chapter, Keith J. Allred explores ways of improving strategies against abusive practices by personnel participating in peace missions, discussing the loopholes and implementation challenges that remain to be confronted.

In the final chapter of part two, Allison Jernow looks at the criminal justice sector, as represented primarily by prosecutors and judges. Traffickers must be prosecuted and victims of forced labour, including trafficking, protected, both in courtrooms and before and after trial. The author examines the opportunities and problems of criminal justice responses to trafficking, emphasising that protecting the rights of trafficked persons should be at the core of prosecution efforts.

### Part III: Cooperation

The book’s third and final section focuses on the under-researched area of counter-trafficking cooperation. Many argue that it takes networks to fight (transnational) networks.<sup>31</sup> However, “netwars”, striving at stealthy attacks on criminal networks, tend to foster informal and often unaccountable governance. Governments and their partners cannot emulate the practices of their criminal opponents without running the risk of undermining their own legitimacy—licit actors have to abide by rules that illicit actors can afford to ignore.<sup>32</sup> Constructing viable counter-trafficking networks is difficult from a practical perspective as well, with numerous obstacles hampering cooperation. These include a lack of capacity; legal loopholes; competition and turf battles between institutions; divergent worldviews, standard operating procedures, and

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<sup>31</sup> John Arquilla and David Ronfeldt, ed., *Networks and Netwars: The Future of Terror, Crime, and Militancy* (Santa Monica, CA.: RAND Corporation, 2001).

<sup>32</sup> For a critique of the “netwar” concept, see Michael Kenney, *From Pablo to Osama: Trafficking and Terrorist Networks, Government Bureaucracies, and Competitive Adaptation* (University Park, Pennsylvania: Pennsylvania State University Press, 2007), 261, note 15.

priorities of counter-trafficking actors; and a lack of trust due to fears over corruption.

The literature on counter-crime governance and networks is still in its infancy. With notable exceptions,<sup>33</sup> existing works tend to focus on how specific actors, especially states, fight specific crimes. What are needed are more systematic assessments of how hybrid alliances, comprising both state and non-state actors, can address more effectively illicit activities in which non-state actors figure prominently. This third section addresses this deficit by offering concrete recommendations for more effective, efficient, and legitimate counter-trafficking cooperation between separate organisations within countries and across borders.

In chapter 10, Phil Williams points out the obstacles to networked security governance against human trafficking, and provides recommendations for how to exploit vulnerabilities of criminal networks. Williams distinguishes between different types of networks involved in human trafficking, showing that networks have distinct advantages over hierarchically organised governments. He thus takes issue with the claim that the power of illicit networks is overestimated.<sup>34</sup> At the same time, however, Williams argues that attacking networks is not sufficient for reducing trafficking—approaches that attack criminal *markets* are warranted.

Helga Konrad and Barbara Limanowska look closely at the conditions that have stymied counter-trafficking cooperation, focusing on Southeast Europe. Avoiding the rehearsal of commonplaces such as: “transnational police cooperation must be stepped up”; “intelligence must be exchanged”; and “the judicial sector must cooperate with civil society organisations”, Konrad and Limanowska show that cooperation in the region has suffered from a law enforcement bias. This bias is indicated by the dominance of “coercive” actors such as Ministries of Interior in cooperation arrangements that has had a detrimental impact on the protection of trafficked persons and the prevention of trafficking. The authors posit that improving cooperation hinges on the systematic protection of the human rights of vulnerable people.

Chapter 12 covers Transnational Referral Mechanisms (TRMs). Recognising the progress made in coordinating national counter-trafficking responses, Mariyana Radeva, Elisa Trossero, and Martijn Pluim offer a way forward for

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<sup>33</sup> See, for example, Andreas and Nadelmann, *Policing the Globe*.

<sup>34</sup> See Mette Eilstrup-Sangiovanni and Calvert Jones, “Assessing the Dangers of Illicit Networks: Why Al-Qaida May be Less Threatening Than Many Think,” *International Security* 33, no.2 (Fall 2008): 7–44.

improving *transnational* cooperation. They discuss the objectives of TRMs; their practical operation; links to National Referral Mechanisms; the challenges faced by the TRM; and the conditions that must be present for TRMs to work effectively.

The conclusion summarises the empirical findings and recommendations of the book. It shows that further progress against human trafficking hinges on progress in three (interrelated and overlapping) areas. First, international agreements, national laws, and working practices must be better implemented. Second, it is important to overcome the obstacles to better counter-trafficking networking. Third, there is a need for more research on the scope and nature of trafficking, and for evaluating the impact of counter-trafficking measures, in a way that is free of political pressure, institutional competition, and prejudice.

In reducing trafficking, security sector activities are not sufficient, even if these are effective, efficient, and legitimate. Whether progress can be made depends on numerous conditions, many of which are beyond the remit of security actors. Nevertheless, a properly functioning counter-trafficking security sector is necessary for reducing human trafficking. By focusing on issues (Part 1), security sector actors (Part 2), and counter-trafficking cooperation (Part 3), this book offers a hybrid approach for improving efforts against human trafficking.



## **PART 1: *Issues***



# CHAPTER 1

## Human Trafficking Patterns

Francesca Bosco, Vittoria Luda di Cortemiglia, Anvar Serojitdinov (UNICRI)

### Introduction

This chapter provides an overview of global trafficking patterns. It begins with an analysis of the extent of the phenomenon before going on to examine some of its main features and causes. Part 1 of this chapter covers data collection constraints, existing figures on human trafficking, including different datasets and data collection efforts on the national, regional and global level, as well as some common assumptions. Parts 2 and 3 focus on the forms and prevalence of human trafficking in different regions, while part 4 provides general information on the types of criminals and criminal structures involved. It contains also a brief description of the profiles of victims of trafficking and the risks and hardships that they incur. Parts 5 and 6 analyse the factors that drive the crime and its consequences. Part 7 deals with prevention, prosecution and protection. It also covers various measures and types of national and international cooperation in the fight against human trafficking. The chapter concludes with recommendations. Specific and detailed aspects of the complex issue presented in this chapter will have dedicated chapters further on in this volume.

### 1. Data and Data Problems: Figures and Caveats

Although various international and national entities are today tackling human trafficking, reliable information is still lacking on the scale of the phenomenon, on the way it works, and on the most effective means to prevent it. One of the major gaps in knowledge lies in the area of data collection. In spite of some recent progress, there are relatively few reliable sources of information available on the actual numbers of people trafficked. Better data will lead to an improved understanding of the problem. Moreover, a deeper understanding will produce better protection, detection, enforcement, and prevention strategies.

Since trafficking is typically a “hidden” behaviour, estimates are needed to assess the severity of the phenomenon. Accurate estimates have to be based on known data, rather than on secondary information or speculation.<sup>1</sup> Below, we provide a non-exhaustive set of factors that stand in the way of collecting reliable data and producing reliable estimates on human trafficking.

### *1.1 Lack of Legislation and Harmonised National Definitions of Human Trafficking*

- Some countries have not yet incorporated the provisions of the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons into their national legislation.<sup>2</sup> Thus, they have neither legislation against human trafficking, nor a clear distinction between smuggling of migrants and human trafficking. Consequently, information related to irregular migration, migrant smuggling, and trafficking is mixed.
- Countries lacking specific legislation on human trafficking face two problems:
  - The focus of police investigations shifts to associated criminal elements, and human trafficking crimes are reported under different criminal provisions, leading to a lack of good statistical data.<sup>3</sup>
  - There are no official criminal justice statistics on human trafficking cases or on the numbers of police-recorded crimes and of prosecuted and convicted persons.
- The narrow application of counter-trafficking legislation to sexual exploitation (to the exclusion of labour trafficking, for example) results

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<sup>1</sup> J. Albanese, “A Criminal Network Approach to Understanding & Measuring Trafficking in Human Beings,” in *Measuring Human Trafficking: Complexities and Pitfalls*, ed. E. Savona and S. Stefanizzi (New York: Springer, 2007), 58.

<sup>2</sup> The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons (UN Trafficking Protocol), attached to the Convention against Transnational Organised Crime (UN TOCC), was opened for signature in December 2000 in Palermo, Italy. Among other things, it provided the international community with a definition of human trafficking. For the texts of the Protocol and Convention, see: [http://www.unicri.it/www/trafficking/legal\\_framework/un.php](http://www.unicri.it/www/trafficking/legal_framework/un.php) (accessed March 24, 2009).

<sup>3</sup> F. Laczko, “Human Trafficking: The Need for Better Data”, *Migration Information Source*, (November 2002), 1–6. Available at: <http://www.migrationinformation.org/Feature/display.cfm?ID=66> (accessed on August 25, 2008).

in few investigations and in almost nonexistent statistics on these cases.<sup>4</sup>

### 1.2 Lack of Systematic Data Collection

- Among those countries that have signed and ratified the UN Trafficking Protocol, only few systematically collect and/or publish data on human trafficking. This makes it difficult to accurately establish the extent to which human trafficking may be increasing or decreasing.<sup>5</sup>
- Data collection differs from agency to agency. Frequently, data on human trafficking collected by international agencies and non-governmental organisations (NGOs) is programme-specific. In view of the fact that each agency collects information according to its own needs, it is possible that the same case appears in data produced by more than one organisation. In addition, data often covers only those who have received certain types of assistance (for example, persons enrolled in assisted return programmes or those accommodated in shelters). Data collection also varies according to the resources of any given organisation. Some are better financed and accord greater priority to data collection than others. Finally, some agencies compile data over a one-year period (for example), while others produce statistics only for the duration of a specific project.<sup>6</sup>
- Data is not collected for comparative purposes. Types of data collected by various countries and agencies may differ. To take just one example, data may be either investigative or judicial. Investigative data may refer to the initial phase of investigation or to the phase in which

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<sup>4</sup> K. Kangaspunta, "Collecting Data on Human Trafficking: Availability, Reliability and Comparability of Trafficking Data," in *Measuring Human Trafficking: Complexities and Pitfalls*, ed. E. Savona and S. Stefanizzi (New York: Springer, 2007), 27–37.

<sup>5</sup> F. Laczko, "Enhancing Data Collection and Research on Trafficking in Persons," in *Measuring Human Trafficking: Complexities and Pitfalls*, ed. E. Savona and S. Stefanizzi (New York: Springer, 2007), 40. For further reading, see: US Government Accountability Office, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance US Antitrafficking Efforts Abroad* (Washington D.C.: US Government Accountability Office, 2006). Available at: <http://www.gao.gov/new.items/d06825.pdf> (accessed March 24, 2009).

<sup>6</sup> Among others, see F. Laczko and M. Gramegna, "Developing Better Indicators of Human Trafficking," *The Brown Journal of World Affairs* X, no.1 (summer/fall 2003): 184. Available at: <http://www.watsoninstitute.org/bjwa/archive/10.1/SexTrafficking/Laczko.pdf> (accessed August 25, 2008); E. Savona and S. Stefanizzi, "Introduction" in *Measuring Human Trafficking: Complexities and Pitfalls*, ed. E. Savona and S. Stefanizzi (New York: Springer, 2007), 2–3.

investigations are concluded. In some countries, data is only investigative and is collected at the beginning of an investigation. In others, data refers to concluded investigations, or to convictions.<sup>7</sup> Differing data collection methodologies hinder comparability across countries and international agencies.

- Often, NGOs gather extremely useful first-hand information. However, their data storage (or sharing) systems are sometimes inadequate, resulting in the loss of information.<sup>8</sup>

### 1.3 Lack of Criminal Justice Response<sup>9</sup>

- Human trafficking as only a low priority for law enforcement results in:
  - Lack of investigation, lack of prosecution, no convictions and no records of cases, in addition to large discrepancies in law enforcement preparedness to address human trafficking.<sup>10</sup>
  - Inadequate protection for witnesses/victims prevents them from testifying. Many trafficked people are usually unaware of their non-liability for the infringement of immigration laws. Thus, many are reluctant to report or testify, fearing deportation as undocumented migrants. In many cases, trafficking victims are not promptly identified as such, and end up being repatriated. Also, many victims do not approach law enforcement authorities for fear of threats by criminal organisations exploiting them or possible stigmatisation at home. As a result, most trafficking crimes go unreported.
- Criminal justice services pay little attention to gathering information on trafficking victims. The number and characteristics of victims that are known to investigative and judicial authorities is of crucial importance. This data would not only lead to a better understanding of

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<sup>7</sup> A. Di Nicola and A. Cauduro, "Review of Official Statistics on Trafficking in Human Beings for Sexual Exploitation and their Validity in the 25 EU Member States from Official Statistics to Estimates of the Phenomenon" in *Measuring Human Trafficking: Complexities and Pitfalls*, ed. E. Savona and S. Stefanizzi (New York: Springer, 2007), 85–86.

<sup>8</sup> Di Nicola and Cauduro, "Review of Official Statistics on Trafficking," 85–86.

<sup>9</sup> For more information see Chapter 9 of this volume, "Human Trafficking, Prosecutors, and Judges" by Allison Jernow.

<sup>10</sup> Albanese, "A Criminal Network Approach," 58.

trafficking trends but it would also help put in place effective prevention strategies.

#### *1.4 Existing Figures on Human Trafficking*

Without good estimates it is difficult for countries to determine the level of resources that should be allocated to counter-trafficking initiatives. This also hinders efforts to map the phenomenon that might help orient law enforcement actions.<sup>11</sup> Without information on trafficking trends over time, countries and agencies are ill equipped to adequately assess the impact of prevention and intervention efforts and hence built better knowledge-based policies. For this reason, several estimates on the scope of the problem have been released in recent years.

According to the estimates of the International Labour Organization (ILO), at least 2.45 million people worldwide find themselves in forced labour as a result of human trafficking at any given time.<sup>12</sup> This figure includes both transnational and internal trafficking. The ILO study suggests that most people are trafficked for commercial sexual exploitation (43 per cent) or for economic exploitation (32 per cent).

The destination region ranked first in the ILO study is Asia and the Pacific, with an estimated 1.36 million victims trafficked there for forced labour. About 270,000 people are trafficked to industrialised countries, 250,000 to Latin America and the Caribbean, and around 230,000 people to forced labour in the Middle East and North Africa. The authors of the study explain the lower estimates for Africa (130,000) and for transition economies (200,000) by reference to the fact that many people from these regions are trafficked towards other regions, including industrialised countries.

According to a 2006 United States (US) Department of State report, about 800,000 people are trafficked every year across international borders worldwide.<sup>13</sup> This figure does not include people trafficked internally.

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<sup>11</sup> Di Nicola and Cauduro, "Review of Official Statistics on Trafficking," 93.

<sup>12</sup> P. Belser and M. de Cock, *ILO Minimum Estimate of Forced Labour in the World* (Geneva: International Labour Organization, 2005), 4–5. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081913.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081913.pdf) (accessed August 25, 2008).

<sup>13</sup> US Department of State, *Trafficking in Persons Report* (Washington D.C.: United States Department of State, June 2008), 7. Available at <http://www.state.gov/g/tip/rls/tiprpt/2008/> (accessed February 2, 2009).

These two estimates differ less than one might think. In fact, taking into account the average duration of exploitation (about two years), the ILO study compared its results (2,450,000 people at any given time) with the US estimate (800,000 annually), thus converting its stock estimate into annual flows. This results in 1,225,000 people trafficked annually for forced labour transnationally as well as internally.<sup>14</sup>

### *1.5 Different Datasets and Data Collection Efforts*

#### Global Level

Four bodies have databases on global trafficking levels and flows: the International Labour Organization (ILO), the United Nations Office on Drugs and Crime (UNODC), the International Organization for Migration (IOM) and the US Government. Among these, only the ILO and the US Government have sought to estimate the total number of victims worldwide, while the UNODC traces the major international trafficking routes and the IOM collects data on assisted victims.<sup>15</sup>

In the absence of solid and widely accepted national estimates from which to derive regional and global figures, the ILO Special Action Programme to Combat Forced Labour (SAP-FL) has developed its own methodology, relying on reported cases of trafficking for forced labour. The result of ILO research has been a minimum estimate on the total number of victims of human trafficking worldwide.<sup>16</sup>

The UNODC Global Database on Trafficking Trends was established to collect open source information on trafficking in persons that can be compared between different countries and regions. The database includes 5,000 episodes from 400 documents with information on 161 countries and special administrative territories provided by 113 source institutions. By June 2004, information from 500 sources had been entered, mostly from industrialised countries.<sup>17</sup>

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<sup>14</sup> Belser and de Cock, *ILO Minimum Estimate of Forced Labour*, 35.

<sup>15</sup> UNODC, *Human Trafficking: An Overview* (Vienna: United Nations Office on Drugs and Crime, 2008), 6. Available at: <http://www.ungift.org/docs/ungift/pdf/knowledge/ebook.pdf> (accessed October 15, 2008).

<sup>16</sup> Belser and de Cock, *ILO Minimum Estimate of Forced Labour*, 13–14.

<sup>17</sup> Albanese, “A Criminal Network Approach,” 58.



A significant data collection effort has also been undertaken by the IOM. Information from all IOM counter-trafficking programmes worldwide is collected in a standardised data-management tool, the Counter-Trafficking Module, which contains information on more than 12,750 documented victims (between November 1999 and June 2008). This tool aims to facilitate the management of IOM's direct assistance, movement and reintegration process, as well as map individual trafficking experiences. It strengthens research capacity, provides a better understanding of the causes, processes, trends and consequences of trafficking and it serves as a knowledge bank, from which statistics and detailed reports can be drawn, informing research, programme development and policy making on counter-trafficking.<sup>18</sup>

Lastly, the US State Department issues an annual *Trafficking in Persons Report*, collecting data from US embassies, foreign government officials, NGOs and international organisations, as well as from published reports, research trips, and information submitted to the State Department by e-mail. In its report, the US State Department also assesses counter-trafficking efforts undertaken by every country in the world.

### Regional Level

Despite some improvement in recent years, regional statistics and research on irregular migration and human trafficking remain highly unsatisfactory. The European Union (EU) has agreed upon a uniform definition along the lines of that found in the UN Protocol and the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings. Nonetheless, data collection efforts in the EU have been difficult. There is almost no data on the number of irregular migrants or labour migrants in search of jobs who may have resorted to the services of traffickers and ended up being exploited. In addition, very little is known about the numbers and profiles of individuals working in or for criminal groups involved in human trafficking. Statistics on the numbers and characteristics of the various categories of trafficked persons are almost impossible to obtain.

The EU Agency for Fundamental Rights was established on March 1, 2007, with a mandate to collect and analyse data on human trafficking.<sup>19</sup> Since then,

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<sup>18</sup> IOM, "Counter-trafficking" <http://www.iom.int/jahia/Jahia/pid/748> (accessed October 25, 2008).

<sup>19</sup> European Commission, "The Creation of a European Union Agency for Fundamental Rights is a Fundamental Element of the EU Policy to Respect and Promote Fundamental Rights, 2007," EU Justice and Home Affairs, [http://ec.europa.eu/justice\\_home/fsj/rights/fsj\\_rights\\_agency\\_en.htm](http://ec.europa.eu/justice_home/fsj/rights/fsj_rights_agency_en.htm) (accessed October 21, 2008).

the agency has started collecting, recording, analysing and disseminating objective, reliable and comparable information.

In the Balkans, a regional database on human trafficking was created by a Regional Clearing Point of the Stability Pact Task Force on Trafficking in Human Beings. The first annual report on victims of human trafficking in South-Eastern Europe provides figures on the number of victims of trafficking identified and assisted in the seven Balkan countries along with Kosovo and Montenegro, as well as describing the mechanisms of assistance and protection.<sup>20</sup>

In Asia, the IOM has implemented a pilot project aimed at improving data collection on human trafficking in several ASEAN member countries (Cambodia, Indonesia, the Philippines and Thailand). The purpose of this project is to assist selected beneficiary countries in developing an improved statistical collection system on trafficking. The first phase of the project involved an analysis of data collection systems and ended with a situation report published in 2007.<sup>21</sup>

### National Level

A few examples of national efforts are provided below. One report from 2004 suggests that information on trafficking in EU member countries is still mainly obtained from statistics pertaining to general crime or to migration and is usually scattered throughout several different, often disparate, national databases.<sup>22</sup> Furthermore, in many countries, the existing databases are confidential, and their information can be used just for other investigative purposes. In addition, collected data is frequently very general. This does not

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<sup>20</sup> IOM, *First Annual Report on Victims of Trafficking in South Eastern Europe* (Vienna: International Organization for Migration, Counter-Trafficking Regional Clearing Point, 2003). Available at: [http://www.iom.hu/PDFs/First per cent20Annual per cent20Report per cent20on per cent20VoT per cent20in per cent20SEE.pdf](http://www.iom.hu/PDFs/First%20Annual%20Report%20on%20VoT%20in%20SEE.pdf) (accessed September 12, 2008). For more information on the regional trends of human trafficking in South-East Europe, see the reports of B. Limanowska, *Trafficking in Human Beings in Southeastern Europe* (UNICEF/UNHCHR/OSCE/ODIHR, 2002, 2003, 2004, 2005). Available at: [http://www.osce.org/publications/odihr/2005/04/13771\\_211\\_en.pdf](http://www.osce.org/publications/odihr/2005/04/13771_211_en.pdf) (accessed March 2, 2009).

<sup>21</sup> IOM, *ASEAN and Trafficking in Persons: Using Data as a Tool to Combat Trafficking in Persons* (Jakarta: International Organization for Migration, 2007). Available at [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/books/lowres per cent20asean per cent20report-complete.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/lowres%20asean%20report-complete.pdf) (accessed February 1, 2009).

<sup>22</sup> A. Cauduro, A. Di Nicola, *A Study for Monitoring the Trafficking of Human Beings for the Purpose of Sexual Exploitation in the EU Member States, Mon-Eu-Traf II (STOP II), Final Report* (Brussels: European Commission, 2004).

help in understanding trends, producing reliable estimates and in preventing the phenomenon.

The German Federal Office of Criminal Investigation and the Dutch National Rapporteur on Trafficking in Human Beings are two of the few systematic providers of national statistics on human trafficking in Europe. Each year, Germany produces a report on known cases of trafficking and on existing trends. The Netherlands, in turn, have established a National Rapporteur, who has been able to map data collected by different agencies in the country. The Dutch methodology could be used, for example, as a basis for a European model for data collection with the inclusion of data referring to trafficking for labour exploitation.

The activities of NGOs are also very important for to the collection of human trafficking information. Nonetheless, the data collection and storage systems of many European NGOs working in the field are not entirely adequate. The number of EU NGOs with regularly updated databases on human trafficking is still fairly small. On the other hand, some Eastern European source and transit countries have been supported in the development of special anti-trafficking programmes, including data collection. In many states in the region, NGOs possess significant information. Nonetheless, problems arise because of differing recording systems and procedures. Outside Europe, the problems seem to be similar: lack of common definitions, non-comparable, poor and scattered data sources, and a very large number of estimates with obscure origins.<sup>23</sup>

### *1.6 Common Assumptions Related to Human Trafficking*

There are a great deal of (often inaccurate) assumptions related to trafficking. One of these is that trafficking for sexual exploitation is more widespread than trafficking for labour exploitation. Trafficking for labour exploitation has been (and is currently) underreported. For several years, discussions on human trafficking focused solely on trafficking for sexual exploitation. In addition, considering that many countries for several years did not even recognise trafficking for labour exploitation as a problem, the identification of victims of this form of trafficking has been less successful than in the case of sexual exploitation.

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<sup>23</sup> K. Aromaa, "Trafficking in Human Beings: Uniform Definitions for Better Measuring and for Effective Counter-Measures," in *Measuring Human Trafficking: Complexities and Pitfalls*, ed. E. Savona and S. Stefanizzi (New York: Springer, 2007), 22–23.

Trafficking for labour exploitation has only recently been included in the legislation of many countries. However, even when adequate legislation is in place, cases involving labour exploitation are often not recognised as trafficking cases. In many countries, there is limited awareness of labour situations corresponding to human trafficking. Moreover, trafficking for labour exploitation in some countries is not seen as a crime but, rather, as an issue to be dealt with through labour regulations and trade unions. In addition, the media often finds sexual exploitation to be a more appealing topic than labour exploitation. Unlike trafficking for sexual exploitation, labour exploitation is often not as visible and is less stigmatised by society. Frequently, sexual exploitation and labour exploitation are both present in the same case.

Types of exploitation can vary in different regions. In Central and South Eastern Europe, sexual exploitation is the predominant form of exploitation reported. The situation is reportedly similar in Latin America, the Caribbean and in Western Europe. The situation differs in the Commonwealth of Independent States (CIS). While some states (such as Belarus, Moldova, the Russian Federation and Ukraine) are frequently reported as origin countries for sexual trafficking to Europe, other CIS countries in the Caucasus and Central Asia have observed trafficking for labour exploitation into Kazakhstan and the Russian Federation. Labour exploitation cases are reported by the majority of sources in Africa<sup>24</sup> and are also frequently reported in Asia, Oceania and North America.

Another common assumption that has to be clarified is that trafficking always involves organised crime and sophisticated transnational networks.<sup>25</sup> As we will see later in this chapter, human trafficking may instead involve a number of people, each playing his or her own role in loose networks. Some of these individuals (such as pilots and train or bus drivers), may unknowingly participate in the process, while others (for example, document forgers, owners of clubs and brothels, or recruitment agents who lure victims by using false promises of employment) are fully aware of the crime they are involved in. Travel agents, for instance, are found on both sides: they can unknowingly participate or they can be fully aware of the human trafficking operations.

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<sup>24</sup> UNODC, *Trafficking in Persons: Global Patterns* (Vienna: United Nations Office on Drugs and Crime, 2006), 65. Available at: [http://www.unodc.org/pdf/traffickinginpersons\\_report\\_2006-04.pdf](http://www.unodc.org/pdf/traffickinginpersons_report_2006-04.pdf) (accessed September 27, 2008).

<sup>25</sup> For more information see Chapter 3 of this volume on “Human Trafficking and Organised Crime” by John Picarelli.

The human trafficking chain also involves many other people: investors who provide the money; organisers who plan the operation; corrupt public officials who accept bribes to enable people to enter and exit illegally;<sup>26</sup> informers who gather information on border surveillance and transit procedures; drivers responsible for moving people from one point to another; enforcers responsible for policing staff and migrants; local people in transit points who provide accommodation and other assistance; debt collectors and money-movers who launder the criminal proceeds.<sup>27</sup>

Small or large-scale organised crime is often the engine of the human trafficking process. There are episodes of human trafficking undertaken by occasional operators but it seems that significant trafficking flows have to be supported by organised criminals to be sustained in the medium to long term. Organised crime entails a stable organisation that is involved in various criminal activities,<sup>28</sup> as reflected in the definition of organised crime groups found in the United Nations Convention against Transnational Organized Crime (article 5).<sup>29</sup>

In Europe, groups that operate in human trafficking represent mainly loose networks, rather than hierarchically structured organisations. These organisations include different nationals operating in their area of competence and, while they specialise in human trafficking, they also operate in related

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<sup>26</sup> For more information see Chapter 2 of this volume on “Human Trafficking and Corruption” by Les Holmes.

<sup>27</sup> F. David and P. Monzini, “Human Smuggling and Trafficking: a Desk Review on the Trafficking in Women from the Philippines” (paper presented at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, Austria, April 10–17, 2000; Doc A/Conf. 187/CRP. April 15, 2000) in *Human Trafficking in Europe: An Economic Perspective*, ed. G. Van Liemt (Geneva: International Labour Organization, 2004), 14.

<sup>28</sup> J. Finckenauer, “Russian Transnational Organised Crime and Human Trafficking,” in *Global Human Smuggling: Comparative Perspectives*, ed. D. Kyle and R. Koslowki (Baltimore, Maryland: Johns Hopkins University Press, 2001), 166–186.

<sup>29</sup> Article 5(1) states: “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity: (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group; (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in: a. Criminal activities of the organized criminal group; b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;
- (b) Organizing, directing, aiding, abetting, facilitating or counseling the commission of serious crime involving an organized criminal group.”

areas such as pimping, forgery of documents, smuggling of migrants and money-laundering.<sup>30</sup> There can also be particular specialisation, depending on the origin of the trafficked persons and on the type of exploitation.

A particular feature, for instance, of trafficking in Nigerian girls and women to Europe for sexual exploitation lies in the role of women in the management of the whole process.<sup>31</sup> A 2004 study by the United Nations Interregional Crime and Justice Research Institute (UNICRI) revealed that men play a marginal role since it is the “madam” who is in charge of the direct management of the victims, from recruitment to exploitation. An upside to this practice is the fact that sexual violence by pimps is less of an issue. “In all probability it is not a structured organisation according to a strongly hierarchical model (as the Italian mafia organisations) [which deals with trafficking of Nigerian women for sexual exploitation], but numerous criminal groups, horizontally linked and characterised by flexibility, a high level of specialization, and a system of network links which is not easily visible from the outside.”<sup>32</sup> This type of organisation has advantages. Firstly, such loose networks are usually much less visible and attract less attention from law enforcement authorities. Secondly, high levels of organisational flexibility allow criminals to take rapid decisions and to adapt their tactics and strategies.

Traffickers calculate risk (of being caught, of having to pay fines, of seeing their assets confiscated), reward and effort involved, both in absolute terms and in comparison with other activities.<sup>33</sup> The profits generated by human trafficking are colossal. The ILO estimates that the gains from human trafficking for both commercial sexual and economic exploitation may approach 31.6 billion US dollars a year.<sup>34</sup> People are both plentiful and cheap. Also, the risks involved are quite low compared to the gravity of the crime.

Sexual exploitation seems to be the activity generating the highest revenues. The total profits from sexual exploitation are estimated at 27.8 billion US

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<sup>30</sup> UNODC, *Trafficking in Persons: Global Patterns*, 23.

<sup>31</sup> UNICRI, *Trafficking of Nigerian Girls to Italy* (Turin: United Nations Interregional Crime and Justice Research Institute, 2003), 79–80. Available at: [http://www.unicri.it/www/trafficking/nigeria/docs/rr\\_prina\\_eng.pdf](http://www.unicri.it/www/trafficking/nigeria/docs/rr_prina_eng.pdf) (accessed September 22, 2008).

<sup>32</sup> UNICRI, *Trafficking of Nigerian Girls to Italy*, 92.

<sup>33</sup> V. L. Gijbert, *Human Trafficking in Europe: An Economic Perspective* (Geneva: International Labour Organization, 2004), 17. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081992.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081992.pdf) (accessed September 17, 2008).

<sup>34</sup> P. Belser, *Forced Labour and Human Trafficking: Estimating the Profits* (Geneva: International Labour Organization, 2005), 17. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081971.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081971.pdf) (accessed September 11, 2008).

dollars.<sup>35</sup> Apart from the price of the services, sexually exploited women are often being sold, rented and even resold. All actors involved in the trafficking chain profit from this criminal activity. In 2008, an NGO stated, “with the average price of full sex in a London brothel at a current estimate of £61.93, a woman working five days a week, serving three customers per day for 48 weeks in a year would generate £44,589.60 annually.” The report goes on, “based on an absolute minimum of 1,198 women working solely in brothels which advertise through local London newspapers, an estimated £53.5 million is generated for brothels through this medium alone.”<sup>36</sup> In order to disguise the crime, human traffickers create fake model agencies, film production studios, and marriage agencies to recruit women. These agencies are also used to launder money and enable reinvestment into other criminal and grey-market activities.<sup>37</sup>

Another assumption is that better prosecution would solve the problem of human trafficking.<sup>38</sup> Better prosecution can enhance the fight against human trafficking but prosecution alone cannot be a panacea to the problem. Despite the criminalisation of human trafficking in many countries, very few traffickers are being prosecuted and convicted. Of course, the small number of cases can be viewed as a positive sign, suggesting that human trafficking is not so widespread. However, the real figures are not as low as the number of court cases appears to show. The fact that only a few traffickers have been successfully prosecuted is linked with the difficulty of identifying cases of trafficking and an absence of intelligence collection. The identification of trafficking cases and the prosecution of perpetrators often requires testimony by the victims, which they are often reluctant to do. In many cases, this is due to (often justified) fears that their identity of witnesses will not be protected, or that victims or relevant state officials will be subject to intimidation.

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<sup>35</sup> Belser, *Forced Labour and Human Trafficking*, 17.

<sup>36</sup> J. Bindel and H. Atkins, *Big Brothel: A Survey Of The Off-Street Sex Industry In London* (London: Eaves Housing for Women, 2008), 25. Available at: <http://www.eaves4women.co.uk/Publications.php>. (accessed March 3, 2009).

<sup>37</sup> Georgina Vaz Cabral, *La traite des êtres humains : Réalités de l'esclavage contemporain* (Paris: La Découverte, 2006), 47–51.

<sup>38</sup> For more information see Chapter 9 of this volume, “Human Trafficking, Prosecutors, and Judges” by Allison Jernow.

## 2. Types of Human Trafficking

### 2.1 Forced Labour

According to the ILO, forced labour is “a work or service exacted from a person under threat or penalty, which includes penal sanctions and the loss of rights and privileges, where the person has not offered him/herself voluntarily.”<sup>39</sup> Forced labour takes place because unscrupulous employers exploit gaps in national legislation. Immigrants are particularly vulnerable, although even individuals can suffer from forced labour exploitation within their own countries. Many women and girls in situations of domestic servitude are also sexually exploited. Criminal groups and networks may also subjugate large numbers of workers to involuntary servitude in household work or in factories, construction, sports, agriculture and mining.

In some regions, a sizeable number of labour migrants end up working under conditions of debt bondage and servitude. Several factors contribute to these practices: abuse of contracts, inadequate local laws on recruitment and employment of migrant labourers, and the imposition of exploitative costs and debts on labour migrants in their country of origin, often with the complicity of labour agencies and employers in the country of destination.<sup>40</sup>

Domestic servitude usually involves the use of force or coercion (physical and emotional abuse). Children are particularly vulnerable. Sometimes parents are approached by family friends who promise to take the child abroad and provide him/her with better living conditions and educational opportunities. In the end, children end up becoming domestic servants, working under slave-like conditions for families abroad. Domestic servitude is rather difficult to detect since it takes place in private homes. Countries of the EU as well as some wealthier countries of Asia and the Middle East have witnessed a growing demand for domestic servants, some of whom end up in forced labour. This type of forced labour has also been detected among people trafficked to Thailand from other countries, and among those assisted by the IOM in Indonesia.<sup>41</sup>

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<sup>39</sup> K. N. Ruwanpura and P. Rai, *Forced Labour: Definition, Indicators and Measurement* (Geneva: International Labour Organization, 2005), 3. Available at: <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1000&context=forcedlabor> (accessed August 23, 2008).

<sup>40</sup> US Department of State, *Trafficking in Persons Report* (Washington D.C.: US Department of State, 2008), 20. Available at: [www.state.gov/g/tip](http://www.state.gov/g/tip) (accessed September 30, 2008).

<sup>41</sup> UNODC, *Global Report on Trafficking in Persons* (Vienna: United Nations Office on Drugs and Crime, 2009), 55. Available at: <http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html> (accessed February 2, 2009).



The trafficking and selling of children and their exploitation in bonded and forced labour are considered to be the “worst forms” of child labour. A child is considered victim of human trafficking for the purpose of forced labour if he/she is being exploited in conditions similar to involuntary servitude, debt bondage, or slavery through the use of force, fraud or coercion. Children are often exploited as a cheap labour force in construction, mining and agriculture.

## *2.2 Sexual Exploitation*

Human trafficking for sexual exploitation comprises a significant portion of overall human trafficking activities. It would be not possible for this type of human trafficking to exist without demand for commercial sex around the world. Even though commercial sexual exploitation has been criminalised,<sup>42</sup> sexual trafficking continues to take place in almost every country of the world, be it a place of origin, transit or destination.

For recruitment, traffickers resort to deception, in particular through false promises of well-paid jobs or opportunities to study abroad. As was suggested above, they often create fake model agencies, film production studios, and marriage agencies for the purposes of recruitment and to cover the crime. In many cases, victims find themselves abroad, locked in apartments, with their passports confiscated by traffickers who coerce them to work in prostitution through threats, use of force, abuse and rape. Very often, the victims are promised their freedom only after earning their purchase price, as well as their travel and visa costs, through prostitution. In addition to the many trafficked adults, UNICEF estimates that about two million children are exploited every year in the global commercial sex industry.<sup>43</sup>

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<sup>42</sup> Some key instruments applicable and relevant to trafficking in persons include: Council of Europe Convention on Action against Trafficking in Human Beings (2005); Brussels Declaration on Preventing and Combating Trafficking in Human Beings (2002); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000); Beijing Declaration and Platform for Action, adopted by the Fourth World Conference on Women (1995); Declaration on the Elimination of Violence against Women (1993); Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949). For the full texts see: [http://www.unicri.it/wwd/trafficking/legal\\_framework/un.php](http://www.unicri.it/wwd/trafficking/legal_framework/un.php) (accessed June 14, 2009).

<sup>43</sup> UNICEF, “All Children Deserve Protection from Exploitation and Abuse,” UNICEF Child Protection, [http://www.unicef.org/protection/index\\_csec.html](http://www.unicef.org/protection/index_csec.html) (accessed November 25, 2008).

### 2.3 Begging and Involvement in Criminal Activities

After prostitution, the most visible forms of exploitation in the streets are begging and peddling (selling small equipment, flowers and cigarettes). Research conducted in Greece showed that during the 1990s thousands of children worked in the streets of all major cities in the country (Athens and Thessaloniki but also Patras, Larissa, Ioannina, Kavala and Heraklion). From 1993 to 1999 an average of 300 children per year, mostly Albanians, were arrested in Athens for involvement in begging. Recently, this number seems to have diminished. However, experts agree that trafficking continues. With little information about what happens to the children exploited during this period, children (and girls especially) apparently shift from economic exploitation to sexual exploitation when they reach the age of twelve. In Greece, approximately 10 per cent of female prostitutes are minors, and 75 per cent of these are Albanians.<sup>44</sup> In France, begging especially concerns Romanian children of the Roma community. In one prominent case, a Ukrainian network sent young deaf-mute people to sell trinkets in public places in France, Spain, Portugal and Germany, as well as throughout the rest of Europe.<sup>45</sup>

Another purpose of human trafficking involves the use of trafficked people in criminal activities. Human traffickers and criminal groups prefer minors to adults: children are easier to control; and their relatively small stature gives them an advantage in committing crimes such as burglary or shoplifting. In one case, a trafficking organisation exploited minors, some as young as thirteen years old, forcing them to shoplift in Northern Italy. Joint investigations started in February 2005 and were carried out in both Italy and Romania. Collaborative work between Romanian and Italian police revealed a total of 100 people trafficked to the Piedmont region (Italy) from the Bistrita-Nasaud District (Romania) for the purposes of shoplifting. All of the minors belonged to extremely poor families and were usually recruited in schools or discos. Only in very few cases did the families report their disappearance to the police. Following the investigation, three persons were arrested in Turin and three in Bistrita.<sup>46</sup>

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<sup>44</sup> Vaz Cabral, *La traite des êtres humains : Réalités de l'esclavage contemporain*, 149–150.

<sup>45</sup> Idem.

<sup>46</sup> C. Bianconi, "Trafficking of Minors for Robbery: a Successful Case Prosecuted by Turin Public Prosecution Office" (PowerPoint Presentation). Available at: [http://www.un.org/esa/population/migration/turin/Turin\\_Statements/BIANCONI.pdf](http://www.un.org/esa/population/migration/turin/Turin_Statements/BIANCONI.pdf) (accessed November 27, 2008).

## 2.4 Organ Removal

The UN Trafficking Protocol lists among the purposes of human trafficking the removal of organs or other human tissues. This would appear to mostly concern the trafficking of kidneys, since removing other organs would require the donor to be killed, which occurs very rarely. Although the link between human trafficking and organ trafficking has not been clearly established, some similarities are evident. Root causes are the same, namely poverty and lack of employment opportunities. Sometimes organ removal happens by means of total deception or coercion. There have been cases reported in Argentina, Brazil and India of people hospitalized to treat an unrelated illness or accident who underwent surgery for kidney removal without their knowledge or consent.

Moreover, there have been rumours of street children in Latin America and children from impoverished families in Eastern Europe being kidnapped or sold and sometimes even murdered for their organs. Although not verified, media reports have also connected the illegal adoption trade to trafficking in organs. Furthermore, there have been reported cases of children trafficked, within and from Africa, in order to use their organs during rituals.<sup>47</sup> According to a study by UNODC, victims of human trafficking for organ removal, ritual killings and mystic practices were recorded in Chad, Egypt, Israel, Liberia, Malawi, Moldova and in a few states in India.<sup>48</sup>

## 2.5 Exploitation in Armed Forces and Conflict<sup>49</sup>

Human trafficking for the purpose of military exploitation occurs when human brokers import labourers (from impoverished regions within the same country or from a third country) to work in military bases. A series of abusive practices happen during the trafficking and exploitation process, including debt bondage, confiscation of passports, and forced or coerced labour. Some contracting and

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<sup>47</sup> E. Pearson, *Coercion in the Kidney Trade? A Background Study on Trafficking in Human Organs Worldwide* (Eschborn: Deutsche Gesellschaft für Technische Zusammenarbeit [GTZ], 2004), 11. Available at: <http://www.gtz.de/de/dokumente/en-svbf-organ-trafficking-e.pdf> (accessed November 15, 2008).

<sup>48</sup> UNODC, *Global Report on Trafficking in Persons*, 52–55.

<sup>49</sup> For more information see Chapter 8 of this volume, “Human Trafficking and Peacekeepers” by Keith J. Allred.

subcontracting firms in military bases in Afghanistan and Iraq have been reportedly involved in such abusive practices.<sup>50</sup>

One of the worst forms of human trafficking is the use of child soldiers in conflict areas. According to a UNODC report, the recruitment of child soldiers is not uncommon in the Democratic Republic of the Congo.<sup>51</sup> According to UNICEF, more than 300,000 child soldiers have been and still are exploited in more than thirty armed conflicts in almost every region of the world.<sup>52</sup> While the majority of child soldiers are between the ages of fifteen and eighteen, some are as young as seven or eight.

A variety of armed forces use child soldiers, including government forces, pro-government paramilitary factions, militias and self-defence units, as well as insurgent groups. Relatively few former child soldiers go through disarmament, demobilisation and reintegration programmes. Despite negotiated peace agreements or ongoing peace processes, trafficked children used as child soldiers and deprived of their childhood can keep on finding themselves in situations of exploitation. Even when this is not the case, some returning child soldiers are rejected by their home communities. The problem of child soldiers is a global one; however, it is particularly critical in Western and Central Africa (for example, in the Democratic Republic of the Congo and in Chad), as well as in Asia (for example, in Sri Lanka, Burma and the Philippines), in the Americas (for example, in Colombia)<sup>53</sup> and in the Middle East where armed groups are also unlawfully using children in conflict areas.<sup>54</sup>

## 2.6 Forced Marriage

Forced marriage is a practice with deep historical roots in which at least one of the parties is married against his/her will and consent. Today, forced marriage

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<sup>50</sup> C. Simpson, "Iraq War Contractors Ordered to End Abuses," *Chicago Tribune*, April 23, 2006. Available at: <http://www.chicagotribune.com/news/local/chi-060423pipeline-story,0,1853590.story> (accessed November 4, 2008).

<sup>51</sup> UNODC, *Global Report on Trafficking in Persons*, 52–53.

<sup>52</sup> UNICEF, *Factsheet: Child Soldiers*. Available at: <http://www.unicef.org/emerg/files/childsoldiers.pdf> (accessed October 15, 2008).

<sup>53</sup> UNODC, *Global Report on Trafficking in Persons*, 52–53.

<sup>54</sup> Among others, see J. C. Andvig and G. Gates, *Recruiting Children for Armed Conflict* (Pittsburgh: Ford Institute for Human Security, 2007). Available at: [http://www.childtrafficking.com/Docs/andvig\\_07\\_recruiting\\_0109.pdf](http://www.childtrafficking.com/Docs/andvig_07_recruiting_0109.pdf) (accessed February 15, 2009); J. Becker, *Child Recruitment in Burma, Sri Lanka and Nepal* (New York: Human Rights Watch, 2007). Available at: [http://www.childtrafficking.com/Docs/becker\\_07\\_child\\_recruitment\\_0109.pdf](http://www.childtrafficking.com/Docs/becker_07_child_recruitment_0109.pdf) (accessed February 15, 2009).

can also be linked to human trafficking. Despite being recognised as a human rights violation and being condemned by the United Nations General Assembly (UNGA), the practice of forced marriage occurs on a significant scale today.

In some Asian countries with asymmetrical sex ratios (due to preferences for male children and as a result of one-child policies), men outnumber women by 117 to 100. Once they become adults, the social pressure to marry often leads these men to resort to human trafficking services in order to purchase a bride from another country.<sup>55</sup> According to the US State Department, it is not uncommon that, in some villages, most of the marriages result from human trafficking. Victims of trafficking for the purpose of forced marriage are often also exploited by recipient families as domestic workers and sex slaves. The UNODC Global Report on Trafficking in Persons mentions specifically Indian victims of trafficking for the purpose of forced marriage.<sup>56</sup>

Forced marriage is also reported in the US and in other Western countries, where “mail-order-bride” agencies, or international introduction services, are commonly advertised.<sup>57</sup> Pictures, body measurements and descriptions of advertised women are provided by the agencies on-line. The descriptions follow sexist stereotypes of “Russian” women to market them to potential Western consumers. Although there are many successful cases of women getting happily married to foreigners through marriage agencies, recruiters occasionally use this method to contact vulnerable young women eager to migrate in search of a brighter future.<sup>58</sup> In the United Kingdom (UK), the Foreign and Commonwealth Office has established the Forced Marriage Unit, a joint initiative with the Home Office, which handles about 400 cases per year, some of which seem to be related to human trafficking.<sup>59</sup>

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<sup>55</sup> Action to End Exploitation, “Forced Marriage,” <http://endexploitation.org/forced-marriages.html> (accessed November 24, 2008).

<sup>56</sup> UNODC, *Global Report on Trafficking in Persons*, 55.

<sup>57</sup> D. M. Hughes, “The Role of Marriage Agencies in Sexual Exploitation and Trafficking of Women from the Former Soviet Union,” *International Review of Victimology* 11, no.1 (2004): 49–71.

<sup>58</sup> UNICRI, *Desk Review on Trafficking in Minors for Commercial Sexual Exploitation: Ukraine* (Turin: UNICRI, 2005): 19–21. Available at: [http://www.unicri.it/www/trafficking/minors/docs/dr\\_ukraine.pdf](http://www.unicri.it/www/trafficking/minors/docs/dr_ukraine.pdf) (accessed March 3, 2009).

<sup>59</sup> The Foreign and Commonwealth Office, “Forced Marriage Unit,” <http://www.fco.gov.uk/en/fco-in-action/nationals/forced-marriage-unit> (accessed March 3, 2009).

## 2.7 *Illicit Adoption*

Illegal adoption of children as a form of human trafficking has become a highly profitable activity for organised criminal groups, private child adoption firms and state officials around the world, driven partly by demand for international adoption, particularly in Europe and the US. However, trafficking for illicit adoption can occur not only transnationally, but internally as well. Through various means, such as abduction and falsification of adoption permits, criminals take advantage of shortcomings in legislation, law enforcement, birth registration and social welfare systems. In some African countries, due to an inexistent system of birth registration, it is almost impossible for local authorities to track the numbers and the locations of children that have been illegally adopted.

In both East and South-East Asia, trafficking in children occurs largely for domestic illegal adoption. Deeply rooted traditional beliefs that favour male children serve as a driving forces for illegal adoption in China. The one-child-family policy (enforced in China since the 1980s) has only exacerbated the problem. According to a national survey conducted in 2000 by Chinese police, a total of 10,768 children were abducted and trafficked between 1980 and 1999, primarily for the purpose of illegal adoption.<sup>60</sup>

In Central America, and particularly in Guatemala, trafficking of minors for illicit international adoption has become a lucrative trade. Guatemala is known for having the highest number (per capita) of international adoptions worldwide.<sup>61</sup> Under the guise of adoptions, more than half of the children are trafficked from Guatemala to the USA. Many individuals are involved in illegal adoption, from midwives to registry officials, lawyers, notaries, doctors and even judges. Midwives often persuade poor mothers to sell their children, or deceive them by telling them that their babies have an illness or have died. Sometimes they even drug mothers and steal their babies in order to sell them to human traffickers. With regard to lawyers, notaries and others, they have

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<sup>60</sup> X. Ren, *Trafficking in Children: China and Asian Perspective* (Montreal: Conference on Making Children's Rights Work: National & International Perspectives International Bureau for Children's Rights, 2004): 2. Available at: [http://www.no-trafficking.org/content/web/05reading\\_rooms/China/trafficking\\_in\\_china\\_china\\_and\\_asian\\_perspective.pdf](http://www.no-trafficking.org/content/web/05reading_rooms/China/trafficking_in_china_china_and_asian_perspective.pdf) (accessed November 11, 2008).

<sup>61</sup> BBC World Service, "The Children of Guatemala," BBC, People and Beliefs (October 28, 2000) [http://www.bbc.co.uk/worldservice/people/highlights/001027\\_adoption.shtml](http://www.bbc.co.uk/worldservice/people/highlights/001027_adoption.shtml) (accessed February 25, 2008).

better access to forged documents, as well as the relative freedom found in private adoption procedures and from virtually inexistent state control.<sup>62</sup>

### 3. Human Trafficking in Different Regions<sup>63</sup>

A 2006 UNODC report showed that trafficking roles vary across regions.<sup>64</sup> Some regions, such as Western Europe, North America, Western Asia, Turkey and Oceania, are reported to be predominantly destinations for trafficked victims, while other regions are largely areas of origin and/or transit. For example, after the collapse of the Soviet Union, the Commonwealth of Independent States became a region of origin for human trafficking. Africa, Asia, Central and South Eastern Europe, Latin America and the Caribbean are significant regions of both origin and destination. Central and South-Eastern Europe, Asia, Africa and Western Europe have also been identified as transit areas. This may be an indicator of either intra-regional trafficking (in the case of Central and South-Eastern Europe, Asia and Africa), or of the use of certain countries and sub-regions as predominantly transit areas to reach the final destination (most often Western Europe). Even within the same region, there can be great differences. Also, trafficking routes do not always seem to follow the logic “from poor to rich”, as is the case, for example, with flows from Benin to Nigeria and from Nigeria to Togo.

#### 3.1 Africa

Trafficking in Africa is characterised by sub-regional differences. West Africa is the major area of reported human trafficking and the sub-region from which most human trafficking originates (particularly so in Nigeria, Benin and Ghana). Eastern and Central Africa are also frequently reported as areas of origin. Southern Africa is reported mostly as a sub-regional destination, whereas Northern Africa is viewed mostly as a region of origin and transit. The number of minors trafficked from Africa outnumbers the number of adult women, and is more frequently reported in Central African countries than in the other sub-regions of the continent. Human trafficking for the purpose of labour exploitation is higher in Africa than in other parts of the world (with the

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<sup>62</sup> CATW, “Factbook on Global Sexual Exploitation, Guatemala,” CATW Factbook, <http://www.uri.edu/artsci/wms/hughes/guatemala.htm> (accessed February 2, 2008).

<sup>63</sup> For further references, see UNICRI’s Bibliography on Human Trafficking, available at: <http://www.unicri.it/wwd/trafficking/bibliography/index.php> (accessed March 24, 2009).

<sup>64</sup> UNODC, *Trafficking in Persons: Global Patterns*, 85–105.

possible exception of South Asia), with Central African countries at the top of the list.

African victims are mostly trafficked within the African continent or to Western European countries. As for trafficking within Africa, Cote d'Ivoire, Nigeria and South Africa appear to be the main countries of destination for victims from other African states, such as Benin, Togo, Ghana, Nigeria, Mali, Burkina Faso, Côte d'Ivoire, Gambia, Senegal, Sierra Leone, Lesotho, Cameroon, Ethiopia and Sudan. According to the IOM, there has been a rapid rise in Ethiopia in the number of men who are promised lucrative contracts in the construction industry in South Africa related to the 2010 Football World Cup. Cases have been identified in Tanzania of men trafficked from East African countries to South Africa, who were also forced to commit crime.<sup>65</sup>

The United Kingdom, Italy, France, Belgium and the Netherlands are the main destination countries for trafficking flows from Africa, along with Saudi Arabia. Reportedly, there are now fewer cases of human trafficking from Africa to North America. The southern part of Africa is also a destination region for trafficked persons from Asia (mostly from Thailand), from the Commonwealth of Independent States (particularly from the Russian Federation) and from Central and South-East Europe.

### 3.2 Asia

Asia is a region of origin and of destination. The prevalent trend is that of intra-regional human trafficking, generally towards Thailand, Japan, India, Taiwan and Pakistan. South-East Asia is identified as a major sub-regional area of origin, followed by South-Central Asia and East Asia.

When considering Asia as a destination region for human trafficking, a different pattern emerges. As sub-regions, the Middle East and Turkey are frequently reported as destinations for trafficked persons, followed by East Asia and South-East Asia. Dynamism and intricate flows characterise migration in South-East Asia, particularly in the Greater Mekong Sub-region, in terms of sending and receiving of migrants, as well as transit countries. Due to recent political and economic changes, the region witnessed a dramatic rise in the number of migrants on the move in South-East Asia. Trafficking in human beings, particularly in women and children, is a major social issue in the

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<sup>65</sup> Humantrafficking.org, "Research on Trafficking of Men for Labour Exploitation in Africa," News & Updates (December 18, 2007), <http://www.humantrafficking.org/updates/786> (accessed January 24, 2009).



Greater Mekong Sub-region. According to the IOM's field missions in South-East Asia, the number of people trafficked annually from and within the region is between 200,000 and 450,000.<sup>66</sup>

In Asia, the bulk of trafficked persons end up being sexually exploited, whereas only 20 per cent of those trafficked are trafficked for the purpose of labour exploitation.<sup>67</sup> The main countries of origin for human trafficking in Asia are China and Thailand, followed by Bangladesh, Cambodia, India, Myanmar, Nepal, Pakistan, the Philippines and Vietnam. Intra-regional trafficking takes place between these origin countries (which can also be destinations) and countries such as Japan, Thailand, India, Taiwan, China and Pakistan. Other destinations are Israel, Turkey, Japan, Thailand, Australia, Western European countries and North America (Canada and the US). All of the following countries are also destinations for human trafficking (some being both countries of origin and transit as well): China, Hong Kong, Taiwan, India, Pakistan, Cambodia, Saudi Arabia and the United Arab Emirates. Recently, the Commonwealth of Independent States became an origin region for human trafficking into Asia. Cases of human trafficking from Ukraine, the Russian Federation and from Kazakhstan, Kyrgyzstan and Georgia have also been reported as a growing and dominant trend.

### *3.3 The Commonwealth of Independent States*

The Commonwealth of Independent States (CIS) is rarely reported as a destination region for human trafficking, yet the rate of internal trafficking tends to be quite high. Belarus, Moldova, the Russian Federation, Ukraine, Kyrgyzstan and Tajikistan are among the major origin countries in the region. Victims are mostly trafficked into Europe (in particular to Germany, Italy and Greece), into North America, to West Asia, Israel and to Turkey.

Human trafficking from the CIS appears to be in women, minors and men for labour exploitation.<sup>68</sup> Sexual exploitation is of particular concern in countries such as Belarus, Moldova, the Russian Federation and Ukraine. As far as internal trafficking is concerned, countries such as Tajikistan, Ukraine, Kyrgyzstan, Uzbekistan, Armenia, Azerbaijan and Belarus appear to be the

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<sup>66</sup> IOM, "Migration in South East Asia," International Organization for Migration in South East Asia, <http://www.iom-seasia.org/> (accessed January 24, 2009).

<sup>67</sup> ILO, *A Global Alliance Against Forced Labour* (Geneva: International Labour Organization, 2005), 13.

<sup>68</sup> E. Tyuryukanova, *Forced Labour in the Russian Federation Today: Irregular Migration and Trafficking in Human Beings* (Geneva: International Labour Organization, 2005).

countries of origin for human trafficking in the CIS. For example, people trafficked for labour exploitation mainly come from Kyrgyzstan, Tajikistan and Uzbekistan and are trafficked into the Russian Federation, Kazakhstan and most recently Ukraine. The available information indicates that trafficking within the CIS region is much greater than trafficking from the CIS to other regions (such as Western Europe and Middle East). “The flow of trafficking in human beings very much follows the flow of labour migration within the CIS region, characterized by a movement of workers away from countries with low levels of pay and labour surplus towards those with higher levels of pay and labour shortages.”<sup>69</sup>

### 3.4 Europe

Central and South-East Europe are reported as origin, transit and destination sub-regions, while Western Europe mostly plays a destination role. Human trafficking for sexual exploitation purposes seems to prevail in European countries over trafficking for labour exploitation. However, the latter is frequently under-reported.

As in other regions of the world, intra-regional patterns of trafficking exist in Europe as well. People trafficked from Central and South-East Europe (mostly from Albania, Bulgaria, Lithuania, Romania, the Czech Republic, Estonia, Hungary, Latvia, Poland and Slovakia) end up being exploited in Western European countries. To a lesser extent, victims from Central and South-East Europe are exploited in their sub-region, namely in Poland, Bosnia and Herzegovina, the Czech Republic and Kosovo. A relatively small number of trafficking cases from Asia and Africa into Central and South-East Europe have also been reported.

According to the IOM’s 2005 *Second Annual Report on Victims of Trafficking in South Eastern Europe*, trafficking at the time had reached alarming proportions in the region and affected an increasing number of men. This is particularly true in the case of Albania, where 70 per cent of victims trafficked for labour exploitation, delinquency and begging are male.<sup>70</sup>

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<sup>69</sup> UNDP, *Human Trafficking and Human Development in the Commonwealth of Independent States* (Bratislava: United Nations Development Programme, unpublished draft).

<sup>70</sup> R. Surtees, P. Biro and R. Bruun, *The Second Annual Report on Victims of Trafficking in South-Eastern Europe 2005* (Geneva: International Organization for Migration, 2005). Available at: [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/studies\\_and\\_reports/second\\_annual05.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/studies_and_reports/second_annual05.pdf) (accessed on January 22, 2009).

Belgium, Germany, Greece, Italy and the Netherlands take the lead among Western European destination countries in terms of trafficking from Central and South-East Europe and the CIS. Africa (in particular Nigeria) and Latin America (particularly Colombia and the Dominican Republic) are also among the most frequently reported origin regions for human trafficking to Western Europe.

### 3.5 Latin America and the Caribbean

Latin America and the Caribbean are reported to be mainly a region of origin and, to a lesser extent, of destination. Political instability and social unrest in some areas have created an environment conducive to traffickers. Since parts of Asia began taking measures to reduce sex tourism, traffickers have started targeting Latin America which has resulted in increased human trafficking activity in that region.

Sexual exploitation appears to be the main purpose of human trafficking activities in this area, whereas trafficking for labour exploitation accounts for about one third of the total of reported cases. More than 50,000 women from Brazil, Colombia, Guatemala, Mexico and the Dominican Republic are working abroad in the sex industry, with many being trafficked to North America, Western Europe and East Asia (Japan). According to UNODC, increasing numbers of men and boys are being recorded as victims of human trafficking for forced labour in Argentina, Brazil, Colombia, Venezuela and, episodically, in Bolivia.<sup>71</sup> Intra-regional patterns of human trafficking have been characterised by trafficking from countries in the region to Costa Rica, Mexico, Guatemala and El Salvador.<sup>72</sup> In 2002, more than 50,000 children may have been involved or were at risk of involvement in sexual exploitation in the region. Most children are trafficked from Honduras and El Salvador to Guatemala, from Nicaragua to Costa Rica, and from Guatemala to El Salvador.<sup>73</sup>

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<sup>71</sup> UNODC, *Global Report on Trafficking in Persons*, 54–55.

<sup>72</sup> IAC, “Trafficking of Women and Children for Sexual Exploitation in the Americas, Fact Sheet, July 2001,” Inter-American Commission of Women (Organization of American States), Women, Health and Development Programme (Pan American Health Organization), <http://www.oas.org/CIM/english/Traffickingfactsheetfinaling.pdf> (accessed March 24, 2009).

<sup>73</sup> See the speech “Efforts in Central America to End Trafficking of Children” of Villareal Maria Eugenia at the conference “Building Sustainable Futures: Enacting Peace and Development”, University of Leuven, Belgium, July 15–19, 2008, <http://soc.kuleuven.be/iieb/ipra2008/papers/index.php?action=paperall> (accessed April 22, 2009).

### 3.6 North America

North America is almost exclusively reported as a destination region. Human trafficking in this region is for both labour and sexual exploitation. However, according to UNODC, cases of trafficking for forced labour accounted for at least 63 per cent of the victims detected in 2007.<sup>74</sup> The main regions of origin are reported to be Eastern Europe (Romania),<sup>75</sup> the CIS (the Russian Federation, Ukraine, Georgia, and Moldova), Asia (China, Malaysia, Thailand, the Philippines), Latin America and the Caribbean (Mexico, Colombia).<sup>76</sup> There are fewer cases of human trafficking from countries in Central and South Eastern Europe and a limited number of human trafficking cases reported from Africa into North America.

### 3.7 Oceania

Oceania (including Australia, New Zealand and many Pacific islands) is mainly a destination for human trafficking. According to UNODC, there are no reported references to men or boys as victims of trafficking in this region. Trafficking to this region is reported to be predominantly for the purpose of sexual exploitation. Thailand and, to a lesser extent, the Philippines are the most frequently reported origin countries. Other countries such as China, South Korea, Malaysia and Vietnam are also reported to be origin countries for the trafficking of sex workers into Australia and New Zealand, based on statistics gathered by immigration authorities and on submissions to a parliamentary inquiry into trafficking of women for sexual servitude.<sup>77</sup>

## 4. Traffickers and the Trafficked

### 4.1 Who are the Traffickers?

There is far less information available on offenders than on trafficked people. As was mentioned above, traffickers can be involved in various functions (as

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<sup>74</sup> UNODC, *Global Report on Trafficking in Persons*, 54.

<sup>75</sup> Maria E. Molina, "Human Trafficking Cases Result in No Convictions in Canadian Courts," *Impunity Watch Reporter*, October 31, 2008, [http://www.impunitywatch.com/impunity\\_watch\\_north\\_amer/2008/10/by-maria-e-moli.html#comments](http://www.impunitywatch.com/impunity_watch_north_amer/2008/10/by-maria-e-moli.html#comments) (accessed January 15, 2009).

<sup>76</sup> US Department of State. *Trafficking in Persons Report*.

<sup>77</sup> J. Putt, "Human Trafficking to Australia: A Research Challenge," *Trends & Issues in Crime and Criminal Justice*, no.338 (June 2007).

recruiters, transporters or exploiters) and in various activities during the different stages of the process (including forging documents, corruption and the withholding of documents). Organised criminal groups are involved in human trafficking, at different operational levels.

Traffickers can be men or women of any age. Increasingly, women play a role during the recruitment and exploitation phases.<sup>78</sup> Similarly, there is an increasing use of older teenage males as low-level operatives in activities such as “look-outs”, as security for brothels or as general helpers. Male traffickers with varying degrees of seniority within the trafficking network act as recruiters, transporters and managers during the exploitation phase. Increasingly, females may also perform these roles. For example, traffickers in Greece are using their female victims to find new recruits in the Balkans and in the former Soviet countries.<sup>79</sup> According to the UNODC, “males represent the great majority of offenders for many crimes, but females appear to play a prominent role in human trafficking cases.” The results of a global comparison of the percentage of women involved in human trafficking and of women involved in (or convicted for) other crimes show that the percentage of women convicted for all crimes did not exceed 15 per cent, whilst the percentage of women convicted for trafficking offences is often above 50 per cent in the same regions. In Eastern Europe and in Central Asia, the role of female human traffickers appears to be predominant. This trend is being reported in other parts of the world as well.<sup>80</sup>

There are situations where the female traffickers’ role is to help the males, leaving her at the margins of criminal activity.<sup>81</sup> Indeed, the coercive enforcement of the exploitation phase and disciplining of the victims is predominately conducted by male traffickers. Nevertheless, female traffickers do play key roles both in the recruitment phase—particularly as the current *modus operandi* moves away from recruitment by advertisement towards a greater focus on contact and recruitment through networks of personal

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<sup>78</sup> UNICRI, *Trafficking in Human Beings and Peace-Support Operations. Pre-deployment /in-service Training Programme for International Law Enforcement Personnel Training Manual* (Turin: United Nations Interregional Crime and Justice Research Institute, 2006), 34.

<sup>79</sup> N. Kitsantonis, “In Greece, Female Sex Victims Become Recruiters,” *International Herald Tribune*, January 29, 2008. Available at: <http://www.iht.com/articles/2008/01/29/europe/traffic.php> (accessed February 1, 2009).

<sup>80</sup> UNODC, *Global Report on Trafficking in Persons*, 45–47.

<sup>81</sup> N. Levenkron, *Another Delivery from Tashkent: Profile of the Israeli Trafficker* (Tel Aviv: Hotline for Migrant Workers, 2007), 40–41. Available at: [http://www.hotline.org.il/english/pdf/Another\\_Delivery\\_From\\_Tashkent-English.pdf](http://www.hotline.org.il/english/pdf/Another_Delivery_From_Tashkent-English.pdf) (accessed October 15, 2008).

contacts—and in the management of the exploitation phase, acting as managers, receptionists and money launderers.

Trafficking operations consisting of only male traffickers, or of both male and female traffickers, have been reported in cases of trafficking in women, men and children. In other cases, there are operations in which traffickers are exclusively female; the information available indicates that their victims tend to be women or girls.<sup>82</sup> Studies have suggested that traffickers who sexually abuse their women and child victims are almost always male.<sup>83</sup> Some traffickers are former victims themselves. For instance, in some countries, a “madam” in a destination country supervises controls and organises girls and women trafficked for sexual exploitation, coordinates their activities and collects their income. Many such “madams” started as trafficked persons themselves, turning to the same methods once their own “debts” were paid off.<sup>84</sup>

Reasons why a trafficked person might become a trafficker include fear of violence, and/or a “promotion” within a trafficking enterprise. Many victims are promoted to the next step of a trafficking hierarchy, turning them into traffickers, but at the same time they are kept under control by those above them. Therefore, many are not free from exploitation, even though they may control another victim. They are also often given the most visible and dangerous roles, making them targets for law enforcement.

In many cases, recruiters are older than those they recruit. This has been attributed to the heightened ease with which an older person can manipulate and ultimately recruit a younger person. On the other hand, many children are forcibly recruited into armed conflict as child soldiers by other children.

Given that almost every country is a country of origin, transit and/or destination, traffickers can be of any nationality. Knowledge of the countries in which traffickers operate and of their origin offers insights on their *modus operandi* and on their role in the process. For instance, recruitment of victims may be significantly facilitated where the recruiter speaks the same language and comes from the same cultural background. Many organised crime groups established in diaspora communities maintain strong links with their states of

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<sup>82</sup> UNODC, *Trafficking in Persons: Global Patterns*, 72.

<sup>83</sup> P. M. Nair, *A Report on Trafficking in Women and Children in India* (New Delhi: Institute of Social Sciences—National Human Rights Commission—UNIFEM, 2002–2003), 148. Available at: <http://nhrc.nic.in/Documents/ReportonTrafficking.pdf> (accessed September 12, 2008).

<sup>84</sup> UNODC, *Trafficking in Persons: Global Patterns*, 74. For further reading, see J. Kane, *Child (or Human) Trafficking in South Eastern Europe* (Geneva: ILO/IPEC, 2005). Available at: [http://www.childtrafficking.com/Docs/ipece\\_balkana\\_05\\_trafficking1097\\_10.pdf](http://www.childtrafficking.com/Docs/ipece_balkana_05_trafficking1097_10.pdf) (accessed March 3, 2009).

origin. In several countries, the majority of offenders are nationals of the country in which the trafficking case is investigated.<sup>85</sup>

Not enough research has yet been undertaken into who these people were before they became traffickers, how they came to be traffickers, and who they are outside of being traffickers. What is known reveals that the only unifying factor between traffickers of differing economic, social, cultural and educational backgrounds is almost always financial; some traffickers hope to grow rich while others are merely struggling to make a living and to provide for their families.<sup>86</sup>

Throughout the process of trafficking, individual traffickers are required to perform particular roles.<sup>87</sup> According to simplified phases of trafficking, traffickers operate as:

- recruiters
- transporters, operating both within a country and/or across borders
- exploiters

Understanding traffickers requires that the larger structures in which they operate also be investigated. Human trafficking can be conducted by spontaneous informal low-level contacts, up to highly organised international networks. Small groups of individuals may comprise family networks or be connected through shared ethnicity, while large-scale criminal networks may operate internationally and oversee the entire operation from the recruitment to the exploitation of the victim.

Different criminal groups operate in different criminal structures; the way in which groups are structured can give an indication of how the activities are pursued. For instance, it has been established that the more hierarchical the

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<sup>85</sup> For instance, the Dutch National Rapporteur reported that, between 1998 and 2002, the most common nationality of suspects of trafficking in that country was Dutch. However, in other countries, available information suggests greater complexities—a study in Germany showed that 52 per cent of German-national traffickers had a different nationality at birth. Similarly, the majority of detected traffickers in Italy between 1996 and 2003 were born in Albania. UNODC, *Trafficking in Persons: Global Patterns*, 72.

<sup>86</sup> Levenkron, *Another Delivery from Tashkent: Profile of the Israeli Trafficker*, 76.

<sup>87</sup> See OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (Geneva: Office of the United Nations High Commissioner for Human Rights, 2002), 6–7. Available at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.2002.68.Add.1.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.2002.68.Add.1.En?Opendocument) (accessed March 4, 2009).

group, the more likely it is to engage in violence.<sup>88</sup> Furthermore, higher structural rigidity has been shown to correlate with a higher propensity for corruption and trans-border activities.<sup>89</sup> Rigid hierarchies often have a single boss, and are organised into several cells reporting to a centre, with strong internal discipline systems.<sup>90</sup>

Given that human trafficking is a high-profit, comparatively low-risk form of criminal activity (although the risks are increasing in many jurisdictions), organised crime groups are increasingly involved.<sup>91</sup> The phenomenon is not, however, exclusively under the control of major criminal networks. Groups involved in human trafficking can be fairly small and operate in loose connection with each other. These groups may specialise in different links of the human trafficking chain, such as personal recruitment, transportation, or brothel management.<sup>92</sup>

The larger criminal networks do not necessarily operate in isolation from one another. There are established linkages to other forms of organised crime, such as weapons and narcotics trafficking and other forms of criminality. The structural links may be constant or consist of loose affiliations whereby the different components come together to commit crime. Trafficking networks may consist of ethnically or nationally homogeneous groups, trafficking in people from the same background. They are equally likely to develop into mixed groups where the perpetrators and those trafficked are from different national and ethnic backgrounds.

#### Small-Scale Informal Networks

Low-level informal networks usually take the form of small groups of individuals within limited family networks and/or ethnic communities that extend across borders. Small numbers of victims are trafficked as the need arises. Traffickers will often use contacts with family and community members back home to recruit women for sexual exploitation, and younger males and females for labour exploitation. Such networks are frequently active in the

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<sup>88</sup> UNODC, *Results of a Pilot Study of Forty Selected Organised Crime Groups in Sixteen Countries* (Vienna: United Nations Office on Drugs and Crime, 2002), 30. Available at: [http://www.unodc.org/pdf/crime/publications/Pilot\\_survey.pdf](http://www.unodc.org/pdf/crime/publications/Pilot_survey.pdf) (accessed October 16, 2008).

<sup>89</sup> UNODC, *Results of a Pilot Study of Forty Selected Organised Crime Groups in Sixteen Countries*, 30.

<sup>90</sup> *Idem*.

<sup>91</sup> UNODC, *Human Trafficking: An Overview*, 1.

<sup>92</sup> UNICRI, *Trafficking in Human Beings and Peace-Support Operations*, 32–35.



border regions between countries of origin and destination, and within ethnic communities.

### Large-Scale Organised Criminal Networks

Large-scale criminal groups are different from small organisations in that they specifically supply markets in foreign countries. Where they operate, they control most aspects of trafficking, from recruitment and transportation to the management of illegal activities.<sup>93</sup> Sophisticated middle-sized groups move or rotate trafficking victims from one place to another, both within a country and across international borders. Furthermore, criminal organisations trade or exchange their victims with other organisations, which give them new identities when the risk of law enforcement grows too high. Flexible organisational structures include recruiters, bodyguards, transporters and decision-makers who negotiate financial conditions with final exploiters.<sup>94</sup>

### Criminal Distribution Networks

More complex transnational criminal organisations are those that control and coordinate every phase of the trafficking procedure, from recruitment to exploitation. These networks are highly specialised. Several professional figures take part in the business.<sup>95</sup> All levels of trafficking groups exist side-by-side. As was mentioned above, these networks are usually involved in smuggling people as well as drugs and stolen goods.<sup>96</sup>

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<sup>93</sup> Some of these groups focus their activities uniquely on the recruitment and transport of victims. Human trafficking functions like a business with a recruitment agency office, document procurement office, transport office and management office. UNICRI, *Trafficking in Human Beings and Peace-Support Operations*, 33.

<sup>94</sup> Traffickers need to be supported at least by a reliable network of exploiters and by middle-men in the transit countries who can facilitate their crossing of national borders by corrupting border officials or providing forged papers.

<sup>95</sup> Initial investors are often sheltered and not otherwise directly involved. Within this network, specialised recruiters are in charge of finding victims. Travel or employment agencies often carry out deals directly in bars, or through newspaper adverts, telephone solicitation or contacts with friends or family members. Transport professionals organise all the travel arrangements, while protectors take care of the necessary bribes. Debt collectors make sure the victims pay the agreed fees once they are in the destination country. Eventually money specialists launder the profits. As operations become more sophisticated, other specialists such as forgers and lawyers are brought in.

<sup>96</sup> Groups from Afghanistan, China, Iran, Kosovo, Nigeria, Pakistan and Turkey are very active in both drug-trafficking and trafficking/smuggling of persons in Europe, making the horizontal interdependency between other forms of organised criminality and THB obvious. Also, Nigerian organised criminal groups have been caught in various activities in connection with trafficking and

#### 4.2 Who are the Victims?

Inadequate knowledge of this crime often results from a failure to identify the victims as such. Among those who are identified, adult women are most frequently reported to be trafficked, followed by children. According to the IOM database, the biggest age group receiving assistance is that from 18 to 24. Many victims have at least mid-level education.<sup>97</sup>

In order for a trafficked person to be meaningfully recognised as a victim of crime, it is important that victims be immune from liability for their involvement in unlawful activities, where such involvement is a direct consequence of their situation as a trafficked person.<sup>98</sup> This idea is reflected in Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings, which states that: “each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”<sup>99</sup> As shown below, trafficked persons have to contend with serious consequences. Therefore, they should be identified as soon as possible in order to provide them with assistance and with protection from both former traffickers and from law enforcement officers who regard them as offenders.

### 5. Causes of Trafficking

The root causes of trafficking are various and often differ from country to country. Trafficking is a complex phenomenon, driven or influenced by social, economic, cultural and other factors. Many of these factors are specific to individual trafficking patterns and to the countries in which they occur. Many

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smuggling: fraud, counterfeiting of cheques and other documents, prostitution, drug trafficking and money-laundering. Groups of other nationalities, such as Albanian, Romanian and Turkish, are also involved in counterfeiting or stealing of documents and then using them for other criminal purposes, such as trafficking in persons. Here, the vertical chains of criminal offences are obvious. UNICRI, *Trafficking in Human Beings and Peace Support Operations*, 34.

<sup>97</sup> IOM, Counter-Trafficking Database, 78 Countries, 1999–2006. Available at: [http://www.iom.int/jahia/Jahia/pid/8/EN/Data\\_and\\_Research\\_on\\_Human\\_Trafficking.pdf](http://www.iom.int/jahia/Jahia/pid/8/EN/Data_and_Research_on_Human_Trafficking.pdf) (accessed October 25, 2008).

<sup>98</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Guideline 7.

<sup>99</sup> Article 26, Council of Europe Convention on Action against Trafficking in Human Beings, CETS, No. 197. This is further borne out in Recommendation 1.8 of the OSCE Action Plan to Combat Trafficking in Persons which recommends “ensuring that victims of trafficking are not subjected to criminal proceedings solely as a direct result of them having been trafficked.” (Decision 557, Revision 1, July 7, 2005).

common patterns, however, can be found in different regions and situations. One such factor is the desire of victims to migrate, which is exploited by offenders during the recruitment phase and to gain initial control or cooperation, only to be then replaced by more coercive measures once the victims have been moved to another country or region.<sup>100</sup>

The factors that make people vulnerable to trafficking and exploitation are partly determined by the specific stage of the trafficking process. There are vulnerabilities related to the conditions in the country of origin. Transportation also makes people vulnerable, as they may not have proper documents or financial means and, therefore, depend on traffickers. The exploitation phase produces some additional vulnerabilities, for example when victims have illegal status in the country or are physically isolated.

We can identify factors that “push” victims into migration and therefore into the control of traffickers, and other factors that tend to “pull” potential victims.

- **Push factors:** Countries or regions of origin are often characterised by poverty and little prospect of sustained economic opportunity. Consequently, there is a constant supply of victims available for exploitation. Push factors can be identified as, *inter alia*, unemployment, poverty, lack of education, gender discrimination, high level of general and/or domestic violence, and conflict or post conflict situations. The search for work or improved living conditions are, in general, strong push factors for all trafficked persons.
- **Pull factors:** Destination countries or regions are characterised by demand for sexual services or an increasing demand for cheap migrant labour or other forms of exploitative service.
- **Organised criminal networks:** Organised crime has taken advantage of this economic “supply and demand” situation in order to generate vast profits through trafficking and exploitation.

Factors affecting vulnerability in the countries of origin include age and gender: women and children represent the main endangered categories. For women confronting unemployment, sexual harassment or domestic violence, the offer of a good salary for working abroad often seems like a magical escape to a better world.<sup>101</sup> The discriminatory and negative factors outlined below

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<sup>100</sup> UNICRI, *Trafficking in Human Beings and Peace Support Operations*, Section 2.

<sup>101</sup> In a study on physical and mental health consequences of human trafficking in Europe it was found that 60 per cent of victims had experienced physical or sexual violence before they were trafficked. Cathy Zimmermann, et al., *Stolen Smiles: A Summary Report on the Physical and Psychological Health*

must be set against the benefits offered by traffickers: employment and financial reward; improved social position and treatment; and access to material benefits.

### *5.1 Factors Contributing to Trafficking in Women*

**Political and economic transition.** Political, social and economic instability have a disproportionately negative impact upon women, reinforcing inequality through increased poverty and unemployment. In some cases, this is due to patriarchal social structures, as well as to discrimination more generally. Trafficking in women can be seen as one consequence of this inequity.

**Gender discrimination.** In some countries, gender discrimination laws either do not exist or are not enforced. Women are often unaware of their rights to equal treatment. In other countries, where national legislation prohibits gender discrimination, there is no formal legal definition of the term nor has a working definition been built through legal cases. Thus, there is a failure to hold accountable those who discriminate against women, and there is almost no access to judicial or other types of remedy.

**Violence against women.** Violence against women, in particular domestic violence, is an important factor in why so many girls and young women want to leave their families and their countries, particularly when the state does not protect them.

**Discrimination in the labour market.** Women are often hired last and fired first. In many cases, women have restricted access to the formal, regulated labour market. Income differentials between men and women are also frequent, as is harassment. Discrimination against certain ethnic groups plays a role, too.

**Social factors.** In times of economic hardship, societies often consolidate existing power structures. Such structures tend to reinforce the position of men, and cause further deterioration in the already-subordinated position of women.

Children are vulnerable to the demands and expectations of those in positions of authority. This vulnerability makes their “consent” to being trafficked irrelevant, even if there was no fraud, force or deception to begin with.

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*Consequences of Women and Adolescents Trafficked in Europe* (London: London School of Hygiene and Tropical Medicine, 2006). Available at <http://www.lshtm.ac.uk/hpu/docs/StolenSmiles.pdf> (accessed October 15, 2008).

## 5.2 Factors Contributing to Trafficking in Children

**Poverty.** A lack of education or employment can sometimes tempt parents to allow their children to go with traffickers who claim to be offering them a brighter future abroad.

**Domestic abuse of children and neglect.** Persons involved in the commercial sexual exploitation of children may also include family members.<sup>102</sup> Some parents knowingly sell their children to brothel owners or to traffickers. Addiction to drugs, the need to conceal incest, discrimination against baby girls and greed are other common push factors in child trafficking.

**Orphans.** Unaccompanied children are especially vulnerable to the risk of sexual abuse or exploitation. Orphans or children burdened with the responsibility of caring for younger siblings are particularly vulnerable.

**Discrimination.** Widespread racism, fragmentation of indigenous cultures and families, as well as limited access to education are the main factors that make minors easy prey for traffickers.

**Misconceptions regarding sexual behaviour.** In many countries it is believed that sex with young girls—who are presumably virgins—prevents the contraction of HIV/AIDS and other sexually-transmitted diseases. Some even believe that it can cure HIV/AIDS or renew youthfulness.

**Harmful traditions or customs.** The practice of early, forced or temporary child marriages also makes children vulnerable to trafficking. Moreover, some daughters of trafficked women become trafficking commodities. This may occur through formal structures such as the caste system or, more informally, through social stigmatization. Both result in girls being forced to work in the commercial sex trade, following their mothers' means of survival. For whatever reason, children of trafficked victims rarely have viable alternatives. In some countries, the sexual exploitation of children is thinly disguised as a religious practice.

**Corruption.** Corruption among police and other law enforcement officials is often cited as a cause of trafficking and as a major obstacle to combating it.<sup>103</sup>

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<sup>102</sup> It is believed that approximately 80 per cent of trafficked children have been psychologically or physically abused by a family member or friend.

<sup>103</sup> Sheldon X. Zhang and Samuel L. Pineda, "Corruption as a Causal Factor in Human Trafficking," in *Organized Crime: Culture, Markets and Policies*, ed. D. Siegel and H. Nelen (New York: Springer, 2008), Chapter 4.

### 5.3 Conflict and Post-conflict Situations<sup>104</sup>

Although there is no precise data, there is strong anecdotal evidence that human trafficking escalates during armed conflict. Impunity, lawlessness, collapse of state institutions and lack of border controls are all factors that allow human trafficking to flourish. Furthermore, the destruction of the economy, family income and family units places women and children at higher risk of being trafficked. Conflict areas may become areas of origin, transit or destination.

Organised criminal groups operate and move more freely than they would in peacetime, exploiting chaotic conditions that make it less likely that their activities will be detected. There is also evidence that the deployment of “internationals” can exacerbate the situation by creating additional demand for sexual services. As demonstrated in recent peace support operations, the arrival of large groups of adult men unaccompanied by wives or girlfriends frequently creates a market for commercial sex and trafficking. During times of armed conflict, very specific forms of human trafficking that are directly linked to conflict may emerge.<sup>105</sup>

The same factors that allow human trafficking to flourish during conflict are often also prevalent in post-conflict situations. High levels of political instability, criminal activity and violence can remain years after fighting has ended. Furthermore, the (re)establishment of the rule of law, including the reconstruction of effective law and order institutions, is never immediate. Criminal networks are therefore able to exploit the situation, often consolidating power gained during conflict.

## 6. Consequences of Trafficking

The consequences of trafficking are varied and wide-ranging for countries of origin, transit, and destination. As noted above, human trafficking is related to organised crime. Corruption is a closely related problem, too. A ready supply of cash can undermine the counter-trafficking efforts within the criminal justice

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<sup>104</sup> For more information see Chapter 8 of this volume on “Human Trafficking and Peacekeepers” by Keith J. Allred.

<sup>105</sup> In a number of conflicts, such as those in Sierra Leone and Bosnia-Herzegovina, fighting factions and governmental forces have used human trafficking and sexual exploitation as a strategy of war. Moreover, many minors have been trafficked to or within several conflict areas, eventually becoming child soldiers. There have also been reports of girls as young as twelve forced to engage in sexual activity with paramilitary forces. UNICRI, *Trafficking in Human Beings and Peace Support Operations*, Section 2.

system.<sup>106</sup> Furthermore, the link between peacekeeping and human trafficking is detrimental to the credibility of peace operations.<sup>107</sup> It should also be noted that human trafficking on a significant scale can destabilise populations at the micro and macro level.<sup>108</sup>

Yet most obviously, human trafficking threatens the well-being of trafficked persons. The most immediate danger faced by trafficked persons is physical violence from those who exploit them. Many victims are physically and sexually abused and are held in conditions of actual and/or psychological captivity. Murders are sometimes used as warnings to other victims to not seek help or assistance. Threats of reprisal against them or their families, and the lack (or invalidity) of identity documents, prevent many victims from escaping. Victims also often suffer from stigmatisation by their communities. Moreover, many are treated as criminals by officials in countries of transit and destination due to their irregular status in the country, and their status as illegal workers or sex workers. In Italy, victims are granted a six-month permit to stay to consider their options and prepare themselves to go back to their homeland. But they often risk being detained and deported shortly after being discovered or coming forward. Even after being identified and having been offered a reprieve from detainment and deportation, many trafficked persons find little access to basic services, from housing to medical care and temporary welfare.

Further health risks should be noted. Trafficked women are often not in a position to negotiate safe sex, or lack access to education about HIV/AIDS. They therefore run the risk of contracting sexually transmitted diseases. Also, in some cultures, it is a commonly held belief that sex with a virgin is a potential cure for AIDS and other sexually transmitted diseases, which increases the demand for children (and virgins) for sexual exploitation. The victims become infected and can transmit the diseases to the next customer. Other impacts on the physical and psychological health of the victim include:

- Infections and infectious diseases due to unhygienic conditions, overcrowding, and lack of access to clean water

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<sup>106</sup> UNODC, *Assistance for the Implementation of the ECOWAS Plan of Action against Trafficking in Persons*, Training Manual (Vienna: United Nations Office on Drugs and Crime, 2006). Available at: [http://www.unodc.org/documents/human-trafficking/ecowas\\_training\\_manual\\_2006.pdf](http://www.unodc.org/documents/human-trafficking/ecowas_training_manual_2006.pdf) (accessed September 7, 2008).

<sup>107</sup> See UNICRI, *Trafficking in Human Beings and Peace Support Operations*.

<sup>108</sup> In some countries, such as Moldova, human trafficking for sexual exploitation has reached proportions that threaten to destabilize the demographic situation. M. Vlachová and L. BIASON, eds., *Women in an Insecure World: Violence Against Women—Facts, Figures and Analysis* (Geneva: DCAF, 2005), Executive summary; 1, 2.

- Unwanted pregnancies
- Forced abortions
- Occupational health risks; injuries, skin infections, respiratory illnesses
- Hazardous working conditions that may affect the growth of a child
- Physical reaction to trauma in the form of psychosomatic pain, change in sleep patterns, weakened immune system and increased use of alcohol and drugs
- Psychological reaction to trauma in the form of shock and fear, disorientation, nightmares and flashbacks, difficulty in trusting, feelings of betrayal, a tendency to isolate oneself, and suicidal tendencies
- Stigmatisation in their communities or countries of origin.

## 7. Counter-Trafficking Measures

Successful counter-trafficking requires political will and cooperation at all levels, at points of origin, transit and destination. In many ways, the differences in legal frameworks across jurisdictions constitute the most fundamental impediment to an effective response to trafficking.

A large number of international instruments have been produced. The Trafficking Protocol advances international law by providing, for the first time, a working definition of human trafficking and requiring ratifying states to criminalise such practices. Several United Nations conventions and regional instruments form the international legal framework within which states must define their own counter-trafficking laws. These instruments also provide a framework for states wishing to collaborate with each other against human trafficking.<sup>109</sup>

Article 2 of the UN Trafficking Protocol indicates that the scope of the Protocol (at a minimum) pertains to the: prevention of trafficking in persons; prosecution (and investigation) of suspected traffickers; and protection of individuals who have fallen victim to trafficking. These are the three main pillars that should be addressed in any domestic legislation. In addition to

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<sup>109</sup> UNODC, *Toolkit to Combat Trafficking in Persons* (Vienna: United Nations Office on Drugs and Crime, 2008), 1. Available at: [http://www.unodc.org/documents/human-trafficking/HT\\_Toolkit08\\_English.pdf](http://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf) (accessed September 28, 2008).



drafting appropriate legal provisions, governments should implement these provisions.

### *7.1 Prevention*

Article 9 of the Protocol requires states to prevent and combat human trafficking and protect victims from re-victimisation. Measures should be taken to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunities. To this end bilateral or multilateral cooperation, including with non-governmental organisations, is encouraged.

The Protocol recognises that human trafficking should be dealt with from both the demand and the supply side, requiring measures intended to discourage the demand for services, which fosters the exploitive element of trafficking and hence its major source of illicit revenue. Certifying products or services as “forced labour free”, for example, is one way to do this.

The Protocol also takes into consideration that former victims are vulnerable later on, especially if they are repatriated to places where trafficking is common. Hence, in addition to the basic requirements to protect victims from intimidation or retaliation by offenders, Article 9(1) of the Protocol calls for measures to protect victims from being trafficked again and from other forms of re-victimisation.

Finally, the Protocol seeks to prevent trafficking by requiring measures intended to make it more difficult for traffickers to use conventional means of transport by requiring states party to ensure that border controls are effective and by taking measures to prevent the misuse of passports and other travel or identification documents. Preventive anti-trafficking measures include:

- awareness raising and information campaigns targeted at potential victims and their families<sup>110</sup>
- the development of long-term strategies aimed at improving the economic and social condition of vulnerable groups
- increased opportunities for individuals to migrate legally for work and vocational training.

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<sup>110</sup> See USAID, *Final Report: Best Practices in Trafficking Prevention in Europe & Eurasia* (Washington D.C.: United States Agency for International Development, January 2009). Available at: [http://tdh-childprotection.org/component/option,com\\_doclib/task,dl/docid,733/1,1/](http://tdh-childprotection.org/component/option,com_doclib/task,dl/docid,733/1,1/) (accessed March 3, 2009).

**Box 1: Example of a Successful NGO Anti-trafficking Effort<sup>111</sup>**

**Coalition of NGOs in Nigeria**

As a result of international and domestic support, the number of NGOs working on trafficking throughout Nigeria has been increasing considerably. Six NGOs (ENCATIP, Edo State Coalition against Trafficking in Persons) cooperate to develop and implement anti-trafficking projects. These projects also involve collaboration with anti-trafficking NGOs in Italy, a major destination country for women trafficked from Nigeria. The first project falls under the area of prevention and addresses issues set forth in Article 9 of the UN Trafficking Protocol. The project focuses on awareness-raising to reach specific target groups such as parents, traditional chiefs and priests, villagers, and children. All campaigns are conducted in the local language and with support from community leaders and associations in order to ensure commitment and participation from the existing communal networks.<sup>112</sup>

The second major project of the coalition addresses both Article 6 and Article 9 of the UN Trafficking Protocol by implementing means of victim assistance and protection as well as means of preventing trafficking. The project targets young women who have been trafficked, young girls and women who have been deported back to Edo State, and girls and women who are vulnerable to trafficking. The programme supports victims of trafficking at the local level. The major component consists of micro-finance schemes that facilitate the rehabilitation and reintegration of trafficking victims into society. Project participants receive specialised technical assistance, business counselling and training, and the resources required to start and run a small business.

### *7.2 Prosecution*

Relatively few traffickers are successfully prosecuted. In recent years, many countries have revised their legislation in order to comply with the requirements of the Trafficking Protocol. However, the implementation of this legislation is still pending in many countries. In order to effectively prosecute traffickers, a state must:

- clearly define trafficking in its legislation as a distinct crime
- establish criminal sanctions comparable to the gravity of the offence
- provide for the criminal liability of legal persons that are used by traffickers as a front for their illicit activities
- criminalise all activities related to trafficking
- establish other criminal offences related (but in addition) to trafficking

<sup>111</sup> ABA/CEELI, *An Introduction to The Human Trafficking Assessment Tool* (Washington D.C.: ABA, 2005), 158.

<sup>112</sup> For more information see: UNICRI, "Trafficking from Nigeria," UNICRI Main Page, <http://www.unicri.it/www/trafficking/nigeria/index.php> (accessed March 24, 2009).

- create specialised investigation units
- cooperate across borders
- implement extradition agreements and proceedings.

Article 5 of the Protocol obligates states party to adopt legislation and implement other necessary measures in order to criminalise trafficking in persons.<sup>113</sup>

**Box 2: Promising Practice**

**SISCESCO-Costa Rica<sup>114</sup>**

With the aim of strengthening the capacities of Costa Rican public prosecutors in responding to trafficking in persons, the 2006 UNICRI *Action Programme Against Trafficking In Minors For Sexual Purposes* set up a sophisticated information system for the investigation and prosecution of human trafficking cases, specifically targeting the offices of public prosecutors in charge of investigating cases of domestic violence and sexual exploitation of children. All prosecution offices in Costa Rica are connected through the system. This important data collection tool assists in building stronger cases and improve investigating skills and strategies. It also supports the Attorney General's Office in drawing up counter-crime policy.

### 7.3 Protection

Both physical and psychological consequences for victims of trafficking are devastating. Thus, psychological, social and legal support provided by government agencies, in cooperation with specialised NGOs, is indispensable. Moreover, building appropriate national structures and capacities for reintegration, including opportunities for reinsertion into the labour market, is necessary in order to prevent victims from being re-trafficked.

Basic principles include measures to:

- properly identify victims of trafficking
- define trafficked persons as “victims” according to international standards

<sup>113</sup> Prosecution under the UN Trafficking Protocol is for “offences established in accordance with article 5 of the Protocol, where those offences are transnational in nature and involve an organised criminal group”.

<sup>114</sup> For more information see: UNICRI, “Trafficking in Minors: Activities in Costa Rica,” UNICRI Main Page, [http://www.unicri.it/www/trafficking/minors/activities\\_costarica.php](http://www.unicri.it/www/trafficking/minors/activities_costarica.php) (accessed March 24, 2009).

- ensure that the acts of trafficked persons, as victims of the offence, are not criminalised.

Another purpose of the UN Trafficking Protocol is to protect and assist victims of trafficking “with full respect for their human rights.”<sup>115</sup> Firstly, the UN Organised Crime Convention recognises the importance of alleviating the impact of transnational organised crime on vulnerable individuals and groups and requires countries to take measures to protect victims against retaliation or intimidation and to ensure that they introduce procedures for compensation and restitution. In addition, States will have to consider the perspective of victims, in accordance with domestic legal principles and consistent with the local defendant’s rights.

It should be remembered that the UN Trafficking Protocol applies to the protection of victims irrespective of the element of trans-nationality or the involvement of organised crime. The Protocol recognises that victims of trafficking are especially vulnerable, and thus need specific protection. Therefore the UN Trafficking Protocol requires each state party to:

- Protect, to the extent that is possible under domestic law, the privacy and identity of victims, including by making legal proceedings relating to trafficking confidential (Article 6(1))
- Ensure that victims receive information on relevant court proceedings in appropriate cases and have an opportunity to have their views presented and considered (Article 6(2))
- Consider providing, in co-operation with civil society, for the physical, psychological and social recovery of the victim (Article 6(3)).

Protection measures for victims of trafficking include:<sup>116</sup>

- medical care
- safe accommodation<sup>117</sup>

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<sup>115</sup> UN Trafficking Protocol, Article 2(b) and Article 25.

<sup>116</sup> Relevant international human rights instruments include the Convention on the Rights of the Child (CRC); the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; and UN Recommended Principles and Guidelines on Human Rights and Human Trafficking. Legal provisions safeguarding the rights of victims of crime have also been incorporated in international law, for example, in the Statute and Rules of the International Criminal Tribunal for the former Yugoslavia (ICTY) and in the Rome Statute of the International Criminal Court (ICC).

<sup>117</sup> Although there is a significant amount of information on shelters, there is a lack of evaluation on existing shelters and assistance programmes. The information is mostly provided in the form of

- psychological and legal counselling
- legal residency status for a certain period of time
- protection from criminal charges that would otherwise stem from irregular residence and employment status
- access to employment and education
- information campaigns regarding the rights of victims.

These types of assistance should be made available to victims of trafficking in countries of origin, transit, and destination. The aforementioned protective measures are meant to complement prevention and prosecution efforts by creating a comprehensive method for combating trafficking.

The essence of the rights-centred approach is captured in paragraph 1 of the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, which states that: “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.” This is also reflected in paragraph 2, which notes that: “states have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons. The rehabilitation of victims and the demonstration that justice is done are important elements of an overall anti-trafficking strategy.”<sup>118</sup> The UN Organised Crime Convention and the Trafficking Protocol are not human rights but criminal justice instruments. A human rights-based approach not only better protects trafficked persons but can help effective law enforcement.<sup>119</sup>

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descriptive case studies and recommended best practices. Shelter facilities vary widely and can include private homes, institutional facilities, hotels and churches. IOM, *Handbook on Direct Assistance to Victims of Trafficking* (Geneva: International Organization for Migration, 2007), 112. See also R. Rosenberg, *Best Practices for Programming to Protect and Assist Victims of Trafficking in Europe and Eurasia* (Bethesda, Maryland: Development Alternatives, 2004). Available at: [http://www.vitalvoices.org/files/docs/Prevention per cent20assessment per cent20Report-formatted per cent20CAS1.pdf](http://www.vitalvoices.org/files/docs/Prevention%20assessment%20Report-formatted%20CAS1.pdf) (accessed March 3, 2009).

<sup>118</sup> OHCHR, “Recommended Principles and Guidelines on Human Rights and Human Trafficking: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council,” (New York: Office of the United Nations High Commissioner for Human Rights, May 20, 2002). Available at: [http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/caf3deb2b05d4f35c1256bf30051a003/\\$FILE/N0240168.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/caf3deb2b05d4f35c1256bf30051a003/$FILE/N0240168.pdf) (accessed March 24, 2009).

<sup>119</sup> See: ASEAN, *Responses to Trafficking in Persons: Ending Impunity for Traffickers and Securing Justice for Victims* (Jakarta: ASEAN, April 2006), 66–67; 81. The Coordinated Mekong Ministerial Initiative against Trafficking process (COMMIT) MOU (2004) draws heavily on the UN’s Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1).

#### *7.4 National and Transnational Cooperation*

The UN Trafficking Protocol sets out specific obligations to co-operate with other countries, be they party or not to the Protocol. Article 2(c) states the need to promote international cooperation in combating trafficking. States should cooperate on bilateral and multilateral levels in order to coordinate law enforcement efforts among the various national authorities as well as international organisations such as Europol and Interpol. Cooperation among states also entails exchange of information; training of law enforcement authorities; mutual legal assistance (i.e., taking evidence or statements from persons or providing copies of relevant documents); and joint investigations.

Various steps have been taken to ensure sustainable cooperation between state and non-state actors:

- Task Forces: to develop methods for organising, monitoring and evaluating the implementation of action plans against trafficking; to recommend improvements for existing action plans, legal frameworks, and organisational measures; to co-operate with NGOs.
- National Rapporteurs: to collect and analyse trafficking data; to monitor the effects of national action plans; to report to government and to make proposals on the development of national policies and action plans.
- National Referral Mechanisms: a national referral mechanism (NRM) is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons and co-ordinate their efforts in a strategic partnership with civil society.
- The Role of NGOs: a victim-oriented approach requires cooperation between police, prosecutors and NGOs who counsel and support trafficking victims. Comprehensive concepts include provision for the support and protection of victim-witnesses before, during and after trafficking trials.
- Memorandum of Understanding: agreements between law enforcement agencies and IOs/NGOs to formalise a continuing cooperative relationship.

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The MOU adopts a victim-centred and rights-based approach. COMMIT Member Countries have agreed to undertake thirty-four actions, most of which are at the national level, but several of which involve bilateral and regional cooperation.

## **Recommendations**

### *Protect the Rights of Victims*

The essence of the rights-centred approach to human trafficking is captured in paragraph 1 of the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, which states that: “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.”<sup>120</sup> The needs and rights of victims should be considered at every stage in proceedings. Law enforcement officers have an obligation to ensure that measures adopted for the purpose of preventing and combating human trafficking do not have an adverse impact on the rights and dignity of trafficking victims, even in cases where they do not become witnesses in a criminal proceeding.

### *Reduce Demand*

Demand reduction must be linked closely to prevention and protection. A new sensitivity toward the creation of a “positive” demand should be fostered, for example, calling on consumers to buy products that are “forced labour free”.

### *Establish Comprehensive Policies*

The complexities of the trafficking problem and its global reach requires concerted efforts by relevant entities at the local, national, regional, and international levels. It is vitally important to form partnerships with intergovernmental organisations, governments, NGOs, international organisations, academic communities, legislators, community leaders, and families confronted with trafficking. The expertise, extensive networks, access, and in-depth understanding of local communities should be an integral part of any national response to human trafficking.

### *Assist Countries of Origin and Destination*

Specialised structures have to be established to coordinate the treatment of identified victims in destination and origin countries by assuring the person’s right to remain on the territory of the destination country if applicable according to its legislation; and by providing origin countries upon their

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<sup>120</sup> This is also reflected in the Recommended Principles paragraph (2), which states that: “states have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons. The rehabilitation of victims and the demonstration that justice is done are important elements of an overall anti-trafficking strategy”.

request with any relevant information for the purposes of family tracing and risk assessment.

#### *Implement Effective Monitoring and Evaluation Tools*

All the relevant actors should design appropriate planning, monitoring and evaluation tools, which track progress and identify unintended consequences. A logical framework should be developed to identify outcome indicators and reporting requirements. Inputs and outputs shall be closely monitored at different levels to make sure that policy approaches, built on research and evaluation, become more evidence-based.

#### *More Information About Traffickers*

Data and information about how people come to commit trafficking crimes, their respective roles in networks of traffickers, and their relationships to other criminals and to victims would help identify and prosecute human traffickers and deter potential traffickers.

#### *Collect Reliable Data at the National and International Level*

Research and data collection capacities especially in developing countries have to be built. Moreover, technical guidelines on data collection and storage standards as well as on research methods have to be developed. To facilitate data collection, various agencies need to more actively share data. Different agencies tackling human trafficking have to agree on and use a common typology of data to be collected. A network with a central interchange, acting as a collecting and informative entity on all the research initiatives in this field needs to be established, as well as a data-bank assembling, rationalising and integrating all collected data and materials. Short-term “snapshot” approaches to data collection and research on human trafficking that focus only on one type of exploitation have to be replaced by a longer-term systematic collection of information and research on various types of trafficking.

#### *Fight Human Trafficking Through a Gender Perspective*

Addressing trafficking from a gender perspective, policy makers should acknowledge trafficking in both men and women. They should also address the similarities and differences in the trafficking experiences of women and men, as well as the differential impacts of policies on men and women. A gender perspective distinguishes between the terms “sex” and “gender”; refers to the



relative status and position of men and women, and women's greater disadvantage in most societies; recognises that women's less valued roles can marginalise them, denying them ownership and control over material and non-material resources and forcing them to rely on men; and considers the interaction between gender and the other social categories such as class, race and ethnicity.<sup>121</sup>

#### *Measures to Prevent Re-Victimisation*

Protection of trafficked persons includes a number of measures to avoid re-victimisation: providing residency status or a permit to stay in the country; asylum; granting assistance to victims in the country of destination; providing accommodation, medical support and counselling; ensuring free translation and legal assistance.

#### *Follow Interview Guidelines with Trafficked Persons*<sup>122</sup>

While conducting interviews with potential trafficking victim, it should be kept in mind that they must be treated sensitively and in accordance with their human rights.

#### *Raise Awareness*

Respect for local cultures means finding appropriate ways to raise awareness and seeking innovative approaches to communication, especially so as to reach the widest public possible and to effectively convey the appropriate information.

#### *Reintegration Victims*

The UN Trafficking Protocol calls for further social and reintegration assistance to victims, as well as in other areas such as legal and psychological counselling, housing, education and healthcare needs.

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<sup>121</sup> UNIFEM/UNIAP, *Trafficking in Persons: A Gender and Rights Perspective* (Bangkok: United Nations Development Fund for Women/United Nations Inter-agency Project on Human Trafficking in the Mekong Sub-region, 2002). Available at: <http://unifem-eseasia.org/resources/others/traffikit.pdf> (accessed December 12, 2008).

<sup>122</sup> For more information on this topic, see, among others: ICMPD, *Listening to Victims: Experiences of Identification, Return and Assistance in South-Eastern Europe* (Vienna: International Centre for Migration Policy Development, 2007); B. Mitchels, *Let's Talk: Developing Effective Communication with Child Victims of Abuse and Human Trafficking* (Pristina: UNICEF, 2004).

### *Strengthen Efforts Against Human Trafficking in Peace Support Operations*

Measures to strengthen and combat human trafficking in PSOs are rooted in recent initiatives that aim to ensure that a gender perspective is fully integrated into all aspects of PSOs. The basis for these initiatives is found in UN Security Council Resolution 1325 on Women, Peace and Security, binding on all UN member states. Initiatives that result from this resolution include the establishment of a UN Department of Peace-Keeping Operations Gender Unit with the responsibility for integrating gender issues into all aspects of PSOs, and the deployment of gender advisors or gender focal points into PSOs (for example, to UNAMA, Afghanistan, UNMISSET and East Timor). In addition, a number of mission-specific codes of conduct prohibiting sexual abuse and/or exploitation have been adopted. All of these initiatives offer important entry points for anti-trafficking measures.<sup>123</sup>

### *Involve the Private Sector*

The private sector can make an invaluable preventive contribution by creating opportunities for livelihoods and supporting organisations that prosecute traffickers and protect victims. Through effective collaboration with government agencies, international organisations, non-governmental organisations and the media, information can be disseminated and awareness created among the workforce. Business coalitions can be formed to encourage the adoption of codes of conduct that keep supply chains and human resources free of trafficking. Civil society can be supported through corporate social responsibility initiatives.

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<sup>123</sup> A report on sexual exploitation occurring in peacekeeping missions (A/59/710) was prepared by the Secretary-General's Adviser on this issue, H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein, recommending the establishment of Personnel Conduct Units (PCUs) in the UNDPKO, at UN Headquarters and in existing missions. This recommendation was approved on May 10, 2005. These PCUs address issues such as preventing misconduct, handling complaints and data management and ensuring compliance with United Nations standards of conduct. On the basis of these standards, the Units ensure training on sexual exploitation and abuse. The Units do not conduct investigations, which are handled by the United Nations' Office for Internal Oversight Services (UN OIOS) and other offices. In addition, other measures are in the process of implementation, including a policy on victim assistance, intensified mandatory training of peacekeepers, measures to strengthen leadership accountability, improvements in living conditions and welfare for peacekeeping personnel, as well as amendments to legal agreements with troop-contributing countries and contracts with all peacekeeping personnel to include prohibitions on sexual exploitation and abuse.

## CHAPTER 2

# Human Trafficking & Corruption: Triple Victimisation?

Leslie Holmes

### Introduction

According to one OSCE report, “there is a very strong correlation between trafficking and corruption” and “the trafficking of persons ... flourishes in part through the corruption of public officials”.<sup>1</sup> Yet, in marked contrast to the situation *vis-à-vis* organised crime and trafficking, little has been published on corruption and human trafficking; most references in the literature are general criticisms of this collusion, without any detail.<sup>2</sup> This is primarily because it is so difficult to obtain concrete information on the issue, for a number of reasons.<sup>3</sup>

One is that corrupt officials themselves are not generally willing to talk about their activities. A second is that undercover operations are even more difficult to mount than in the case of narcotics or illicit arms control. All too often, female police officers would actually have to engage in sex work to be convincing as prostitutes (and might be subjected to violence), while male officers would in most countries actually have to have sex with prostitutes if trying to investigate and charge those suspected of trafficking for sexual

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<sup>1</sup> L. Mann and I. Dolea, *OSCE Trial Observation Manual for the Republic of Moldova* (Chisinau: OSCE/ODIHR, 2006), 79; 182.

<sup>2</sup> Surprisingly, the latest UNODC report on trafficking makes no significant reference to the role of corruption in trafficking—see S. Chawla, A. Me and T. le Pichon, eds., *Global Report on Trafficking in Persons* (Vienna: United Nations Office on Drugs and Crime, 2009). I am indebted to the Australian Research Council for funding (ARC Discovery Grant No. DP0558453) that made the research into this topic possible. I also wish to thank Shaorong Baggio, Adam Berryman, Ben Buckland, Kasia Lach, Katya Malinova, Janine Pentzold and Wu Dong Dong for their invaluable research assistance, and the two reviewers of an earlier version of this chapter (Louise Shelley and Mike Dottridge) for their perceptive comments and useful suggestions. All mistakes and interpretations remain my own responsibility, however.

<sup>3</sup> Scattered evidence is available, however. Some is provided in this chapter. For limited and sometimes circumstantial evidence on China, see for example, B. Lintner, *Blood Brothers* (New York: Palgrave Macmillan, 2003), esp. 373–87.

exploitation purposes. In contrast, drug or even weapons stings often involve merely setting up a purchase, not actually taking the drugs or using the weapons. A third factor is that those trafficked are often too traumatised and/or scared to discuss their situation with state authorities. Since police officers sometimes either collude with traffickers or even run trafficking operations themselves (see below for evidence), this is not surprising.<sup>4</sup> Fourth, whereas law enforcement officers and statisticians in most countries are usually willing to provide details on cases involving organised crime gangs, the former typically become coy when asked to provide hard information on corrupt behaviour among their own ranks. This problem is exacerbated when such behaviour relates to human trafficking and collusion with organised crime.

Finally, even researchers have been either slow or reluctant to consider including questions about possible collusion between corrupt officials and traffickers when surveying trafficked persons. For instance, in an otherwise impressively thorough analysis of trafficking in three West European states published in the early-2000s under the aegis of the European Union, the long questionnaires did not include any question directly related to possible corruption.<sup>5</sup> Similarly, a detailed and highly sensitive analysis of children trafficked in South Eastern Europe included no questions directly relating to corruption, and only a few passing references to the possible involvement of corrupt officials.<sup>6</sup>

Yet there is no question that human trafficking could not occur on the scale it does were it not for the complicity and collusion of corrupt officials with criminal gangs. Although the data-deficiencies mean it is impossible to draw a comprehensive picture of the involvement of corrupt officials, the seriousness of this problem renders it vital to sketch at least an incomplete image of the ways in which corruption interacts with trafficking. After all, one important aspect of this issue usually overlooked is that trafficking-related corruption can subject those trafficked to a *double* or even *triple* victimisation and abuse of

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<sup>4</sup> There are many other reasons for this reluctance to report, of course, including fear of imprisonment for breaking immigration, labour and prostitution laws—and violent retribution from the traffickers.

<sup>5</sup> W. Vandekerckhove, Z. Parič, B. Moens, I. Orfano, R. Hopkins, and J. Nijboer, *Research Based on Case Studies of Victims of Trafficking in Human Beings in 3 EU Member States, i.e. Belgium, Italy and The Netherlands* (Brussels: Commission of the European Communities DG Justice and Home Affairs, 2003): esp. Annexes 1–3 (unpaginated, but beginning on what is page 347).

<sup>6</sup> M. Dottridge, *Action to Prevent Child Trafficking in South Eastern Europe: A Preliminary Assessment* (Geneva and Le Mont sur Lausanne: UNICEF and Terre des Hommes Foundation, 2006), esp. 12; 22; 23; 43; 46 and 73–89 (questionnaire). Apparently, some of the children interviewed for this project did provide evidence of the involvement of corrupt officials in their responses; but this was not included in the report.

human rights.<sup>7</sup> All too often, they are victims not only of criminal gangs, but also of officials who cannot be trusted to help them counter the first form of victimisation. And if states turn a blind eye to their own officers' corrupt involvement in trafficking and/or treat trafficked persons as criminals rather than victims, there is a third form of victimisation.

This chapter provides evidence of both alleged and confirmed involvement of corrupt officials in trafficking from various parts of the world. It identifies the types of officials involved and how they operate. This includes consideration of the ways in which corrupt officials can impact upon trafficking indirectly as well as directly, so that the scale of trafficking-related corruption is *larger* than is commonly assumed. Importantly, it then makes concrete policy proposals for combating corruption as this relates to human trafficking; merely understanding the problem is not enough.

Before considering the limited evidence, however, some important definitional points need to be made. The most common definition of corruption is one used by the World Bank—"the abuse of public office for private gain"—or else something very similar (for example, "the use of public office for private advantage"). In recent times, there has been a debate about the meaning of public office, with some observers arguing that it can include positions in the private sector. In line with more traditional approaches, it is maintained here that corruption must involve officers of the state, which is how the term public officials is understood in this chapter.<sup>8</sup> Thus improper business-to-business activity that does not involve officers of the state is excluded from this approach.<sup>9</sup>

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<sup>7</sup> I am indebted to Dr. Stephanie Schwandner-Sievers for having encouraged me to develop this concept.

<sup>8</sup> The spread of neo-liberalism since the end of the 1970s has blurred the distinction between the private and public sectors. One of the main areas in which this blurring is obvious is in out-sourcing—i.e. where states now pay private agencies to perform tasks that had previously been performed by officers of the state. The approach adopted here is to include under the term "public officials" those private contractors who are performing "responsible" tasks—involving authority, typically legal or military—on behalf of the state. Thus soldiers or prison wardens employed by private companies but contracted to work for states could in this approach be corrupt, whereas state-employed canteen workers in a prison could not. This example highlights well the problems in demarcating "public office", as well as the fact that some decisions on which posts to include must ultimately be subjective and somewhat arbitrary.

<sup>9</sup> Until the end of the 1990s, the interpretation of corruption adopted here was also that of the world's leading international anti-corruption NGO, Transparency International (TI). But TI opted with effect from 2000 to include under the term corruption examples of improper behaviour that occur exclusively within the private sector (which we prefer to call corporate crime). Its current definition of corruption is thus "the misuse of entrusted power for private gain." Unfortunately, however, TI is inconsistent in its definition, since some of its indices—notably the annual Corruption Perceptions Index (CPI)—are *still* based on the original definition (i.e. state officials must be involved—the definition used for the CPI is precisely that presented above as the most common definition). Another expert who now prefers to

In this sense, our definition is at the narrower end of the spectrum. But from another perspective, the interpretation of corruption employed here is broader than usual. This is because it includes behaviour by public officials that is not *necessarily* illegal in any formal sense, nor even very conscious—but which is condemned and seen as highly improper by large sections of the population. In the vernacular, it relates to activity that is perceived by many as seriously inappropriate behaviour by officers of the state. For example, officials who have in some way been involved in trafficking, but who cannot be prosecuted for this because of political immunity, will still be treated in this analysis as corrupt. Similarly, if state officials employ foreign domestic help at very low rates, without bothering to check their papers and background when they know they should, this is treated here as corrupt behaviour. This is in line with the so-called “sunlight test” in corruption analysis, whereby officials who are uncertain as to whether a particular action in which they are engaging is corrupt or not choose not to check, for fear that the result might be against their own interests. This avoidance means that they fail the sunlight test, since they are not willing to expose their questionable behaviour to public scrutiny. Conversely, cases in which a criminal gang provides information to law enforcement agencies about other trafficking gangs in return for warnings about an imminent raid or investigation are not treated here as corruption—unless any of the law enforcement agents personally benefit from this—since the state’s officers’ questionable behaviour is intended to maximise public benefit, not improperly reward individual officers.<sup>10</sup>

**Box 1: Ways in Which Officials Can Be Corruptly Involved in Trafficking**

A. Direct ways

- i. Running a trafficking operation
- ii. Consciously participating in a trafficking operation run by a criminal gang. Collusion may involve alerting the gang to forthcoming raids, turning a blind eye during border crossings, illegally providing relevant state paperwork such as visas, or helping traffickers regain control of

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include corporate crime under corruption is Daniel Kaufmann, who was until the end of 2008 the leading light in the World Bank Institute (Governance and Anti-Corruption)—see D. Kaufmann and P. Vicente, “Legal Corruption—2<sup>nd</sup> Draft” The World Bank, [http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/Legal\\_Corruption.pdf](http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/Legal_Corruption.pdf) (accessed January 5, 2009). While disagreeing with Kaufmann on this issue, it will be obvious from the following text that I strongly agree with him that not all corruption is illegal.

<sup>10</sup> See A. Schloenhardt, “Organized Crime and the Business of Migrant Trafficking,” *Crime, Law and Social Change*, 32, no. 3 (1999) esp. 210.

victims who have escaped.

- iii. Running activities that involve trafficking (for example, prostitution, forced labour, begging)
- iv. Consciously participating in activities run by a criminal gang that involve trafficking (for example, prostitution, forced labour, begging). This may involve alerting the gang to forthcoming raids, or illegally providing relevant state paperwork such as work permits.

B. Indirect ways

- i. Using persons known to be or suspected of having been trafficked (for example, in prostitution, in domestic help)
- ii. Refusing to investigate allegations of trafficking
- iii. Supportive involvement in passing legislation that is conducive to trafficking
- iv. Supportive involvement in refusing to pass legislation designed to curb trafficking.

In all of the above cases, there must be proof or a realistic assumption that the state official intends to benefit from his/her action or inaction for that action or inaction to constitute corruption. Whereas this is obvious in the activities listed in Section A, it is less so in activities listed in Section B, requiring further elaboration. If, for example, a parliamentarian votes against a bill designed to criminalise the use of trafficked women for sexual purposes or trafficked persons working in agriculture primarily because he or she has been given or promised a bribe (an example of “state capture” activity), this constitutes corruption relating to trafficking. If, on the other hand, parliamentarians vote against the bill primarily because of their own values, not any received or promised reward, their action can be described as *conducive* to trafficking, but not actually corrupt.

## 1. Scattered Evidence

While details on actual cases are scarce, a “patchwork quilt” can be created using the scattered evidence available from various parts of the world. This said, my own research focus on Central and Eastern Europe (CEE) and the Commonwealth of Independent States (CIS) means there will be more evidence from there than from elsewhere. But since the OSCE identified CEE and the CIS in the late-1990s as the world’s fastest-growing source region for trafficked people, this focus is justifiable.<sup>11</sup> Citing actual cases provides information on the kinds of officials involved; how they interact with criminal gangs involved in trafficking; whether or not they ever operate independently of organised crime gangs; and how they are dealt with by the authorities.

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<sup>11</sup> OSCE/ODIHR, *Trafficking in Human Beings: Implications for the OSCE* (Warsaw: ODIHR, 1999), 5.

Sally Stoecker and Louise Shelley argue that the trafficking of women for the purposes of prostitution was “primarily an Asian phenomenon” until the end of the 1980s.<sup>12</sup> Thus, while there was unquestionably plenty of trafficking elsewhere, including much internal trafficking (i.e. within a given country), Asia is an appropriate continent in which to start our analysis. Between June 2004 and June 2006, Bangladesh prosecuted eight officials for complicity in trafficking.<sup>13</sup> In 2006, the former Deputy Director of the Police Anti-Human Trafficking and Juvenile Protection Department in Cambodia was convicted for involvement in trafficking and received a five-year prison sentence; two of his subordinates were also convicted, and were sentenced to seven years’ imprisonment. In the same year, two military officers and a member of the military police were arrested for running brothels and trafficking; one received a five-year suspended sentence and was fined the equivalent of approximately US\$1,250.<sup>14</sup>

According to the then head of Khabarovsk’s Border Patrol Unit, Chinese police officers are directly involved in the trafficking of Russian women. The Russian official alleged in 2000 that there were cases of Russian women trying to escape from Chinese brothels by approaching the Chinese police, only to find that the latter either returned them to their brothels or else sold them to other brothels.<sup>15</sup> However, despite on one level fulfilling public promises to deal firmly with corruption *generally*, by both prosecuting and convicting large numbers of officials,<sup>16</sup> the Chinese authorities appear seldom if ever to prosecute officials for corruption relating directly to trafficking, as distinct from people smuggling.<sup>17</sup> A rare exception to this, though it occurred in Hong

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<sup>12</sup> S. Stoecker and L. Shelley, “Introduction” in *Human Traffic and Transnational Crime: Eurasian and American Perspectives*, ed. S. Stoecker and L. Shelley, (Lanham MD: Rowman and Littlefield, 2005), 1.

<sup>13</sup> US Department of State, *Trafficking in Persons Report* (hereafter *TiPR*) *June 2006* (Washington DC: US Department of State, 2006), 68.

<sup>14</sup> Department of State, *TiPR 2007*, 74.

<sup>15</sup> L. Erokhina, “Trafficking in Women in the Russian Far East: A Real or Imaginary Phenomenon?” in *Human Traffic and Transnational Crime: Eurasian and American Perspectives*, ed. S. Stoecker and L. Shelley, (Lanham MD: Rowman and Littlefield, 2005), 91-2.

<sup>16</sup> For instance, 136,161 officials were punished in China in 2001 for “graft, bribery or misconduct” (*People’s Daily Online*, January 2, 2002—accessed September 18, 2003)—while the number of Communist party cadres disciplined in 2004 for corruption was 164,831 (*People’s Daily Online*, February 16, 2005—accessed October 3, 2005).

<sup>17</sup> The Deputy Chairman of Changle (in Fujian Province) Municipal Committee of the Chinese People’s Political Consultative Committee was in 2001 sentenced to three years’ imprisonment and a substantial fine for his direct involvement in people smuggling—*China News Network*, March 19, 2001; Huang Rui, “A Probe into Transnational ‘People Smuggling’ on the Coast of Fujian Province,” [in Chinese] *Journal of Shandong Public Security College* 67, no.1 (2003), 87.



Kong rather than Communist China itself, was the 2005 sentencing of a police sergeant for tipping off Mongkok-based brothels about impending police raids.<sup>18</sup> Similarly, Russia does prosecute a number of officials for corruption—but, relative to the perceived problems and reports from NGOs, not nearly enough in the area of trafficking.<sup>19</sup> However, corruption unquestionably plays a role in Russian trafficking. In June 2005, for instance, a Russian narcotics enforcement officer was investigated for allegedly selling Uzbek migrants to traffickers for some US\$15 each. Life is very cheap in some parts of the world.<sup>20</sup>

Since the collapse of most of the communist bloc in the late-1980s/early-1990s, there has been a huge increase in the number of people—mostly women, but also some men and an increasing number of children—trafficked from CEE and the CIS to Western Europe, East Asia and elsewhere. As in other parts of the world, there is still relatively little hard evidence on the involvement of corrupt officials in this. But there are plenty of general references to corruption and sex-related trafficking, including from officials in post-communist states. For example, the head of the ten-person police unit formed in Moscow in the late-1990s to counter prostitution, Viktor Yegorin, “noted that the unit’s efforts to reduce prostitution were undermined by police corruption. The police accept bribes to assist the women in getting residence permits and to ignore the prostitution.”<sup>21</sup> But *detailed* concrete information is still difficult to obtain.

This said, evidence from Poland, Lithuania, successor states to the former Yugoslavia and (East) Germany is cited here. Thus, in April 2001, the trial began in the Polish town of Gorzów of an organised crime gang accused of trafficking some 600 undocumented migrants to Germany; among the accused were six Polish border guards.<sup>22</sup> Then in May 2006, Polish media reported the case of two Polish police officers from Wrocław who had engaged in the selling of women to escort agencies in Vienna (Austria) for between 1000 and 1500 Euros each. They collaborated in this activity with a female prostitute from Wrocław and a Polish male living in Vienna. By the time of their arrests,

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<sup>18</sup> *People’s Daily Online*, 12 May 2005 (accessed October 3, 2005); the sentence was three years’ imprisonment.

<sup>19</sup> Department of State, *TiPR 2006*, 211.

<sup>20</sup> *Ibid.*

<sup>21</sup> Donna Hughes, *Trafficking for Sexual Exploitation: The Case of the Russian Federation* (Geneva: International Organization for Migration, 2002), 22.

<sup>22</sup> *Gazeta Wyborcza*, April 29, 2001. In September 2002, two border guards working on the Polish border with Lithuania were acquitted of involvement in the trafficking of 113 Asians into Poland; the court considered the evidence against them suggestive but not conclusive (*Gazeta Wyborcza*, September 9, 2002).

the police officers had been involved in the trafficking of 440 women, of whom 150 were from Poland (many of the others were apparently Romanian).<sup>23</sup> A final example reported in the Polish press in March 2004 reveals that not all trafficking involving corrupt officials is transnational. Thus a police sergeant from Katowice recruited teenage girls from a child shelter, and supplied them to a local gang in return for free use of the girls for sexual purposes.<sup>24</sup> However, as of the end of 2006, no Polish police officers or other officers of the state had been convicted for involvement in trafficking.<sup>25</sup>

Other CEE and CIS countries that are to be commended for having recently clamped down much harder on civilian traffickers still appear not to be taking the issue of complicit corrupt officials seriously enough; examples include Armenia and Belarus.<sup>26</sup> As in the cases of China and Russia cited above, even countries that do prosecute reasonably large numbers of officials for corruption do not always focus on trafficking; Czechia is an example.<sup>27</sup> One exception to this is Lithuania, which *has* in the past convicted corrupt officials involved in trafficking. In 2002, Lithuanian authorities sentenced six former police officers to between three and seven years' imprisonment for their involvement in trafficking, extortion and pimping. This was a marked increase on the previous year, when only one former police officer was convicted.<sup>28</sup> However, one of the police officers had his sentence reduced in 2003 from seven years' imprisonment to two years' probation, which might send an unfortunate message to other corrupt or potentially corrupt officers.<sup>29</sup> Moreover, there do not appear to have been any convictions since Lithuania joined the EU (May 2004). It would be reassuring to have it confirmed explicitly that this is because there were no allegations and no evidence, rather than a reflection of lower levels of concern once EU membership had been achieved.

The successor states of former Yugoslavia provide some of the most detailed evidence on the involvement of corrupt officials in trafficking. However, while there is plenty of evidence of corrupt police officers being involved in

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<sup>23</sup> K. Łagowska, "Policjanci sprzedawali kobiety do agencji towarzyskich," *Gazeta Wyborcza*, May 12, 2006.

<sup>24</sup> "Policjant nakłaniał nastolatki do prostytucji," *Gazeta Wyborcza*, March 24, 2004.

<sup>25</sup> Department of State, *TiPR 2007*, 171.

<sup>26</sup> Department of State, *TiPR 2006*, 62; 69.

<sup>27</sup> *Ibid.*, 104.

<sup>28</sup> Department of State, *TiPR 2002*, 71; Department of State, *TiPR 2003*, 98.

<sup>29</sup> Department of State, *TiPR 2004*, 155. Admittedly, the sentence was reduced because of insufficient evidence; but in this case, it is unclear why the heavier sentence was imposed in the first place.

trafficking in various ways, there are very few prosecutions.<sup>30</sup> A relatively straightforward case is of a police officer from Banja Luka (Bosnia and Herzegovina) who was sentenced in 2001 to fifteen months' imprisonment for being directly involved in the smuggling of people across international borders for the purposes of trafficking.<sup>31</sup> In 2006, two police officers in the Republic of Macedonia were convicted of crimes relating to trafficking.<sup>32</sup> This figure was down on the number of corrupt officials convicted in 2003, when "several government officials and police officers" were convicted for corruption relating to trafficking, and a police inspector was convicted for selling information regarding a forthcoming trafficking raid.<sup>33</sup> The Republic of Macedonia has been convicting corrupt officials for involvement in trafficking since at least 2002.<sup>34</sup>

But it is not only domestic state officials who are involved in trafficking. There is considerable evidence that some international peacekeepers in Bosnia have both used prostitutes they knew had been trafficked and been directly involved in their trafficking.<sup>35</sup> Moreover, interviews and surveys reveal that many officials of state organisations and IOs have not appreciated until recently the potential significance of the involvement of peacekeepers in trafficking, failing to "understand the security implications of both human rights abuses and the unwitting support of organised crime".<sup>36</sup>

Next door to former Yugoslavia, Albania has also witnessed cases of corrupt officials involved in trafficking. In 2006, for example, five state officers (a policeman and four border police officers) were arrested for various crimes

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<sup>30</sup> For detailed evidence of police involvement see M. Vandenberg, "Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution," *Human Rights Watch* 14, no.9.D (2002), 26-34. See too M. Vandenberg, "Peacekeeping and Rule Breaking: United Nations Anti-Trafficking Policy in Bosnia and Herzegovina" in *Human Trafficking, Human Security, and the Balkans* ed. H. R. Friman and S. Reich (Pittsburgh: University of Pittsburgh Press, 2007), 81-95.

<sup>31</sup> *Ibid.*, 37; n.180.

<sup>32</sup> Department of State, *TiPR 2007*, 140.

<sup>33</sup> Department of State, *TiPR 2004*, 157.

<sup>34</sup> Department of State, *TiPR 2003*, 100.

<sup>35</sup> For evidence of UN peacekeepers and other officials using prostitutes in former Yugoslavia see C. Corrin, "Transitional Road for Traffic: Analysing Trafficking in Women From and Through Central and Eastern Europe," *Europe-Asia Studies* 57, no. 4 (2005), 543-60.

<sup>36</sup> S. Mendelson, *Barracks and Brothels: Peacekeepers and Human Trafficking in the Balkans* (Washington DC: CSIS Press, 2005), 4. See also esp. pages 19-68 for concrete evidence both of corrupt involvement in trafficking and of the disturbing attitudes of many officials in the US military, NATO and the UN. The situation appears to have improved by the mid-2000s, at least in some parts of the world—see Keith J. Allred's analysis of peacekeepers in chapter 8 of this collection.

relating to corrupt involvement in trafficking.<sup>37</sup> In the following year, twelve police officers in Albania were charged with involvement in trafficking.<sup>38</sup> Another post-communist state that has acknowledged the involvement of corrupt officials in trafficking is Moldova where, in August 2006, several senior government officials—including the Deputy Director of the Centre for Combating Trafficking in Persons—were dismissed from their posts for assisting a well-known trafficking syndicate; but none was prosecuted.<sup>39</sup>

Turning to Western Europe—although Germany may still enjoy a relatively clean image in the minds of many, its record in terms of human trafficking is far from pristine. That corruption occurs at the highest levels in Germany has been evident for many years, with the Flick scandal of the 1980s and the “Kohlgate” scandal of the late-1990s/early-2000s being the best-known examples. But a significant trafficking-related scandal broke in Leipzig in 2007, when it was alleged that senior local politicians had knowingly been using trafficked female and child prostitutes. The press in Leipzig had for some years been reporting on prostitution in the city.<sup>40</sup> By early-1993, it was reporting on under-age prostitutes in local brothels, of which the best known was the “Jasmin” brothel. For instance, reports in the *Leipziger Volkszeitung* in January and February provided details on four girls aged between thirteen and sixteen years who had been forcibly prostituted.<sup>41</sup> By early-February, a police officer had been arrested for allegedly forcing a fifteen-year old Turkish girl to work as a prostitute in one of the local brothels—the same one (Jasmin) in which the other girls had been discovered days before.<sup>42</sup> He went on trial on charges of “furthering sexual activities with an under-age person and human trafficking” in January 1994.<sup>43</sup>

Disturbing though this already was, the whole case became far more significant in the late-Spring of 2007, when first local, then national newspapers and other media began to provide details on a case that allegedly involved senior Saxon politicians, justice officials, intelligence officers and police officers colluding

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<sup>37</sup> Department of State, *TiPR 2007*, 52.

<sup>38</sup> Department of State, *TiPR 2008*, 54.

<sup>39</sup> *Ibid.*, 150.

<sup>40</sup> See, for example, “Ein Bordell in Leipzig,” *Leipziger Volkszeitung*, April 17, 1991.

<sup>41</sup> “Minderjährige in Leipziger Bordell” and “Bordell der ‘kleinen Mädchen’ aufgefliegen,” *Leipziger Volkszeitung*, January, 30–31, 1993; “Mädchen ins Bordell,” *Leipziger Volkszeitung*, February 11, 1993.

<sup>42</sup> “Polizist brachte Mädchen ins Bordell,” *Leipziger Volkszeitung*, February 11, 1993.

<sup>43</sup> S. Kreuz, “Der Zuhälter vom Mädchen-Bordell ‘Jasmin’ vor Gericht,” *Leipziger Volkszeitung*, January 26, 1994.

with organised crime gangs in child prostitution, bribery, cover-ups and interference in investigations and trials. By June 2007, even Chancellor Merkel's Chief-of-Staff and coordinator of German intelligence services, Thomas de Maiziere, had been implicated. He had been Saxon Interior Minister in 2004-5, and was accused of having failed to initiate investigations when the evidence of corruption was strong.<sup>44</sup> By August 2007, Saxony's Minister of the Interior was claiming that a considerable amount of misinformation had been disseminated about the Leipzig case, and that he had been deceived by several senior officials about the nature and extent of the corruption/trafficking scandal.<sup>45</sup> However, while some aspects of the case may have been exaggerated by the media, there is ample evidence that some public officials in Saxony were both directly and indirectly involved in trafficking.

The focus so far has mainly been on active involvement of corrupt officials in trafficking, either in collusion with organised crime gangs, or in their own right. But some corrupt officials are involved in trafficking in a more inactive way—notably “turning a blind eye” in return for pay-offs.<sup>46</sup> Such involvement still represents direct and conscious involvement, however. Yet there are also ways in which state officials can contribute less directly to the crime of trafficking. One is through the use or abuse of immunity. Thus diplomats sometimes use trafficked persons as domestic helps, without checking their employees' backgrounds. Even if such diplomats are not fully aware of the trafficking background of the person they employ, they do know about the suspicious circumstances under which their domestics entered their service, and are fully aware that they need not concern themselves about trafficking implications because of diplomatic immunity—in most countries, at least.<sup>47</sup> However, some Western states are now beginning to tighten up in this area. Belgium is a good example. In the two-year period 2004 and 2005, Belgium's

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<sup>44</sup> “German State Corruption Scandal Takes First Victim,” *Deutsche Welle* online, June 13, 2007, <http://www.dw-world.de/dw/article/0,2144,2607523,00.html> (accessed March 12, 2009); “Merkel's Chief of Staff under Pressure,” *Spiegel Online International*, June 12, 2007, <http://www.spiegel.de/international/germany/0,1518,488054,00.html> (accessed March 12, 2009); “Mafiöse Strukturen im ‘Leipziger Sumpf?’” *tagesschau.de*, June 14, 2007, <http://www.tagesschau.de/inland/meldung22150.html> (all accessed July 25, 2008); “CDU-Politiker nehmen Kanzleramtschef de Maizière ins Visier,” *Spiegel-Online*, June 7, 2007, <http://www.spiegel.de/politik/deutschland/0,1518,487312,00.html> (accessed January 9, 2009).

<sup>45</sup> “Sachsens Innenminister will von Mafia-Rede nichts mehr wissen,” *Spiegel-Online*, August 7, 2007, <http://www.spiegel.de/politik/deutschland/0,1518,498636,00.html> (accessed January 9, 2009).

<sup>46</sup> L. Douglas, “Sex Trafficking in Cambodia” (working paper 122, Monash Asia Institute, Clayton, 2003), 4.

<sup>47</sup> *OSCE/ODIHR, Trafficking in Human Beings*, 21.

Ministry of Foreign Affairs issued ten sanctions and twenty letters of intent to sanction against diplomats for alleged use of forced or bonded labour.<sup>48</sup>

The type of case just referred to makes it clear that not all trafficking is primarily for the purposes of sexual exploitation. Indeed, while a majority of commentators assume that most trafficking relates to the sex industry, there is evidence to suggest that such a perception might be misguided, in some countries at least. Empirical research suggests that there is more trafficking into Russia of seasonal migrant workers (primarily for agriculture) than of women for sexual exploitation, for instance.<sup>49</sup> While one recent major research project into child trafficking in twenty-five countries indicates that the most common reason for it *is* sexual exploitation, many children are trafficked instead for the purposes of street begging, working in sweat-shops, and engaging in crime (for example, pick-pocketing).<sup>50</sup>

Having provided evidence of the existence of a problem that has been almost neglected by researchers and governments, we can begin to identify certain patterns and high-risk situations. Wherever there are relatively closed national borders, there is the potential for corruption among customs officers and border guards. This is particularly so between very unequal countries with different standards of living and opportunities; the more affluent and attractive country will act as a powerful magnet to citizens from poorer countries. All this plays into the hands of transnational traffickers, who will often seek to minimise their risks by paying corrupt border officials to ensure smooth passage of their “goods”, whatever these may be. While the borders *within* Europe’s Schengen zone have become much more open in recent years, those at the edges of the zone have become more difficult to cross, leading many observers to refer to “Fortress Europe”. Misha Glenny has argued that it is precisely West European restrictions on labour movement by citizens of non-EU states that encourage

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<sup>48</sup> Department of State, *TiPR 2006*, 71.

<sup>49</sup> E. Tyuryukanova, *Forced Labour in the Russian Federation Today: Irregular Migration and Trafficking in Human Beings* (Geneva: International Labour Office, 2005); the original version is E. Tyuryukanova, *Prinuditel'nyi Trud v Sovremennoi Rossii: Nereguliruemaya Migratsiya i Torgovlya Lyud'mi* (Geneva: International Labour Office 2004), a 2nd edition of which was published (in Russian) in 2006.

<sup>50</sup> AGIS 2005, Bundesministerium für Inneres Republik Österreich, and International Organization for Migration, *Comprehensive Training for Law Enforcement Authorities Responsible for Child Trafficking/Minors* (Vienna: AGIS, BM.I, IOM, 2005), 3.

illegal migration;<sup>51</sup> this obviously overlaps with both people smuggling and human trafficking.<sup>52</sup>

But Western Europe is by no means the only part of the world in which powerful “pull” factors operate. Another is the US. Peter Andreas is among those who argue that the liberalisation of trade across the US-Mexico border (with the creation of NAFTA) has been accompanied by at least the rhetoric of much tougher border controls.<sup>53</sup> Ironically, this has in turn *increased* the propensity of traffickers to seek to corrupt officials on both sides of the border, so that they can continue conducting their activities under more difficult conditions.

Another group of state officials at risk of being corrupted in the context of people smuggling and human trafficking is that responsible for issuing passports or visas. In June 2008, a senior officer from Australia’s immigration department was sentenced in Sydney to nine months’ imprisonment for corruptly approving 110 applications for illegal migration by Chinese nationals in the period 1996-2000. While it is not clear whether or not this involved trafficking, this kind of post is certainly conducive to that (see Box 2).<sup>54</sup> A more clearcut example of this type of involvement by a corrupt official is of a Czech national working in the US Embassy in Prague who was discovered in the 1990s to have been improperly issuing B1 (business) and B2 (tourist) visas to the US in return for bribes from a Czech organised crime gang.<sup>55</sup>

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<sup>51</sup> M. Glenny, “Migration Policies of Western European Governments and the Fight against Organized Crime in SEE,” in *Fighting Organized Crime in Southeast Europe* ed. E. Athanassopoulou, (Abingdon: Routledge, 2005), 34–40.

<sup>52</sup> For the distinctions between people smuggling and human trafficking, see chapter 4 (by Benjamin S. Buckland).

<sup>53</sup> P. Andreas, *Border Games: Policing the U.S.-Mexico Divide* (Ithaca NY: Cornell University Press, 2000). See too R. Maril, *Patrolling Chaos: The U.S. Border Patrol in Deep South Texas* (Lubbock: Texas Tech University Press, 2004).

<sup>54</sup> *Sydney Morning Herald*, June 4, 2008. For allegations of German officials in the Embassy in Chisinau (Moldova) being dismissed for corruptly selling visas see E. Wood, “EU Visas for Sale in Moldova,” *Tiraspol Times*, May 17, 2007, 1. Similar allegations of the corrupt sale of visas made against Romanian Embassy officials in the same city can be found in *The Diplomat—Bucharest*, September 2007, [http://www.thediplomat.ro/news\\_review\\_0907.php](http://www.thediplomat.ro/news_review_0907.php) (accessed August 20, 2008).

<sup>55</sup> A. O’Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime* (Washington DC: Center for the Study of Intelligence [CIA], 2000), 8.

## Box 2: Corruption in Migration Services

Two trafficking-related aspects of corruption to have been particularly under-researched are the role of corrupt officials in embassies and consulates in source-countries, and in immigration departments in destination-countries. Unfortunately, this gap is not because the problems do not exist, or because they arise only rarely, but rather because of the paucity of concrete information. Nevertheless, a few examples of both types of trafficking-related corruption soon demonstrate that the problems exist and may be all too common.

### Corruption in embassies and consulates

In August 2001, the **French** Ministry for Foreign and European Affairs confirmed that investigations were underway in eight French embassies after it was acknowledged that thousands—some claim up to 25,000, though this figure sounds unrealistically high—of visas had been issued in **Sofia** to Bulgarian prostitutes. In itself, this constitutes corruption relating to illegal immigration and prostitution, if not directly to trafficking. However, a police investigator acknowledged that it was quite possible that organised crime was involved in the scam; since organised crime's involvement in prostitution is so frequently in the form of trafficking, the circumstantial evidence that corrupt officials were involved in corruption is strong (*Guardian*, August 28, 2001). And the French Embassy was apparently not the only West European embassy in **Sofia** in which corrupt officials were involved at least in people smuggling, and possibly in human trafficking. Thus a senior official at the **Belgian** Embassy was accused of developing a number of front companies in Belgium that would issue fake work invitations—for a fee of up to €4230—to Bulgarians that could then be used to obtain Belgian work visas.<sup>56</sup>

A more clear-cut case of corruption relating to human trafficking came to light in April and May 2006 at the **Swiss** embassy in **Islamabad** (Pakistan). According to officials of the Swiss Federal Department of Foreign Affairs, Pakistani organised crime gangs involved in human trafficking had almost certainly infiltrated the visa section of the Islamabad embassy and corrupted officials. In the words of Swiss Foreign Minister Micheline Calmy-Rey, "We have little doubt that we have been targeted by criminal networks engaged in human trafficking." Apparently, one of the channels used by the gangs was Pakistani travel agencies. As a result of an investigation conducted by Swiss specialists on people smuggling, at least 100 cases of visa fraud were uncovered, and the visa section in Islamabad was completely closed for some time. It was not re-opened until the entire staff of the embassy had been replaced; the staff of the Swiss consulate in Karachi was also replaced. The Swiss authorities quickly learnt lessons from this case. They engaged in risk assessments of all their embassies and consulates, and by the end of 2006 had identified thirty-three in which the dangers of corruption among visa-officials were particularly acute. Fourteen of these were in Asia (including Beijing and Mumbai), ten in Africa, and five in Eastern Europe (including Moscow, Belgrade and Pristina). The Swiss authorities also responded to suggestions that part of the reason for the problem was staff overload because of staff cutbacks. Staff numbers at various embassies were increased in response.<sup>57</sup>

<sup>56</sup> Crimes Against Persons Unit, *Trafficking of Women and Children for Sexual Exploitation in the EU: The Involvement of Western Balkans Organised Crime 2006—Public Version* (The Hague: Europol, 2007), 22.

<sup>57</sup> All from *BBC Worldwide Monitoring*, May 1, 6, 7 and 19, 2006, December 10, 2006; *swissinfo.ch* May 3, 2006; *Daily Times* [Pakistan], April 28, 2006.



### Corruption in immigration departments

It has been suggested that officials in immigration departments in some Western states have sought bribes and/or sex in return for visas. Again, such corruption is not *explicitly* related to human trafficking. However, its existence does indicate the willingness of some officials to provide visas corruptly, which unquestionably plays into the hands of traffickers. One of the best-known cases in recent years relates to the Immigration and Nationality Directorate's Lunar House in Croydon (South London), which was widely publicised in the UK in 2006. An investigation revealed that several immigration officers at the centre, displaying a "laddish culture", had improperly bypassed normal appointment procedures and expedited the applications of attractive females, while *The Times* claimed that the Home Office had revealed that three immigration officials had had sex with visa applicants and had been arrested.<sup>58</sup> According to some British media, immigration minister Tony McNulty lost his ministerial post in part because of poor handling of the case.<sup>59</sup>

The police are also all too often involved in assisting traffickers. One Thai trafficker claimed that another trafficker had paid Thai police some US\$12,000 in bribes in return for their "turning a blind eye" to the fact that he had been caught with some 300 passports. Other cases from Thailand indicate that police there have also extorted bribes from applicants for US visas whose passports are counterfeited or else have been illegally modified (usually through changing the photograph).<sup>60</sup> Yet another way in which the police can be involved in trafficking is in alerting owners of brothels, karaoke bars and other locations in which there are trafficked women to impending raids; there have been allegations against police officers in New Orleans (US) for this form of involvement.<sup>61</sup> Some police officers are only "grass-eaters" (i.e. they will accept bribes if offered). But others are more predatory—"meat-eaters"—and will seek revenge on traffickers who do not pay the bribes the officers demand. Thus, some members of the Mexican "Grupo Beta" police team were allegedly demanding between \$200 and \$500 per time during the 1990s to allow human traffickers and people-smugglers to take people across the border with the US, and would not only imprison (for two to three days) traffickers who refused to pay, but would also sell their human "cargoes" to other traffickers for \$50 per person.<sup>62</sup>

<sup>58</sup> *The Times*, March 15 and 16, 2006; *The Independent*, May, 21 2006; *The Observer*, May 28, 2006.

<sup>59</sup> For example, *The Scotsman*, May 23, 2006; *The Sun*, May 25, 2006; *The Independent*, June 10, 2006.

<sup>60</sup> O'Neill Richard, *International Trafficking in Women*, 8. For a detailed analysis of how some police officers in Thailand corruptly collude in human trafficking and prostitution more generally see Pasuk Phongpaichit, Sunghsidh Piriyaarangsana and Nualnoi Treerat, *Guns, Girls, Gambling, Ganja* (Chiang Mai: Silkworm, 1998), esp. 155–214.

<sup>61</sup> O'Neill Richard, *International Trafficking in Women*, 15.

<sup>62</sup> *Ibid.*, 17.

While concrete evidence on this is hard to come by, there have certainly been allegations that state officials have been involved in trafficking through selling children from orphanages to procurers.<sup>63</sup> And it seems that prosecutors can sometimes be bought off by crime gangs of traffickers; there are allegations of this in Russia, for instance.<sup>64</sup>

What conclusions can be drawn from the cases cited?

- There is no question that officials in all types of system, including affluent ones, are sometimes tempted to become involved in trafficking. This said, the incomplete evidence available suggests that the problem is usually worse in poorer countries.
- We have concrete evidence only of relatively small numbers of officials being directly involved in trafficking. But this is just the tip of an iceberg, and is explained largely by the difficulties involved in investigating such activities. As the global economic crisis that began in 2008 demonstrates, much improper and even illegal behaviour—in this case by corporate executives—can occur for many years before it eventually comes to light. However, prolonged near-invisibility does not mean that a phenomenon is not occurring. Rather, it often indicates that those engaged in some forms of crime are much better at hiding their activities than those involved in more overt crimes with more visible victims.
- While many corrupt officers collude with criminal gangs in the trafficking process, some operate in their own right.
- Although it seems that it is primarily law enforcement officers of various kinds who are most prone to become directly involved in the actual trafficking process, other officers of the state contribute to trafficking by using the services of prostitutes they know or should suspect have been trafficked; some peacekeeping forces are an obvious example. This constitutes corruption as defined at the beginning of this analysis.
- Finally, evidence from around the world and all types of system indicate that far too many state authorities are typically either unwilling or feel unable to prosecute corrupt officials involved in trafficking. Indeed, many countries have only recently made human trafficking a

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<sup>63</sup> OSCE/ODIHR *Trafficking in Human Beings*, 12.

<sup>64</sup> Department of State, *TiPR 2006*, 211.

punishable crime. This was the case in Russia, for example, until President Putin pushed through an amendment to the Russian Criminal Code in December 2003—although even this was not finally ratified by the *Duma* (legislature) until March 2004. In fact, of the 155 countries and territories covered in the 2009 UNODC *Global Report on Trafficking*, only just over one third had formally criminalised human trafficking as of 2003. Fortunately, this figure had soared to almost 80 per cent by the end of 2008, though several states—particularly in Africa—still had no anti-trafficking legislation.<sup>65</sup>

## 2. Public Perceptions

While there is no shortage of survey material on public and business attitudes towards, and experience of, corruption generally, and some—though much less—on organised crime, there is very little survey data on public perceptions of and attitudes towards trafficking, particularly towards corruption and trafficking.<sup>66</sup> But surveys conducted on behalf of the author in three states (Germany, Italy and Poland) in 2006 provide limited insights into attitudes toward these phenomena in parts of Europe. It must be emphasised that the survey was intended to discover attitudes and beliefs towards people smuggling generally, as distinct from human trafficking more specifically. However, and despite the fact that the questionnaire drew a distinction between these two phenomena, feedback from some of the interviewees indicated that many respondents did not accept that there was a difference. Since a number of specialists on these crimes also argue that, in practice, one often mutates into the other, it is maintained here that the survey results are of value to the present exercise, especially in the absence of many more!

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<sup>65</sup> Chawla, Me and le Pichon, *Global Report*, 8-9.

<sup>66</sup> For readily available survey data on corruption, see the Corruption Perceptions Indices (CPIs) on the Transparency International website; this index has been published annually since 1995. For survey evidence on organised crime see the International Crime Victim Surveys (ICVS) and the International Crime Business Surveys (ICBS). And for an innovative approach to the measurement of organised crime and its impact in individual countries see J. Van Dijk, “Mafia Markers: Assessing Organized Crime and its Impact on Societies,” *Trends in Organized Crime* 10, no.4 (2007), 39–56.

**Table 1: Public Beliefs (2006) about the Suggestion that Most People Entering their Country Illegally do so with the Assistance of Organised Crime Gangs (Percentages)**

	Strongly Disagree	Disagree	Agree	Strongly Agree	Don't Know, or Neither Agree nor Disagree
Germany	1	4	39	40	16
Italy	8	8	27	44	14
Poland	4	8	37	12	38

Notes:

1. All percentages have been rounded to whole figures, so that some rows do not sum to exactly 100.
2. Surveys conducted by TNS-Emnid in Germany (N = 1030), TNS-infratest in Italy (N = 1027), and CBOS in Poland (N = 937).

It is clear from Table 1 that a majority of citizens in all three countries believed that people smuggling was a crime that more often than not involved organised crime gangs; while only just under 50 per cent of Poles believed this, 71 per cent of Italians and 79 per cent of Germans did. But even the Polish figure was high. The main difference between the Polish findings and those in Italy and Germany was *not* that many more Poles believed that organised crime was *not* involved (Poles were actually the middle-rankers on this), but rather that many more Poles than Germans or Italians were not sure what to believe. We can now consider the responses vis-à-vis the involvement of corrupt officials.

**Table 2: Public Beliefs (2006) about the Suggestion that Organised Crime Gangs that Smuggle People into their Country do so with the Corrupt Assistance of State Officials (Percentages)**

	Strongly Disagree	Disagree	Agree	Strongly Agree	Don't Know, or Neither Agree nor Disagree
Germany	3	13	28	12	44
Italy	9	11	28	26	25
Poland	3	7	35	15	40

Note: Caveat and sources as for Table 1

A striking feature of Table 2 is that far higher percentages of Germans and Italians were unsure of whether or not corrupt officials were involved with organised crime gangs in people smuggling than were unsure about the involvement of just crime gangs; the Polish figure was almost the same as in the previous table. The high German percentage could be interpreted as indicating that many Germans are now less certain than they have traditionally

been that their *Beamten* (civil servants and other state officials) are uncorrupt, but are still unwilling to believe that many of them have indeed become corrupt. It would be interesting to compare these figures with any taken before the *Kohlgate* affair; that corruption scandal, which broke in late-1999, shook many Germans' faith in the trustworthiness of their officialdom. Conversely, the Italians—while still less sure than they are about the involvement of organised crime—have long been used to high rates of corruption among their officials.

Yet for all these caveats and uncertainties, the percentages of respondents who did believe that corrupt officials were colluding with crime gangs ranged between 40 per cent (Germany) and 54 per cent (Italy); by any assessment, this means that large numbers of citizens in the three countries—exactly half in Poland, and an absolute majority in Italy—perceive there to be widespread involvement of state officers in people smuggling. It is reasonable to assume from this that large numbers of citizens believe some of their officials are colluding in trafficking.

### 3. Causes

In a book published some sixteen years ago, the author identified more than sixty causes of corruption.<sup>67</sup> Most of these still pertain, so that space limitations require a high degree of selectivity in this section.<sup>68</sup> In his major study of revolutions since the Middle Ages, Charles Tilly argues persuasively that we should distinguish between revolutionary situations and revolutionary outcomes; not all revolutionary situations crystallise into actual revolutions.<sup>69</sup> Similarly, a distinction can be drawn between *corruption-friendly situations* and *corruption triggers*. The assumption here is that certain contexts are particularly conducive to corruption, but that there need to be additional factors for potentially corrupt officials actually to engage in corruption.

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<sup>67</sup> L. Holmes, *The End of Communist Power: Anti-Corruption Campaigns and Legitimation Crisis* (New York: Oxford University Press, 1993), 157–201.

<sup>68</sup> Those interested in more detailed analyses of the causes of corruption should begin their search with some of the “classics” in corruption studies, such as M. Clarke (ed.), *Corruption: Causes, Consequences and Control* (London: Frances Pinter, 1983), A. Heidenheimer, ed., *Political Corruption* (New York: Holt, Rinehart and Winston, 1970—the [3<sup>rd</sup>] edition of this collection was co-edited with M. Johnston and was published in 2001 by Transaction Publishers), or R. Williams, ed., *Explaining Corruption* (Cheltenham: Edward Elgar, 2000).

<sup>69</sup> C. Tilly, *European Revolutions, 1492-1992* (Oxford: Blackwell, 1993), esp. 10-16.

Many factors contribute to a *corruption-friendly situation*. Perhaps the most obvious is perceived relative poverty. If state officials find they are unable to afford what they consider to be a minimally acceptable standard of living, they are more likely to be tempted into engaging in corruption. The term relative here is important, and is to be interpreted in three ways. The first is “relative to perceived basic needs.” What these would be to even an impoverished US citizen will be very different from what they would be to someone living in Darfur or the Amazon jungle. The second meaning is “relative to the official’s previous income”. If there is massive inflation, for example, and state salaries do not keep pace with this, then many officials will feel relatively impoverished and deprived. Another situation in which this second meaning pertains could be found in many post-communist states in the 1990s. Fiscal problems meant that many officials were paid late, or not in full, or not at all. Third, state officials can compare themselves with others, and feel that they have been left behind. In a weak or failed state in which the authorities cannot afford adequate protection of their citizens against criminals, organised crime is likely to flourish. If state officers believe that criminals are faring much better financially than they are and getting away with it, they might decide to join those criminals, or to collude with them, or to emulate them—all for personal benefit.

In terms of corruption-friendly factors specific to trafficking, at least two that have changed in recent years need to be highlighted. The first is the contradictory impact of the simultaneous loosening and tightening of borders. As Archibold and Becker argue in the case of the tightening of the border between the US and Mexico, “Increased corruption is linked, in part, to tougher enforcement, driving smugglers to recruit federal employees as accomplices.”<sup>70</sup> The same argument applies to the outer limits of the Schengen Zone in Europe. Yet the ease of travel once in the Schengen area makes it very tempting for traffickers and illegal migrants to try to cross the outer barriers, thus increasing the proclivity to offer bribes to border guards.

The second driver is the growth of the sex industry in the affluent world, and the reduction of social stigma for prostitutes’ clients as many forms of paid sex have been legalised. Yet there is an ambiguity—even a contradiction—here. Normally in a situation of labour imbalance between supply and demand in a given economy, governments encourage workers in the area of shortage to immigrate. But this does not happen in the case of sex work. This very fact

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<sup>70</sup> R. Archibold and A. Becker, “Border Agents, Lured by the Other Side,” *New York Times*, May 27, 2008.

indicates that Western authorities are still ambiguous about the status of such work. But since they do not offer work visas in an area of growing demand, it is rational—even if ethically questionable—for traffickers to increase supply to the market. If this requires the payment of bribes to various officials involved in the illegal migration process, so be it.

What of *corruption triggers*, the factors that encourage dissatisfied state officials—those in a corruption-friendly situation—to actually “jump the fence” and engage in corruption? There are many reasons why officers of the state become involved in the business of trafficking. In some cases, these are personal (individual), such as the build-up of a high level of debt because of gambling, drug abuse, a mistress, etc. Here, only systemic factors will be considered.

A number of analysts of crime generally, as well as of organised crime and corruption more specifically, have argued that it is neither poverty nor economic problems that constitute the primary drivers of most types of crime (crimes of passion usually involve other motivations), but rather opportunity.<sup>71</sup> In addition to the fact that certain branches of the state—those in which officials are most likely to be offered bribes of various kinds—are much higher risk than others, there are also a number of specific factors that increase the exposure of state officials to what is sometimes called “active corruption” (i.e. where citizens offer rewards in return for improper favours from officials). Several of these relate very much to the changed conditions of the 1990s that resulted in new opportunities, some of which can still arise in both transition and developing countries.

One of these changes was that many state apparatuses, including police forces, were downsized in the 1990s. As a result, there were often large numbers of retrenched officers who felt demoralised and alienated from their former employer, the state. Many of them turned to organised crime gangs, for whom they had a number of advantages over others wanting to join such groups. For instance, they had insider knowledge of how the authorities investigated and addressed criminality. But another advantage—of direct relevance to the current analysis—was that many still had links to their former colleagues, and were thus able to identify those who might most easily be tempted into corruption. They would also know who might be most prone to *blackmail* or even *threats*, which are two concrete reasons why some officials engage in corruption and collude with crime gangs; there are times when the distinction

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<sup>71</sup> See for example, V. Ruggiero, *Crime and Markets: Essays in Anti-Criminology* (Oxford: Oxford University Press, 2000).

between criminal and victim becomes blurred. All this meant that officers might be approached—and thus subject to opportunities (temptation!)—in a way they would probably not have been in a more stable situation.

#### 4. Consequences

It is obvious that the principal losers in trafficking are those trafficked. It is perhaps less obvious that corruption can exacerbate their situation. This is because the need for their traffickers to pay bribes as part of the trafficking operation can substantially increase the overall costs of that operation. In Russia, it was claimed by the Deputy Chair of the Committee on Security and Safety in the 1990s that up to 50 per cent of criminal income is spent on bribes to government and police officials. While this was not only to human traffickers, the point certainly applied to them too.<sup>72</sup> These costs have to be recuperated by the traffickers. Although they can in theory pass some of them on to customers, empirically we know that they also pass some on to trafficked persons. In short, the debt bondage situation for trafficked persons is exacerbated. Reducing the corruption variable in trafficking should render it more difficult for traffickers to engage in their unsavoury business. But even if it did not, trafficked persons *should* benefit, assuming their debts to the traffickers were reduced—and that the traffickers pass on their savings. Unfortunately, given the type of people engaged in trafficking, such a reasonable assumption cannot be made.

It is probably even less intuitively obvious that corruption among officials can be so rife in a country that ordinary citizens seek to flee their homeland country just to live in a less corrupt society. But research conducted by Donna Hughes suggests that this does occur.<sup>73</sup> Given the overall context of this point, their desperation is likely to make such citizens more prone to being duped into what eventually becomes a trafficking situation.

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<sup>72</sup> S. Boskholov, "Organized Crime and Corruption in Russia," *Demokratizatsiya* 3, no.3 (2005), 270–4, here p. 271.

<sup>73</sup> D. Hughes, "Supplying Women for the Sex Industry: Trafficking from the Russian Federation," in *Sexualities in Post-Communism*, ed. A. Štulhofer, T. Sandfort, V. Diehl Elias and J. Elias, online at [http://www.uri.edu/artsci/wms/hughes/supplying\\_women.pdf](http://www.uri.edu/artsci/wms/hughes/supplying_women.pdf), pp.4–5 in online version (accessed September 3, 2008).



## 5. Conclusions and Policy Implications

It has been demonstrated that law enforcement officers, immigration officers, military personnel, politicians and other state officials have all engaged in corrupt behaviour relating to trafficking. The ways in which this could constitute a security issue can now be explored.

In cases in which corrupt involvement in trafficking clearly breaks the law, those officers of the state engaged in it are at risk of being blackmailed. The Leipzig case outlined above allegedly involved blackmail of senior officials who were using child prostitutes.<sup>74</sup> This risk also arises if the corrupt officer is married, or merely wishes to present himself (or, more rarely, herself) as a respected pillar of the community. This not only means that the official is more prone to continue his or her involvement in human trafficking (i.e. it is unlikely to be a one-off event), but also that s/he is at greater risk of being either persuaded or coerced into involvement in other kinds of collusion with organised crime. If a gang is involved in other types of smuggling and trafficking—such as narcotics or arms—then officers of the state could become involved in that. It is obvious why this constitutes a serious security threat.

Another implication is that corrupt officers can assist in the *continuation and even expansion* of trafficking operations through tipping off brothel-owners and others of imminent raids. Even where a brothel is operating legally, some of the sex-workers may be working under slave-like conditions, and can be hidden away until the raid is over. Moreover, given that some raids, particularly those on unambiguously illegal operations, result in armed resistance from the traffickers, corrupt officials tipping off crime gangs can assist in the killing or wounding of their colleagues.<sup>75</sup>

It is only in the past ten years or so that governments and IOs have begun to address the issue of trafficking seriously. Their awareness of, and interest in, the role of corruption in trafficking is still at a low level, despite recent improvements. It follows from this that current counter-corruption strategies are, in most cases, still very underdeveloped. However, the recommendations below are based in part on methods that have been either trialled or proposed in one or more states or by one or more IOs.

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<sup>74</sup> C. Kohl, "Ein Sumpf und mindestens drei Tote," *Süddeutsche Zeitung*, May 25, 2007, 2.

<sup>75</sup> For evidence of such armed resistance, albeit without hard evidence of the collusion of corrupt officials, see P. Chemnitz, "Streit der Zuhälter wird mit der Waffe ausgetragen," *Leipziger Volkszeitung*, March 24, 1994.

Although organised crime and corruption are interactive, the latter drives the former more than the converse. If trafficking is to be reduced, states and IOs will have to acknowledge far more than most currently do that it could not occur on the scale and with the ease it does without the collusion of their own officers. The sooner this unpleasant truth is recognised, the sooner the recent substantial growth in trafficking, especially transnational, will be contained and then reversed. This is desirable from the human rights perspective, in that it would reduce the triple victimisation to a single or double one, as well as the scale of the first and second types of victimisation. But it is also important and urgent in terms of the security interests of states.

### **Recommendations**

There are numerous measures that governments and IOs can and should take to reduce both corruption and trafficking, which then necessarily affect the corruption-trafficking nexus. Here, the focus is on fourteen of the potentially most effective.

#### *Risk Assessments*

While *a priori* assumptions and intuition must always play a role in identifying potential dangers, the analysis of actual case-studies adds considerably to our ability to assess the risks in particular types of situation, and to determine which types of official are most likely to be involved. This certainly applies in the case of corruption and trafficking.

Trafficking can occur both within a country and transnationally, and this fact should be seen as the starting point for assessing potential risks. An appropriate area for consideration is with policies that can be almost immediately implemented. In the case of transnational trafficking, the state agencies to which most attention should be directed are those involved in international travel. The most obvious groups of potentially corruptible officers are those involved in border-crossing—customs officials and border guards. But there are other agencies that might well be involved and that are perhaps less immediately obvious. They include any agencies that provide passports and visas, as well as any that register newly-arrived migrants or visitors.

All of the factors that apply primarily to risk assessment in the case of purely domestic trafficking apply also in the case of transnational trafficking, so that they can be added to the list provided in the previous paragraph. Thus, where various types of prostitution are illegal, it is the police in most states who are

responsible for controlling this, so that they should be primary targets in any corruption risk-assessment.

### *Education*

Ideally, public attitudes towards prostitution, trafficking and corruption would be changed over time—so that the corrupt officials are condemned more strongly, and trafficked persons are treated with more sympathy, as victims. Unfortunately, such re-education of the public could be a long and difficult process. But other forms of education—arguably even more important—can be introduced quickly, are inexpensive, and, from the limited empirical results available, can be very effective. This is the education of officials potentially involved in the investigation and prosecution of cases of alleged corruption and trafficking. According to Prof. Zbigniew Lasocik, one of Poland's leading experts on trafficking,<sup>76</sup> even short seminars of a few hours—if presented well—can change the attitudes of police officers, judges and others towards corruption and trafficking. Such sessions can make officers of the state more willing than previously to treat the trafficked persons as victims, and corrupt officials as real criminals and a potential danger to society.<sup>77</sup>

The view that the personal values of investigators and prosecutors constitute a major factor in explaining different rates of corruption and trafficking in different locations appears to be borne out by comparative research on Khabarovsk and Primorskii Krai in the Russian Far East. According to Liudmila Erokhina, who reaches her conclusions on the basis of a number of interviews primarily with law enforcement officers in the two regions, the authorities in the former are far more concerned than their counterparts in the latter about addressing the issue of trafficking, which results in higher rates of anti-trafficking activity and more impressive results. Admittedly, the reasons for the higher level of attention in Khabarovsk relate more to concerns about the effects of trafficking on STD (sexually transmitted disease) rates in the broader population, the fact that trafficked persons are often involved in smuggling of goods, and other factors that are pragmatic rather than based on

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<sup>76</sup> See Z. Lasocik, ed., *Handel Ludźmi: Zapobieganie i Ściganie* (Warsaw: Wydawnictwa Uniwersytetu Warszawskiego, 2006).

<sup>77</sup> For some disturbing survey results of police attitudes towards corruption and/or trafficking see N. Arteaga Botello and A. López Rivera, "Everything in This Job is Money: Inside the Mexican Police," *World Policy Journal* 17, no.3 (2000), 61–70; A. Beck and R. Lee, "Attitudes to Corruption amongst Russian Police Officers and Trainees," *Crime, Law and Social Change* 38, no.4 (2002), 357–72; A. Maljević, D. Datzer, E. Muratbegović and M. Budimlić, *Overtly About Police and Corruption* (Sarajevo: Udruženje Diplomiranih Kriminalista u Bosni i Hercegovini, 2006), esp. 121–216.

sympathy or a concern for human rights.<sup>78</sup> Nevertheless, it is ultimately a fundamental difference of attitudes among law enforcement officers in the two Russian locations that accounts for significantly different levels of anti-trafficking activity in them.

### *Harsher Punishments*

As a number of analysts have noted, the punishments meted out for trafficking—when administered at all—are in most countries very mild, and typically even milder for officials than for gang members. Often, the punishments for human trafficking are far more lenient than for drug trafficking, even though the profit margins can be higher. This is seen by some observers as likely to result in the former soon becoming an even bigger business than the latter.<sup>79</sup> This is not the only reason, however. Many drugs require ingredients available only in certain parts of the world, so that supply may be severely reduced if authorities commit to destroying the crops (as has happened in both Afghanistan and Colombia on occasions), which then creates major problems for those whose livelihoods depend on supplying and trafficking such products. In contrast, the potential supply of persons for trafficking is almost limitless—again increasing its attractiveness to criminals. Moreover, whereas the revenue from any particular batch of illicit drugs is a one-off, that from a trafficked person can last years. Increasing the number of convictions and making the sentences more severe for traffickers, *and* for corrupt officials who collude with them, would deter some, and at least put some traffickers and corrupt officials somewhere where they can do less harm.

### *Immunity*

The reference to the need for harsher punishments leads to another factor that needs to be addressed as a matter of urgency—immunity. The United States has demonstrated in various ways that it is now taking the issue of transnational human (or alien, as the US authorities usually call it) trafficking far more seriously than it used to. But as long as it continues to insist that its military

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<sup>78</sup> Erokhina, “Trafficking in Women in the Russian Far East,” 88–93.

<sup>79</sup> Whereas several Asian states administer the death penalty for certain types of drug trafficking, only Bangladesh does for human trafficking; three people were sentenced to death in Bangladesh between June 2008 and January 2009 for trafficking of females. The death penalty is not being advocated here; rather, the contrast between the treatments needs to be highlighted. Thus the maximum fine in India for drug trafficking is approximately 100 times more than the maximum for human trafficking. Cited in Janis Foo, “Sex Trafficking: Inside the Business of Modern Slavery,” *Far Eastern Economic Review*, March 6, 2009, Reviews.

and diplomatic personnel must enjoy immunity from local law enforcement, a potentially powerful weapon for reducing either direct or indirect involvement of officers of the state in trafficking is blunted.

One reason so many states are unwilling to lift the immunity of their officers overseas is the concern that their increasing dependence on civilian contractors and privately-employed soldiers will be jeopardised (i.e. that they will be unable to attract sufficient numbers relative to the tasks at hand). But another significant reason, which applies both to regular officers of the state and contracted persons, is that the judicial systems in many countries in which these officers operate are known to be flawed, often seriously. Basically, the rule of law operates poorly or not at all in such countries. Manifestations of this range from inadequate laws and sub-standard evidence-collecting mechanisms to what many Westerners would consider excessively draconian punishments for those found guilty (for example, the death penalty for corruption), an insufficiently independent judiciary—and corruption in the law-enforcement agencies. But in addition to assisting developing and transition states to improve their law-enforcement agencies and the rule of law more generally, developed states could and should address the immunity issue by being far more willing than most currently are to investigate claims of corruption and trafficking-related activities among their own officers and contractors, and trying their own people themselves. One of the most effective ways of encouraging others to respect and develop the rule of law is to set a good example oneself!

### *Naming and Shaming*

A method that has been used in some parts of the world and could usefully be extended to others is naming and shaming. South Korean authorities have threatened to publish the names not only of brothel owners found guilty of using trafficked persons, but also patrons, many of them high profile public figures; this is the “shining the light” policy that some claim has been very effective at reducing the patronage of such brothels by public servants.<sup>80</sup>

### *Removal of Limits on the Number of Testimony-Related Visas That Can Be Issued*

It is strange that various governments actually impose limits on the number of special visas that can be issued each year to persons who are prepared to testify

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<sup>80</sup> Department of State, *TiPR 2003*, 20.

against criminals. But the US, for instance, has had such a limit—200 per year, with up to fifty extra ones possible if the testimony relates to terrorism.<sup>81</sup> There are potential drawbacks involved in a limitless visa situation—most obviously, that an increasing number of people will make false allegations simply in order to be granted a visa. Nevertheless, states should examine this issue from a likely cost-benefit perspective. If the potential benefits of either having a limitless number—or, preferably, a limited number plus a workable method for rapidly expanding this number if there is good reason to do so—outweigh the potential costs, which they usually would do, then that should steer policy. Bureaucratic regulations should not play into the hands of either corrupt officials or crime gangs involved in trafficking. Indeed, having a strict limit gives discretionary power to officials, which in turn *increases* their susceptibility to corruption.

### *Reducing Demand through New Approaches to Prostitution*

In most countries, it is the women (mostly) who sell sexual services, not the men (mostly) who purchase them, who are treated as law-breakers and/or social outcasts. Perhaps ironically, the legalisation or—worse—*de facto* decriminalisation of prostitution, brothels, etc. in many countries in recent years appears to have increased the scale of trafficking.<sup>82</sup> Research indicates that only a few women become prostitutes out of genuine preference (because of the high incomes, a feeling of power over men, etc.). Most are either forced or tricked into it, or else engage in it reluctantly because of a desperate economic situation. Legalisation of prostitution makes the use of prostitutes more socially acceptable. In theory, and logically, this should also render the activities of sex workers more socially acceptable—less stigmatised—too. But logic does not always drive social attitudes, and all too often the prostitutes suffer in various ways, while their clients do not. But Sweden (in 1999), Norway (effective January 2009) and a small number of other countries have now made or appear set to make the *use* of prostitutes illegal (though the selling of sexual services remains legal in Sweden);<sup>83</sup> while some men will risk

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<sup>81</sup> O'Neill Richard, *International Trafficking in Women*, 41.

<sup>82</sup> While this point is fairly obvious in the case of decriminalisation (i.e. because the potential costs of trafficking, such as a prison sentence, are reduced, thus rendering trafficking more attractive), it is less so in the case of legalisation. But Australian experience suggests that legalisation of brothels makes it much more difficult for the police to raid them at will than is the case with illegal brothels; this in turn makes it harder for the police to discover trafficked prostitutes. Laws could be amended to address this anomaly, however.

<sup>83</sup> Other countries to have recently adopted or that are considering this approach—i.e. making the purchase of sex illegal, rather than its sale—include Bulgaria (*International Herald Tribune*, October 9, 2007), Estonia, and South Africa. Some countries have made the purchase of sex only with *trafficked*

breaking the law for sex, many—perhaps most—“johns” will think twice about paying for sex if this could land them in prison. The Russian media have certainly claimed that the change in Swedish legislation has had an impact on Russian traffickers.<sup>84</sup> Given that the demand for sexual services has apparently declined markedly in Sweden since the introduction of the new law, Russian suppliers of trafficked women have redirected their attention to countries such as Germany, where prostitution was *de facto* legalised from the beginning of 2002. Reducing the demand for sexual services should reduce the number of opportunities for corruption in trafficking.

### *Changing Media Laws*

In an excellent summary of the different roles the media can play in exposing and publicising corruption, Rodney Tiffen identified five canine models—the wolf, the yapping pack, the lapdog, the muzzled watchdog, and the watchdog.<sup>85</sup> Space limitations preclude a full exposition of these five types here. But the concept of the muzzled watchdog is highly relevant to the current analysis. If the media are muzzled, not by strict government censorship as such, but by overly harsh defamation laws that render it too dangerous (potentially expensive!) for the media to make claims about officers of the state that they cannot support almost 100 per cent, then they will normally refrain from making such claims. The apparently high levels of corruption in Cambodia, Kazakhstan and Ukraine have been explained partly in terms of those countries’ draconian defamation laws,<sup>86</sup> while the US’s laws are often cited as exemplary if the media are to play a watchdog role on corruption.<sup>87</sup>

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persons, rather than with all prostitutes, illegal (for example, Finland since 2006; the UK published details of a similar plan in November 2008). While the rationale behind such a policy might be defensible (i.e. that women or men who freely choose to sell their own bodies for sex should have the right to do so), the practicalities of implementing such a two-pronged (differentiated) approach render it highly problematical.

<sup>84</sup> M. Buckley, “Press Images of Human Trafficking from Russia: Myths and Interpretations,” (paper presented at the ICCEES World Congress, Berlin, July 2005).

<sup>85</sup> R. Tiffen, *Scandals, Media and Corruption in Contemporary Australia* (Sydney: University of New South Wales Press, 1999), 206–39.

<sup>86</sup> See for example, A. Karatnycky, A. Motyl and C. Graybow, C., eds., *Nations in Transit 1998: Civil Society, Democracy and Markets in East Central Europe and the Newly Independent States* (New York: Freedom House, 1998), 614–5; D. Nussbaum, “Dead Silence: When Journalists are Muzzled, Corruption Goes Unchecked,” May 3, 2006, [http://www.transparency.org/content/download/5988/35174/file/WPF-Day\\_statement\\_DN\\_03\\_05\\_06.pdf](http://www.transparency.org/content/download/5988/35174/file/WPF-Day_statement_DN_03_05_06.pdf) (accessed January 10, 2009).

<sup>87</sup> Russia had looked set to introduce much stricter media libel laws in April 2008; but, in an encouraging sign, President Medvedev made critical comments on the bill, which were interpreted as having sunk it

### *Increasing the Involvement of NGOs*

One of the most problematic aspects of controlling corruption, including in trafficking, is that the people responsible for exercising such control are precisely those who might be engaged in the anti-social, and usually illegal, activity themselves, especially in highly corrupt societies. Even establishing government watchdogs is not invariably a failsafe method, particularly in countries in which corruption is rife across the system. For this reason, it is important that NGOs be permitted to play a greater role in monitoring trafficking and the role of corruption in this. Unfortunately, agencies that can play such a role, including Human Rights Watch and Transparency International, are all too often treated by government authorities as troublemakers and “outside” *agents provocateurs*.<sup>88</sup> This needs to change. If the only way to do this is for external agencies to fund relevant NGOs, so be it; governments genuinely committed to fighting corruption and trafficking should welcome and appreciate such funding.

### *Further Improvement of States’ Treatment of Trafficked Persons*

Several analysts make the point that trafficked persons are all too often still treated as illegal immigrants and/or criminals rather than as victims. While the situation is beginning to improve, more governments will have to follow the Italian lead and provide supportive conditions to victims, whether or not they are prepared to testify against their traffickers and collusive corrupt officials. The Italian experience indicates that many victims will gradually become more relaxed after their traumatic experiences if treated in this sympathetic way by authorities, and be prepared to testify.<sup>89</sup> But even when they do testify, most courts seek information only about the traffickers, not the collusion of corrupt officials. This is an area in need of significant change.

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(Reuters, June 2, 2008—in *Johnson’s Russia List*, No. 108, June 3, 2008, Item #1; *Glasnost Defence Foundation Digest*, #384, June 9, 2008).

<sup>88</sup> An example is the authorities in Republika Srpska (Bosnia), who in 2008 accused the local branch of Transparency International of corruption—see A. Alic, *Bosnia: Corruption Watchdog under Fire* (Zurich: International Relations and Security Network ISN, July 16, 2008).

<sup>89</sup> The path-breaking legislation by the Italian authorities is usually referred to as Article 18; it was passed in 1998 and became effective in 2000—for details on the legislation and its impact, plus suggestions for further improvement, see I. Orfano, ed., *Article 18: Protection of Victims of Trafficking and Fight against Crime (Italy and the European Scenarios)—Research Report* (Martinsicuro: On the Road, 2002). Whereas Article 18 was originally designed to protect only persons trafficked for work in the sex industry, its effectiveness has led to its recent amendment, to cover also persons trafficked for other kinds of work.



### *Changing the Gender Balance*

It might appear *a priori* that state agencies in the “high risk” category for being corrupted by traffickers would be less prone to such corruption were they to be staffed primarily by women. Unfortunately, empirical research suggests that such an assumption must be questioned.<sup>90</sup> One reason is that *women* are often heavily involved in running trafficking and prostitution operations, so that the notion of a law-abiding “sisterhood” displaying solidarity needs to be challenged.<sup>91</sup> Second, authorities such as the Mexico City traffic police have in the past sought to eradicate or reduce corruption by changing the dominant gender of a particular agency. But research indicates that, while switching from a predominantly or all-male force to a predominantly or exclusively female one typically does reduce them substantially in the short-term, corruption levels often begin to creep up again in the longer term. The current view on this, based on a limited amount of research, is that the most effective long-term gender arrangement for reducing corruption levels is to have roughly equal numbers of men and women in a given agency.<sup>92</sup>

### *Greater Use of Technology and Data Sharing*

While some civil rights activists might oppose the advocacy of greater state control through technology, the scale and nature of trafficking—and the rights of trafficked persons!—should override concerns about the rights of individuals, *especially* officers of the state assessed to be in high risk (opportunity) situations for engaging in trafficking and/or corruption. The technology could include more cameras in border crossing posts, more telephone and e-mail monitoring in police stations and judges’ chambers, better data banks, etc. Such technology should not be secretive (which addresses one concern of many civil rights activists). Rather, simply knowing that one’s e-mail might be read or one’s phone conversations listened in to should act as a deterrent to many potentially corruptible officials. There would have to be legal safeguards in place, of course, to ensure that monitoring related only to criminal activity, not to *any* improper behaviour detected (for example,

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<sup>90</sup> For evidence that attitudes towards some aspects of corruption can be markedly different between male and female police officers, while views on other aspects can be remarkably similar or else display no clear gender-related pattern, see Maljević et al., *Overtly About Police and Corruption*, esp. 157–61.

<sup>91</sup> For empirical evidence see D. Hughes and T. Denisova, *Trafficking in Women from Ukraine* (Washington, D.C.: National Institute of Justice, 2002), 19. More generally on the role of women in trafficking and organised crime see G. Fiandaca, ed., *Women and the Mafia: Female Roles in Organized Crime Structures* (New York: Springer, 2007).

<sup>92</sup> R. Mukherjee and O. Golcekus, “Gender and Corruption in the Public Sector,” in *Global Corruption Report 2004* ed. R. Hodess, T. Inowlocki, D. Rodriguez, and T. Wolfe, (London: Pluto, 2004), 337-9.

cheating on one's partner, smoking in a non-smoking building); but this is not an insurmountable obstacle.

Given the transnational nature of much human trafficking, government agencies in different countries will have to share more of their data. Unfortunately, while this might seem obvious in theory, experience renders it less so in practice. Thus some Western governments find it difficult to collaborate with foreign authorities precisely because of the high levels of corruption in those countries,<sup>93</sup> though this is not the only reason. Others include arrogance on the part of some Western officials who are loath to collaborate with counterparts in less developed states, and their unwillingness to acknowledge the seriousness of the trafficking problem within their own countries.

#### *Standardisation of Definitions*

There remain too many definitional differences and inconsistencies across jurisdictions. Despite signing up to various international treaties that define terms such as organised crime, corruption, and trafficking, many states continue to use their own definitions for domestic purposes. Differences can render extradition and other forms of transnational policing collaboration much more difficult and slower, which plays into the hands of both traffickers and corrupt officials.

#### *The Role of Political Will*

Finally, several analysts maintain that the single most important factor in combating corruption—generally, not specifically relating to trafficking—is political will. This is usually taken to refer to the political will of the leadership. But leadership commitment is in fact only a necessary, not a sufficient, condition. Just as important as political will is political capacity. Unless leaders have state administrative apparatuses able and willing to implement their policies, their commitment to reducing corruption will mean little. Expressed another way, those responsible for the actual realisation of policies must *also* have political commitment and resources if those policies are to succeed.

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<sup>93</sup> O'Neill Richard, *International Trafficking in Women*, 31.

## CHAPTER 3

# Human Trafficking & Organised Crime in the US & Western Europe

John Picarelli

### Introduction

It is easy to assume that human trafficking and organised crime are interchangeable terms.<sup>1</sup> Perusing the media, words like mafia or crime group are frequently found in articles about human trafficking. Yet human trafficking is nothing more than a form of organised crime. The perpetrators of human trafficking can and do vary greatly from case to case. Major international organised crime groups are perpetrators of trafficking in human beings. But they are not the sole perpetrators. Crime groups often cooperate with other crime groups, with smaller ad hoc collections of criminal and even with talented criminal entrepreneurs to perpetrate human trafficking. The relationship between organised crime and trafficking in human beings is, therefore, more complicated than one might assume. Traffickers, in other words, are a diverse set of actors.<sup>2</sup>

This chapter explores the diversity of traffickers historically and in western Europe and the United States (US).<sup>3</sup> Historically, those who traded in human beings under the flags of western European states and later the US ranged from small groups of entrepreneurs to large state-sanctioned or state-owned corporations. While the trade remained legal, many of these actors operated

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<sup>1</sup> The opinions expressed in this chapter are the author's personal views and do not represent the official views of the National Institute of Justice.

<sup>2</sup> A number of studies have examined the heterogeneity of traffickers in specific countries and regions. Examples include Stephen Lize and Kevin Bales, *Trafficking in Persons in the United States, Final Report* (Washington DC: National Institute of Justice, 2005) for the US; J. Kaizen, W. Nonneman, "Irregular Migration in Belgium and Organized Crime: an Overview," *International Migration* 45, no.2 (2007): 127-32 for Belgium; and Liz Kelly, "'You Can Find Anything You Want': A Critical Reflection on Research on Trafficking in Persons within and into Europe," *International Migration* 43, no.1/2 (2005), 235-65, here 249-54, on Europe.

<sup>3</sup> While the findings of this chapter are applicable to other regions of the globe, the chapter limits its analysis to western Europe and the US for the sake of brevity.

under the regulation and protection of the state. As states took measures to abolish the trade, however, traders responded not by disbanding but often by turning to the illicit trade in human beings. Contemporary trafficking in human beings has therefore retained this diversity, and has done so in no small part due to the evolution of the trade. Today, small groups of perpetrators operate among and with large transnational criminal organisations. Criminal entrepreneurs provide specialised services, such as money laundering and document fraud to traffickers. And in keeping with the past, the contemporary trade in human beings spans the “upperworld” and underworld. Corruption links traffickers to government officials and corporate firms.<sup>4</sup>

Understanding the links between organised crime and human trafficking therefore requires an analytical model that can accommodate this diversity. This chapter develops just such a model by drawing on the tradition of international political economy, which examines how actors organise and operate complex cross-border markets for goods and services. The transactional social network model identifies three main types of trafficking organisations. The first are small trafficking groups comprised mainly of a handful of entrepreneurial individuals. Second are cooperatives comprised of individuals, small groups and even criminal organisations that combine specialised skills to form larger trafficking syndicates. Last are situations where one large criminal organisation controls all aspects of a trafficking network.

Improving our understanding of this diversity should serve as a priority for those policymakers and practitioners that form the anti-trafficking community. Since each of these organisational types has different attributes and levels of sophistication, each also has a different set of ramifications for authorities. Thus, while studies have demonstrated that authorities require more training to recognise trafficking cases in general, this chapter suggests that they also require more specialised training to recognise different types of trafficking organisations. The chapter also concludes that the fusion of law enforcement, immigration and other information sources is vital to making this determination more rapidly and more accurately. Finally, while the research community is growing more robust and continues to produce more well-grounded studies of trafficking, we must continue to encourage researchers to develop more empirically-grounded studies of trafficking organisations, both to improve our understanding and to identify how organisations continue to evolve in the face of state intervention.

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<sup>4</sup> For more information on the links between trafficking and corruption, see Leslie Holmes’ chapter on the subject in this volume.

## 1. Perpetrators of Human Trafficking in History

Traffickers today are the direct descendants of slave traders from millennia past. Contemporary traffickers in Europe and the US have evolved from those who traded African slaves in the Americas as early as the 1500s.<sup>5</sup> From the outset, a diversity of actors have participated in different stages of the trade. Over time, states outlawed different forms of the trade. In response, those trading in human beings evolved into first grey market and later black market operators. The evolution of traffickers is an important but often overlooked element for understanding the diversity of actors engaged in contemporary human trafficking.

Two elements of the early trade in slaves between the Americas and Africa are important to note. The first is the early diversity in actors involved in the trade. In the 1600s and 1700s, it appeared that state-owned and other quasi-public companies monopolised the trade in human beings from Africa to colonies in the Americas. However, smaller private traders conducted the bulk of the trade. Akinjogbin provides a detailed examination of one of these entrepreneurs, the British slave trader Archibald Dalzel.<sup>6</sup> During the middle of the 18<sup>th</sup> century, Dalzel made the decision to enter the trade in African chattel slaves due to the lack gainful employment coupled with a need to save his family from debt and ruin. Operating from the British fort at Whydah (modern day Ouidah in Benin), Dalzel earned some 1000 pounds annually trading slaves with the French and Portuguese. Dalzel would parlay these gains into the sole ownership of three vessels, each of which earned him profits from the slave trade between Africa and the Americas. In the space of a decade, Dalzel had created a small slaving and trading company from the trade in chattel slaves.

The other important observation about the early trade in human beings is that there has always been an illicit element to the trade. The illicit slave trade became more prominent as countries first regulated and later criminalised the trade. In the 1640s, the Dutch exploited the Spanish revocation of Portuguese rights to sell slaves on Spanish territory by smuggling slaves into Spanish colonies. The colonial powers were generally tolerant of the illicit trade in slaves if it met the exploding demand for slaves in the colonies, a growing

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<sup>5</sup> Suzanne Miers, *Slavery in the Twentieth Century: The Evolution of a Global Problem* (Walnut Creek: AltaMira, 2003); John Picarelli, "Historical Approaches to the Trade in Human Beings," in *Human Trafficking*, ed. Maggy Lee, 26–48 (London: Willian, 2007).

<sup>6</sup> I. A. Akinjogbin, "Archibald Dalzel: Slave Trader and Historian of Dahomey," *Journal of African History* 7, no.1 (1966): 67-78. The terms "slave trade" and "slaves" in this section refer to the practice of chattel slavery from the 1500s to the 1800s in the Western hemisphere, and is not synonymous with indentured servants or trafficked persons.

problem with the rise of the plantation economy. Since black market traders were more efficient and cost-effective than the monopoly-controlled trading systems, colonial authorities viewed it as a welcome safety valve. The Spanish tolerated the illicit trade in slaves to its colonies in the 1640s and 1650s for this reason.<sup>7</sup> So large was this trade that Bermuda served as a black market trans-shipment station by the 1670s. Private individuals thereby short-circuited the top-down approach of the large companies, using smuggling and off-the-record trades of slaves to accomplish these ends.

During the 1800s, also known as the age of abolition, the balance of the trade in human beings steadily tilted towards the illicit side. The British were the first to ban the trade in chattel slaves, and were quick to bring their diplomatic and military power to bear to convince other states to do likewise. Yet demand for slaves did not slacken, and this resulted in traders shifting away from legal trading in slaves to a burgeoning illicit trade. One estimate, based on detailed archival research, identified some 3,033 French traders in slaves operating in the black market that controlled some 25 per cent of the trade in slaves.<sup>8</sup> Eltis notes that 338 black market French slave traders brought 105,000 African slaves into the French West Indies between 1821 and 1833.<sup>9</sup>

The shift to the illicit trade brought with it a concomitant shift in the organisation of the trade. Brazil offers an excellent illustration of how abolition fuelled both an illicit trade in human beings and the reformulation of those who traded in human beings. In 1826, Brazil signed a treaty to end the importation of chattel slaves in 1829. Yet the treaty did nothing to end the demand for slaves. Thus, the tempo of the trade at first doubled and then later tripled on an annual basis. In the 1840s alone, illicit traders smuggled 370,000 chattel slaves from Africa into Brazil.<sup>10</sup> In order to avoid British naval patrols and Brazilian state authorities, traders in human beings first oversaw small, tight-knit and entrepreneurial enterprises.

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<sup>7</sup> James A. Rawley, *The Transatlantic Slave Trade: A History* (New York: W.W. Norton & Company, 1981).

<sup>8</sup> Serge Daget, "British Repression of the Illegal French Slave Trade: Some Considerations," in *The Uncommon Market: Essays in the Economic History of the Atlantic Slave Trade*, ed. Henry Gemery and Jan Hogendorn, 419–42 (New York: Academic Press, 1979).

<sup>9</sup> David Eltis, "The Direction and Fluctuation of the Transatlantic Slave Trade, 1821–1843: A Revision of the 1845 Parliamentary Paper," in *The Uncommon Market: Essays in the Economic History of the Atlantic Slave Trade*, ed. Henry Gemery and Jan Hogendorn, 273–302 (New York: Academic Press, 1979).

<sup>10</sup> Christopher Lloyd, *The Navy and the Slave Trade* (London: Frank Cass, 1968).

On the whole, the later slave trade drew its participants from the Portuguese commercial class in Rio de Janeiro. In 1849, the Portuguese immigrants formed approximately 10% of the population of Rio de Janeiro and its suburbs. Although of all economic levels, most of them shared two common characteristics: They had once been impoverished immigrants from Portugal or the islands off Africa; and most were engaged in trade or small business ... Most slave-traders had originally immigrated as young boys from Portugal, the Azores, or Madeira. Usually, they came as indentured servants to work in gin shops, petty dry-goods stores, and on slave ships as common seamen. When they became free of their "masters," many joined the jobless poor whites of the cities. Others participated in the slave trade because no other way of earning a living was open to them.<sup>11</sup>

Yet as time progressed, the risks associated with the illegal slave trade drove out the occasional traders and consolidated the trade in slaves into the hands of "a small minority of merchants of Portuguese extraction, who had always controlled the nominally independent government."<sup>12</sup> The trade in slaves became bolder and larger syndicates emerged, who purchased protection from the government of Brazil through bribes paid to port inspectors, customs officials, judges and other political agents.<sup>13</sup> Manoel Pinto da Fonseca, one of the wealthiest men in Rio, worked fastidiously in the late 1830s and 1840s to construct a trading house that operated on four continents and had the power to squeeze out many smaller slave traders from the market. His profits from the slave trade, estimated at one point to be roughly 150,000 pounds per annum, allowed him to make substantial loans to the Brazilian government. Another trader, José Bernardino de Sá, was rumoured to have even more economic clout than Fonseca. Sá owned slave stations in southern Africa, used Portuguese-flagged ships to transport slaves and held a trading house in Rio. He, like many other traders, shifted to charter American ships to transport his slaves on their return legs from Africa.<sup>14</sup>

From this combination of black marketeering, organisational consolidation, intercontinental operations and distribution of corruption arose the first traders in human beings worthy of the label transnational criminal organisations.

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<sup>11</sup> Mary Karasch, "The Brazilian Slavers and the Illegal Slave Trade, 1836-1851" (M.A. diss., University of Wisconsin, 1967).

<sup>12</sup> Lloyd, *The Navy and the Slave Trade*.

<sup>13</sup> Jose Rodrigues, *Brazil and Africa* (Berkeley: University of California Press, 1965).

<sup>14</sup> Mary Karasch, "The Brazilian Slavers."

Consider, for example, that Florida provided an ideal location for trafficking in human beings, and was so well organised that a slave ferry operated between Havana and Florida starting in 1818. Richard Drake, in his memoir of slave trading, notes that “Florida was a sort of nursery for slave-breeders, and many American citizens grew rich by trafficking in Guinea negroes, and smuggling them continually, in small parties, through the southern United States.”<sup>15</sup> In 1840, Drake was also responsible for the creation of a slave trading station off the coast of Honduras, backed by capital obtained from American and Spanish mercantile houses, that traded slaves to cities throughout the US. Corruption followed the trade, either through the active involvement of public officials in the slave trade or through bribery of port officials and the like.

After the abolition of the trade in chattel slaves from Africa, the trade in human beings did not end. Rather, the trade continued to operate as an interconnected series of grey and black markets. Indentured servants and indebted bondsmen replaced many of the chattels on plantations throughout the Americas. The trade in indentured servants operated largely as a grey market—legal in theory but illegally as a surrogate for the African slave system it replaced.<sup>16</sup>

Like the trade in African slaves, the trade in indentured servants and debt bondsmen relied on international chains of entrepreneurs and small firms connecting supply to demand. Such chains began with recruiters who would bring their recruits to the firms located in the major port cities of India and China. Recruiters were paid by the head and fees steadily increased during the late 1800s as demand for indentured servants rose. In response, recruiters employed steadily more illegal tactics to fill their quotas. For example, it became common practice to use black market Indian recruiters called *arkatia*, who would search marketplaces, railway stations, temples and urban squares for eligible men and use whatever ruse they could to deliver these recruits to official “legal” recruiters for a fee. For example, a story titled “An Indian Slave Trade” in the London *Standard* of April 5, 1871 described an Indian recruiter named Buldeo Jemadar who used deceptive recruiting and force to coerce young women into indentured servitude in Jamaica.<sup>17</sup> Jemadar employed at least eight men to locate men and women, especially those coming to the city on pilgrimage, and delivered “recruits” to a sub-agent, John Manasseh, who served as a go-between for Bird & Co., a firm that provided funds and other

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<sup>15</sup> Philip Drake, *Revelations of a Slave Smuggler* (Northbrook: Metro Books, 1972).

<sup>16</sup> Hugh Tinker, *A New System of Slavery: The Export of Indian Labour Overseas, 1830–1920* (London: Oxford University Press, 1974).

<sup>17</sup> *Ibid.*



logistical support in order to aid recruiters in establishing relations with agents in Calcutta.

The tactics recruiters employed to meet the demand for indentured servants were strikingly similar to those contemporary traffickers use. Recruiters either obfuscated or ignored mandatory disclosures during the recruiting process, used whatever leverage they had at hand and often treated recruits no differently than the slaves they purchased earlier in the 1800s.

Often the recruiting was done in such a manner that there was hardly any question of a free choice on the part of the laborers. This became particularly known of China. The poverty-stricken Chinese were tempted with loans, after receipt of which they were immediately in the power of the recruiting agents because of the Chinese laws pertaining to debt slavery. Naturally they were also tempted with false promises of a glorious future in the foreign countries.<sup>18</sup>

The trade [in indentured labour from China] was largely in the hands of two British firms, Tait and Company and Syme, Muir and Company. “The latter built a special barracoon or ‘pig pen’ (*chu-tsai kuan*), as the Chinese called it, in front of their firm,” where the potential emigrants were stripped naked, examined for defects, and, if approved, made to put their mark on labor contracts then stamped or painted with the letter of their destination.<sup>19</sup>

Examples of recruiters engaging in illegal and clandestine behaviour were so common that the “paragraphs on recruiters’ licenses in the annual reports to the Protector of Emigrants provide ample evidence of this”, including theft of money and valuables, illegal detention and rape.<sup>20</sup> Furthermore, it was not out of the ordinary for the use of force to come into the recruiting process. In 1930, a League of Nations investigative committee led by Cuthbert Christy of Great Britain published its first report on human trafficking that accused Liberian officials of establishing a front company that used military units to forcibly

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<sup>18</sup> W. Kloosterboer, *Involuntary Labour Since the Abolition of Slavery: A Survey of Compulsory Labour Throughout the World* (Westport: Greenwood Press, 1960).

<sup>19</sup> David Northrup, *Indentured Labor in the Age of Imperialism, 1834–1922* (New York: Cambridge University Press, 1995).

<sup>20</sup> P. C. Emmer, “The Great Escape: The Migration of Female Indentured Servants From British India to Surinam, 1873–1916,” in *Abolition and Its Aftermath: The Historical Context, 1790 - 1916*, ed. David Richardson, 245–266 (London: Frank Cass, 1985).

recruit workers for Spanish cocoa plantations and the American Firestone rubber company.<sup>21</sup>

Overlap between the black market for indentured servants, legitimate business and government was as widespread as during the slave era. A number of corporations, such as the aforementioned Firestone rubber company, benefited from the employment of indentures. Some local government officials fostered an environment conducive to indentured servitude and debt bondage. Miers captures their mindset perfectly when she states that “the colonial rulers’ need to extract labour led to ad hoc experiments, some of which resulted in atrocities causing scandals on an unprecedented scale.”<sup>22</sup> Such experiments most often involved the trade in humans from other colonies and held under contract or debt bondage—such as the transfer of Indian indentured labour to South Africa. Indeed, some colonial officials experimented in multiple forms of unfree labour. In 1926, a French enquiry into high mortality rates amongst workers building a railroad from Brazzaville to the Atlantic Coast found the workers were in fact trafficked from West Africa. Furthermore, the report noted that the company trafficked in women in order to maintain brothels for the labourers.

The evolution of a more diverse set of traders in human beings was not limited to the trade for labour exploitation. By the 1800s, sex trafficking served as a separate but parallel form of the trade. New York City provides one example of how sex trafficking largely paralleled the evolution of the trade in human beings for labour exploitation. In the mid to late 1800s, criminal groups from the burgeoning migrant communities of the day teamed up with the corrupt Tammany Hall political machine to gain protection for prostitution rings that centred on crime group-controlled brothels. The groups procured women for brothels from recruiters operating in Europe. The New York-based crime groups would have the recruiters deliver the women to New York and then would force the women to work in the corruption-protected brothels in the city. For example, the “Vice Trust” of 1912 was reported to have hundreds of women ensconced in forty-three brothels between West 16<sup>th</sup> and 40<sup>th</sup> streets in Manhattan. The women were forced into debt bondage, paying madams five dollars per day in rent, three dollars for board and only receiving a snack during

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<sup>21</sup> Cuthbert Christy, *Report of the International Commission of Inquiry into the Existence of Slavery and Forced Labor in the Republic of Liberia* (Geneva: League of Nations, 1930).

<sup>22</sup> Suzanne Miers, *Slavery in the Twentieth Century: The Evolution of a Global Problem* (Walnut Creek: AltaMira, 2003).

each eight hour shift. The trust used payouts to police and local government officials of 400,000 dollars a year to protect their interests.<sup>23</sup>

Like their brethren trading in indentured servants and debt bondsmen, sex traffickers formed an international confraternity of entrepreneurs, formal criminal groups and links to government and law enforcement officials. An investigation in New York City in 1909 detailed how a diverse pimps, procurers and crime group often met in New York's saloons to coordinate actions and share market information.

[T]he club on 6<sup>th</sup> Ave. ... is called the "Faverdale Club" and is located at 425 Sixth Ave., and is next to Mouquin's restaurant. August Frings above referred to is one of its moving spirits [slang for trader in human beings], and others are Armand, Jean l'Italian, etc. It is a headquarters for the old procurers and new ones from France go there on arrival ... The men who compose this Club used, a year and a half ago, to frequent various public saloons and "Cafes Chantants", but since the efforts of the Government to secure their arrest and conviction have been successful in so many cases. They have confined themselves principally to the Club and to private meeting places where they are safe from observation.<sup>24</sup>

Records from this time detail similar meeting houses in other major American cities, and go so far as to detail circuits along which prostitutes and sexual slaves were sent from brothel to brothel (another parallel to the operation of contemporary trafficking in women). Women were recruited and trafficked from countries like Japan, France, Italy, Austria-Hungary, Poland and Russia into the US. A 1909 US Immigration Service (USIS) memo detailed a number of brothels located in Fort Worth, Texas, including a case where two Japanese women were trafficked via New Orleans and a French trafficker used fake citizenship papers from Los Angeles.<sup>25</sup> In another case, a Japanese woman was brought to Portland, Oregon in October 1906 and held in sexual slavery through a debt bondage scheme. Other US immigration investigations from the time took place in Chicago, Atlanta, San Francisco and Philadelphia.

Yet the example that most resembled transnational criminal organisations was the Zwi Migdal organisation. A Jewish group that originated in Eastern Europe,

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<sup>23</sup> Edward Bristow, *Prostitution and Prejudice: The Jewish Fight Against White Slavery 1870-1939* (New York: Schocken Books, 1982).

<sup>24</sup> Alan Kraut, *Records of the Immigration and Naturalization Service. Part 4, European Investigations, 1898-1936* (Bethesda: University Publications of America, 1996), micro-fiche, 19, 52484/3.

<sup>25</sup> Kraut, *Records of the Immigration and Naturalization Service*, 11, 52484/8.

the Zwi Migdal group would traffic women from Eastern Europe into South America for six decades. The group controlled the entire trade in women, from recruiting in Eastern Europe to transport via France and other countries to the brothels in Argentina and Brazil. Vincent chronicles the Zwi Migdal organisation's expansive trade in women through the personal stories of Jewish women that entered into religious marriages they later found were rooted in the false pretences of recruiting them for South American brothels.<sup>26</sup>

In sum, four observations arise from this briefest of glimpses into the history of the trade in human beings. The first is that traders in human beings were and remain a diverse set of actors. From the earliest forms of the trade, individual entrepreneurs and small firms operated alongside larger, more organised actors. Second, the trade in human beings has always consisted of licit and illicit dimensions. This leads to a third and related observation, which is that as legal restrictions on the trade advanced, the need to purchase protection from government agencies through bribes and other forms of corruption also increased. Last, and most importantly, the trade in human beings always required a level of international organisation that today we most often summarise through the use of one word: transnational.

## **2. Contemporary Traffickers: Three Brief Case Examples**

Contemporary trafficking continues as a diverse criminal enterprise that involves both licit and illicit actors operating both domestically and transnationally. Diversity continues to define the perpetration of trafficking in human beings. Recent trafficking cases have shown that actors range from small groups of entrepreneurial individuals to large, well-organised criminal groups. Government officials, commercial actors and specialised actors remain important to some but not all trafficking organisations. Such general statements hold true regardless of the location of the trafficking organisations. In 2006, the author conducted over forty interviews with law enforcement, prosecutors, academic experts and nongovernmental officials in the US, Sweden and Italy on how trafficking in persons operated. The interviews supported the conclusion that traffickers are diverse.

Sweden drew praise for having an effective anti-trafficking policy that has resulted in low rates of trafficking into a western European state. Trafficking, however, still occurs. When it does, it is often entrepreneurial and small-scale,

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<sup>26</sup> Isabel Vincent, *Bodies and Souls, The Tragic Plight of Three Jewish Women Forced into Prostitution in the Americas* (New York: William Morrow, 2005).

reflecting a lack of strong markets for commercial sex. Of the dozen or more trafficking cases that Swedish authorities investigated between 2000 and 2006, none had more than six perpetrators. Repeated questioning of law enforcement, prosecutors and other experts failed to locate large criminal syndicates controlling trafficking networks operating in Sweden. For example, Swedish authorities established a task force that for three years sought to locate major transnational criminal groups engaging in trafficking. The task force resulted in only six cases, and in each of these cases the criminal groups remained offshore and collected profits from smaller, more entrepreneurial trafficking groups operating in Sweden on their behalf. Three of these cases involved the Kemetova crime group, an ethnic Russian criminal organisation based in Estonia that collected 10 per cent of profits from “project leaders” that in turn organised and ran trafficking rings from Estonia into Sweden. None of the experts in Sweden were able to identify a single case of labour trafficking.

Italy, on the other hand, has very active markets and has often been successful in identifying and prosecuting trafficking cases. A sign of just how significant the trafficking problem is in Italy is that between 1998 and 2006 the government accepted 8000 applications from sex trafficking victims for state protection. The actual prosecutions of trafficking in Italy reveal the diversity of actors as well. Transcrime, an Italian research centre, stated that Italian prosecutors opened 2930 separate cases of trafficking between 1996 and 2000 that targeted 7582 traffickers and involved 2741 victims.<sup>27</sup>

Thus it is not surprising that, unlike Sweden, a number of large criminal groups conducted sex trafficking in Italy. Criminal organisations from Nigeria, Albania and other former Warsaw Pact countries are the largest trafficking organisations operating in Italy. Starting in the 1980s, Nigerian procurers and madams established brothels in northern Italian cities and expanded into roadside prostitution as well. The women forced to work in these schemes were recruited in Nigeria and neighbouring countries and then held through debt bondage and other mechanisms. One expert estimated that in 2006, 50 per cent of the prostitutes in Italy (12,500) were Nigerian or a product of the Nigerian sex trade. In the early 1990s, Albanian crime groups began to traffic women into Italy. After the 1997 collapse of the Albanian economy, the Albanians quickly ascended to become the most prolific traffickers into Italy. Albanian traffickers were most well-known for a ferocious use of violence to maintain control of their trafficking routes and their victims. More recently, Italy

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<sup>27</sup> Ernesto Savona, Roberta Belli, Federica Curtol, Silva Decarli, and Andrea Di Nicola, *Trafficking in Persons and Smuggling of Migrants into Italy* (Trento: Transcrime, 2003).

witnessed a steep increase in trafficking from countries in the former Warsaw Pact. Traffickers from Ukraine, Romania and Moldova have all increased in the past few years. According to one expert, Romanian women, in 2006, became the most frequent victims seen in Italian rescue shelters.

Labour trafficking schemes also exist throughout the country. Labour trafficking occurs within the larger context of illegal Chinese immigration that began in the 1970s and continued to provide cheap labour to textile firms outside Florence and elsewhere in Italy. Ukrainian women were forced into slavery in service of agricultural concerns in the Calabria region, and North Africans were identified as slaves working on farms in Sicily. Another NGO reported on separate cases of labour trafficking involving men from China, Romania, Morocco and Pakistan. Forced begging and the enslavement of children were also found in Italy. In May 2006, police in Trieste uncovered a major Bulgarian trafficking ring that was trafficking eight to twelve year old boys and girls for petty theft, shoplifting and even prostitution.

The significant size of trafficking markets in Italy has allowed a diversity of actors, ranging from entrepreneurs to organised crime groups, to focus on specific segments of trafficking networks and garner profits from this specialisation. For example, Italian and Bulgarian authorities in June 2005 completed Operation Balkangate and ordered the arrest of fifty-seven people for operating a wide-scale trafficking network. Using an elaborate series of front companies and portraying themselves as alien smugglers, the trafficking group forced their victims into various forms of slavery upon their arrival in Italy. Women were trafficked into prostitution and men for work as shepherds. Expanding their operations, the network began to traffic babies into Italy and sold them for 10,000 Euros each. Italian authorities revealed similar cases occurring in 2003, including one in which traffickers kidnapped a pregnant Albanian woman and, along with eighteen other women, brought her to Lecce in southern Italy to give birth and sell her baby.<sup>28</sup>

This diversity of actors is also found in US trafficking markets. A recent review of over a dozen of the most recent cases of trafficking into the US revealed that over half of them involved a single individual trafficker, while another quarter were a small group of individuals.<sup>29</sup> Some of these traffickers were entrepreneurial individuals that formed small groups to bring in relatively small numbers of victims for large profits. In 1996-7, Alex Mishulovich and a

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<sup>28</sup> Arie Sophie Bari, "I was pregnant, and then my lover sold me and my baby," *The Observer*, July 20, 2003.

<sup>29</sup> Lize and Bales, *Trafficking in Persons*.

handful of other traffickers employed a debt bondage scheme, backed by threats and the use of force, to traffic five Latvian women into the US and force them to work as adult dancers in the Chicago area. In California, a US Federal Court convicted an Indian national named Lakireddy Bali Reddy in 2001 for exploiting the H1-B visa programme, intended to grant high tech workers working rights, to traffic twenty Indian men for labour exploitation and two girls for sexual exploitation. In 1997, members of the Cadena-Sosa family, a mother and her four sons, led a sex trafficking ring that brought women and girls from Mexico to Florida and forced them to work off a two thousand three hundred dollar smuggling fee through prostitution in trailers that served as brothels. In 2003, the US government convicted Kil Soo Lee for trafficking some 200 victims, mainly women, from Vietnam and China to American Samoa for labour exploitation in a garment-producing sweatshop.

Yet other cases involve more significant involvement of criminal organisations. For example, the author spoke numerous times with law enforcement investigators in Montgomery County, a suburban Maryland county located just northwest of Washington DC. In 2006, the investigators arrested members of a Latin American trafficking network that supplied women for sexual slavery in the Washington, DC suburbs, and catered only to Latin American customers. The network started with international traffickers responsible for bringing victims into the US. The international traffickers were based in Queens, New York and Union City, New Jersey. From these sites, the traffickers supplied the women to brothels in cities that ranged from Boston, Massachusetts to Richmond, Virginia. The brothel owners would “hire” the women from the traffickers for a week. In Maryland, a representative of the brothel organisations would drive to Queens and Union City every Sunday to exchange the women of the previous week with a new group acquired from the traffickers. Brothel owners and the traffickers split the proceeds evenly, while the trafficked women kept none of the money.

One last facet of contemporary trafficking bears a striking resemblance to the trade in human beings of earlier eras—the presence of corruption. Corruption acts both as an environmental condition that favours trafficking and as a tactic that traffickers use to ply their trade. Some studies have shown that the level of corruption in society is a causal factor for contemporary trafficking in human beings.<sup>30</sup> But traffickers using corruption to perpetrate the trade is also well-documented. Studies have shown how law enforcement officials, border

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<sup>30</sup> Kevin Bales, *Understanding Global Slavery: A Reader* (Berkeley: University of California Press, 2005).

guards, customs officials, consular staff members and numerous other types of government officials have taken bribes or even conspired with traffickers.<sup>31</sup> In sum, corruption remains an integral part of the trafficking in human beings.<sup>32</sup>

### 3. Trafficking Organisations or Trafficking That Is Organised?

A growing number of experts and practitioners are choosing to focus on organised crime as a market for illicit goods and services rather than as exclusively a form of criminal organisation.<sup>33</sup> Such an approach, which political scientists refer to as illicit international political economy and criminologists call crime that is organised, allows the analyst to capture the diversity of actors who contribute to the criminal act directly or indirectly.<sup>34</sup> Both the historical trace and the case evidence presented here fits this approach to trafficking in human beings. In sum, trafficking in human beings is an example of a complex crime that is organised and has a diverse set of perpetrators.

Rather than focus on specific criminal organisations and how they form to perpetrate trafficking in human beings, an alternative approach deconstructs the roles that individuals or groups fulfil to conduct trafficking. One of the best ways to capture the complexity of trafficking is therefore to think of it as a transactional network. The nodes of the networks are the roles that need filling in order for trafficking to occur. The model contains three parts:

1. *Required roles*: Elements of trafficking that must be present. Specifically, these are (a) recruitment, (b) movement and (c) exploitation of victims.
2. *Ancillary roles*: Elements of trafficking that may or may not be present. Some trafficking groups require experts in document fraud or money laundering. Escorts, debt collectors and security agents are also

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<sup>31</sup> Osita Agbu, "Corruption and Human Trafficking: The Nigerian Case," *West Africa Review* 4, no. 1 (2003); Andrew Cockburn, "21st Century Slaves," *National Geographic* 204, no.3 (2003): 2.

<sup>32</sup> For more information on the links between trafficking and corruption, see Leslie Holmes' chapter on the subject in this volume.

<sup>33</sup> Peter Andreas, "Illicit International Political Economy: The Clandestine Side of Globalization," *Review of International Political Economy* 11, no. 3 (2004): 641-652; Richard H. Friman and Peter Andreas, eds., *The Illicit Global Economy and State Power* (Lanham, MD: Rowman and Littlefield, 1999); John Picarelli and Phil Williams, "Combating Organized Crime in Armed Conflicts," in *Profiting from Peace: Managing the Resource Dimensions of Civil War*, ed. Karen Ballentine and Heiko Nitzschke, 123-152 (Boulder: Lynne Rienner, 2005).

<sup>34</sup> Andreas, "Illicit International Political Economy."



sometimes found in trafficking groups. Finally, some traffickers pay bribes to government officials or business leaders in order to prevent legal complications.

3. *Transactions*: Flows that connect the nodes of the network. For example, one can represent the recruitment of victims in one country and their movement into enslavement in a second country as three roles (i.e. recruitment, movement and enslavement) connected by the flow of one or more victims. The movement of other commodities such as information or money can serve as links between the roles in the network as well.

The power of this approach is found when the model network is transformed from a transactional to a social network model. One or more agents can fulfil each of the roles in the model. Individuals can serve as recruiters, transporters, protectors or any number of other roles. Small groups of two or three individuals can also specialise in one role without meeting any formal definition of organised crime. But formal organised crime groups are also active agents in trafficking. They can focus on fulfilling one role, a couple of roles or even all of the roles in the transactional network. Moreover, the social network model captures the important linkages between “upperworld” and underworld. For example, some examples might have businesses serving as exploiters or government officials providing the traffickers with protection.

The model transactional network captures the complexity of trafficking in human beings. The logical start of a trafficking ring is the recruitment of victims. Through promises of work, marriage, a better life in a new country or any number of other schemes, recruiters locate persons willing to relocate to improve their lives somehow and arrange for their travel. After relocation, victims are enslaved and held in place through debt bondage, physical threats, psychological abuse, drug dependency and other mechanisms. The larger the trafficking scheme, the more likely one is to find associated criminal activities like document fraud, money laundering, cyber-crime and corruption involved.<sup>35</sup>

The network model establishes a range of ways that trafficking is organised. Just using examples from the above historical and contemporary evidence, three types of trafficking networks emerge.

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<sup>35</sup> Louise Shelley, “Human Trafficking as a Form of Transnational Crime,” in *Human Trafficking*, ed. Maggy Lee, 116–37 (Portland: Willan, 2007).

### *3.1 Entrepreneurial Trafficking Organisations*

Entrepreneurial trafficking organisations occupy the smaller end of the spectrum. Often, these groups are small in size with only a handful of perpetrators fulfilling one or more roles. It is not uncommon to find two or three perpetrators acting simultaneously as recruiters, transporters, and exploiters—essentially travelling overseas to recruit persons for exploitation schemes they are operating and escorting the persons in the process. It also follows that, due to their small size, these trafficking organisations often limit the number of persons they are trafficking or exploiting at any one given time. Finally, these groups are not likely to engage in ancillary activities like money laundering or document fraud themselves, but will engage specialists when these services are required.

The methods that entrepreneurial groups use to conduct trafficking are often simple and unsophisticated. First, they are much more likely to engage in specific country-to-country trafficking. For example, these traffickers prefer to operate in source countries they are familiar with through prior citizenship or ethnic heritage. Moreover, they most often traffic people to a destination state that they reside in or within which they maintain some form of business dealings. In order to move the persons, they almost always use commercial carriers and seemingly legitimate methods to circumvent immigration controls. Regarding the latter, entrepreneurial traffickers often engage in visa shopping to obtain a visa, and then have the trafficked persons overstay their visa once in the destination state.<sup>36</sup> Finally, due primarily to the reasons mentioned above, such groups are likely to engage in trafficking only sporadically, replacing victims in sweatshops or brothels as needed. While entrepreneurial trafficking groups are small in size and engage in trafficking only sporadically, one should not discount the harm that these groups inflict or assume that these groups earn paltry sums from their criminal endeavours. In fact, entrepreneurial groups have been known to earn significant sums of money in a short period of time. Since entrepreneurial groups draw their profits from the exploitation phase of trafficking, they often maintain close control over their victims.

The Mishulovich case in the US is an example of how an entrepreneurial group operates. The case centred on two Latvian men who left Chicago in the US to recruit women in Latvia for clerical positions but later forced them to work as

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<sup>36</sup> Visa shopping is the act of filing visa petitions with more than one of a state's Embassy or Consulate in a region. The theory behind visa shopping is twofold. One is that some consular officials may not as strictly adjudicate visa applications as others. Second, that by only applying for one or two visas at a time, the trafficker is less likely to draw attention to him or herself.

exotic dancers and in other related businesses in the Chicago area. The two men recruited five women in Riga in 1996 with promises that they would only have to pay half their travel fees and would earn 60,000 dollars per year. They helped the women obtain tourist visas by stating the women were their relatives, escorted them into the US on commercial air flights, and then enslaved them when they reached the US—taking their papers, locking them into a one-bedroom apartment and threatening them with harm and violence if the women did not cooperate. For six months, the women worked almost every night and earned roughly 600 dollars per night but only kept 20 dollars. Not including travel and boarding expenses, Mishulovich and his associates earned roughly 100,000 dollars per woman for the six months. In sum, two men and a limited number of accomplices recruited, transported and exploited women in sex trafficking network that lasted months and resulted in both significant profits and sizeable trauma for the victims.

### *3.2 Transnational Networks*

A second form of trafficking networks is a large organised crime group that controls all aspects of trafficking. Major transnational networks often have large numbers of perpetrators and operate across wide geographical range. The transnational networks involve larger aggregate volumes of trafficked persons and, as such, tend to maintain their trafficking schemes continuously. For this reason (and others), these groups tend to be more innovative, constantly searching for new routes or ports of entry to exploit. Finally, the transnational groups employ numerous routes to multiple destinations, and are often found to engage in other smuggling activities, such as narcotics trafficking and arms smuggling, alongside (or even using) trafficking methods. Such groups are more likely to contain linkages to ancillary services like protectors in government, debt collectors, document fraud experts, money launderers and even some form of intelligence-gathering function. Moreover, these criminal organisations are likely to have connections to the “upperworld”, either through the use or complicity of businesses or from bribes paid to government officials.

While the Zwi Migdal group serves as a historical example of a crime group that controlled all aspects of trafficking, plenty of contemporary examples exist as well. In Operation Lost Thai, US investigators in California collected numerous wiretap conversations between brothel operators, a crime group in the Los Angeles area and recruiters overseas. The criminal group in Los Angeles served as the coordinator for the network, essentially soliciting demands from the brothel owners and then working with their recruiters

overseas to secure new victims. At one point in the investigation, law enforcement wiretaps captured discussions between traffickers and recruiters that asked for Malaysian women since the brothel-keepers found them easier to market. In sum, the crime group controlled the trafficking network from recruitment to exploitation.

From a review of recent cases and the inputs of expert investigators, indicators of organised crime involvement in human trafficking cases into the US and Europe include the following:

- High-quality altered and/or forged documents
- Numerous front companies or other commercial interests
- Advanced technology (e.g. satellite phones, GPS, laptop computers, digital surveillance equipment)
- Extensive corruption
- Rapid modification or adaptation of trafficking operations to reflect changing risks
- Trafficked persons travelling extremely long distances in larger numbers
- The same lawyers for different criminal cases
- Sophisticated methods of laundering funds from the trafficking network.

All of these indicators are relative to other forms of human trafficking, and thus by themselves are not all that useful. But, when combined with the investigator's experience of human trafficking cases, they serve as a way to better understand what law enforcement officers may be encountering as they develop information about a human trafficking network.<sup>37</sup>

### 3.3 Hybrid Groups

A third type of trafficking organisation is a hybrid of entrepreneurs and criminal groups that collaborate to complete trafficking. From the historical

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<sup>37</sup> It is important to note that this list of indicators is drawn from a sample of trafficking cases into only two, industrialized regions of the globe. The diversity of cultural, socioeconomic and other factors suggests that trafficking groups in other regions of the globe will have different sets of indicators. See Louise Shelley, "The Trade in People in and from the Former Soviet Union," *Crime, Law and Social Change* 40 (2003): 231-249.

and contemporary evidence, it is clear that this “middle” option is the most frequent and most diverse. Small groups of individuals and formal crime groups collaborate. From the earlier historical example, it was individual arkatia recruiters that located victims for firms that indentured men to work the plantations of the Caribbean and South America. A good contemporary example concerns three trafficking cases in Sweden that involved Estonian crime groups. While the crime groups found women from Eastern Europe and transported them to Estonia and eventually Sweden, it was small groups of Estonian and Russian traffickers that controlled the women and established the apartment brothels where they were exploited. This combination of small groups and large criminal establishments played to each organisation’s strengths and allowed each to reap profits from sex trafficking. The Estonian crime group provided false documents, hired members of a long-haul trucking company to transport the women and paid protection money to another crime group in Estonia. In return, the small group ran the brothels in Sweden, collected the money from the brothels and paid a percentage of the weekly profits to the crime group in Estonia. The crime groups satisfied different roles in the trafficking network based on the most efficient use of their resources.

In sum, it is important to note that this categorisation scheme is nothing more than a means to an end. Other systems of categorisation are certainly possible. Yet the important conclusion is that trafficking organisations are diverse and defy parsimonious explanations. Trafficking in human beings requires an organisation that fulfils a number of roles. While some criminal organisations have the resources to manage large trafficking networks, a good number of other trafficking organisations prefer to use a more cooperative or entrepreneurial model. Establishing investigative techniques geared only to criminal groups or small entrepreneurial models of trafficking are bound to miss significant amounts of trafficking perpetrated by hybrid organisations. Situational awareness of the types of trafficking organisations operating within a specific region is therefore a ground-level requirement for anti-trafficking policies and programmes.

### **Recommendations**

This chapter made the case that the link between organised crime and human trafficking is best captured as one embedded within the greater diversity of actors that perpetrate the trade in human beings. Organised crime is a major player in the trade. Discerning those trafficking organisations controlled

entirely by organised crime as opposed to those affiliated with organised crime is thus an important goal for security services. Contending with the diversity of actors leads to other important recommendations regarding investigative resources, training, intelligence and further research.

*Investigators Need to Devote Resources to be Able to Recognise and Investigate the Full Diversity of Trafficking in Persons*

While some might think this a supercilious recommendation, recent surveys of the US effectiveness at fighting human trafficking suggest otherwise. The National Institute of Justice convened two independent surveys of law enforcement agencies, one for those involved in Anti-Trafficking Task Forces and a second for those that are not. Both surveys indicated that a sizeable minority of law enforcement agencies remain unable to provide even a simple definition of trafficking.<sup>38</sup> The studies concluded that those agencies that dedicated resources and training for countering trafficking were the same agencies that most often found cases of trafficking.

*Investigators Need Basic and Advanced Training on Human Trafficking*

Some training for investigators needs to introduce basic concepts like definitions and resources available to investigators. Yet training should also go beyond the basics and provide up-to-date information on the organisation of trafficking, including how to recognise when organised crime is more likely to be involved in trafficking.

*Investigators Require Devoted Resources to Implement Training Against the Diversity of Trafficking Groups*

Training is not a magic bullet against human trafficking. Investigators also need to access additional resources when they identify a trafficking case.<sup>39</sup> The diversity of actors and their networked forms of organisation will require significant human and capital resources to investigate. The establishment and funding of task forces provides early and steady support for investigators and prosecutors as they take the case through the judicial system. Investigators also require specialized support. For example, this chapter identified the links

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<sup>38</sup> Amy Farrell, Jack McDevitt, and Stephanie Fahy, *Understanding and Improving Law Enforcement Responses to Human Trafficking* (Boston: Institute on Race and Justice, 2008); Phyllis Newton, Timothy Mulcahy, and Susan Martin, *Finding Victims of Human Trafficking* (Rockville: National Opinion Research Center, 2008).

<sup>39</sup> For more on the prosecution of trafficking, see Allison Jernow's chapter on the subject in this volume.

between corruption and trafficking organizations.<sup>40</sup> Policymakers must provide investigators with experts in financial forensics in order to identify bribes and with regulators that can identify corrupt links to officials and firms.

*Investigators Would Benefit from the Formation of Domestic Intelligence Services Dedicated to the Identification of Human Traffickers*

Law enforcement intelligence has proven itself a valuable asset by making the connections between trafficking actors quickly through the sharing and fusion of information from multiple (and international) law enforcement agencies.<sup>41</sup> The US Human Trafficking and Smuggling Center and the UK Human Trafficking Centre are two examples of how information sharing can lead to quicker identification and wiser investment of resources to bring investigations of trafficking cases to a successful end.

*Researchers Can Help Improve our Understanding of the Diversity of Trafficking Groups and Their Impact on Security Services*

While quality research on trafficking in human beings is growing at a rapid pace, more information is needed on types of trafficking organisations.<sup>42</sup> Studies that examine and compare how trafficking groups organised in specific cases in one or more countries would contribute a richer understanding of how trafficking groups operate as well as how best to identify them. Moreover, studies that analyze cases over time will allow for the important observation of how trafficking groups are evolving to meet the threat from new laws, new investigative capacities and so on. Finally, researchers can provide evaluations of different investigative techniques in order to identify best practices that are transferable from one country to another. Only through the construction of an effective and truly international response will investigators gain an advantage against human trafficking organisations.

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<sup>40</sup> For more on the links between trafficking and corruption, see Leslie Holmes' chapter on the subject in this volume.

<sup>41</sup> For more information on intelligence and trafficking, see Fred Schreier's chapter on the subject in this volume.

<sup>42</sup> Elzbieta Gozdzia and Micah Bump, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature* (Washington DC: Georgetown University 2008).





## CHAPTER 4

# Human Trafficking & Smuggling: Crossover & Overlap

Benjamin S. Buckland

### Introduction

The Trafficking and Smuggling Protocols have been a spur to efforts aimed at improving protection for trafficked people.<sup>1</sup> It is now increasingly clear what the protection needs of trafficked people are, even if those needs often remain unfulfilled. Great strides have also been made towards establishing standards for better prevention and better prosecution.

The definition of trafficking contained in the Protocol was important for a number of reasons. Perhaps foremost among these is the fact that an agreed definition has done much to aid the collection of data on trafficking scope, patterns, and trends. While the nature of the phenomenon (particularly the fact that many of those involved are keen to keep it in the shadows) means that an accurate picture is still out of reach, many elements are visible and well defined. This data has enabled better responses by police, border guards, prosecutors, NGOs and others.

What this chapter argues, however, is that the trafficked person described by the Trafficking Protocol represents something of an ideal type, one that only captures a small percentage of those in need of protection. I argue that human trafficking and the smuggling of migrants often sit together on a long continuum of exploitation and that, while they may be very different at the extremes, there is a great deal of crossover (a migrant starts in one category and ends in another) and overlap (various factors make it hard to place a migrant in either category) in the middle.<sup>2</sup>

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<sup>1</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol), 25 December 2003; Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol), 28 January 2004.

<sup>2</sup> It should be noted at the outset that the following discussion only really applies to the trafficking and smuggling of adults.

This fact is well illustrated by a simple example. The 2008 United States (US) Government's Trafficking in Persons Report opens with the story of Lila,

a 19-year-old Romanian girl who ... was introduced by an 'acquaintance' to a man who offered her a job as a housekeeper/salesperson in the UK. When she arrived in the UK, the man sold her to a pimp and Lila was forced into prostitution. She was threatened that she would be sent home in pieces if she did not follow every order. After an attempted escape, her papers were confiscated and the beatings became more frequent and brutal.<sup>3</sup>

Lila was clearly trafficked but what if we change her story a little and imagine that she had come to Britain willingly, but illegally, arrived owing debts to the people who had arranged her passage and worked willingly, but in difficult conditions, in order to repay that debt? This second scenario is far from implausible and, with a little variation in industry and working conditions, describes the situation of many thousands in the UK alone. In the second example Lila has merely been smuggled.

The trafficking/smuggling binary set up by the two Palermo Protocols offers dramatically less protection to the second category of person. In fact, while trafficked people are posited as innocent victims, smuggled people are regarded as criminals. This is something that I will explore in more detail below, but suffice to say that this victim/criminal divide is an assumption that this chapter seeks to challenge.

Of course, while I intend to undermine the sharp distinction made in most jurisdictions between trafficked victims and smuggled criminals, it is not my intention to tar everyone with the "criminal" brush—a race to the bottom in terms of protection should not be in anyone's interest. Rather, it is argued here that the extension of current protection regimes needs to continue so that many more people are covered than the current narrow band of migrants classed officially as trafficked.

This chapter is divided into three parts. In the first, I look initially at the trafficking of people and smuggling of migrants as they are currently conceptualised, as well as at the way both state and non-state actors have sought to approach them. I then examine how the two phenomena may both crossover and overlap. In the second part I look at the possible factors that have led to crossover and overlap not being widely reflected by current policy. In

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<sup>3</sup> United States of America, Department of State, *Trafficking in Persons Report* (Washington DC: Department of State, 2008).

particular, I argue that factors such as path dependency, narrow state interests and false assumptions are key.

The final part is divided into two. In the first of these sub-parts, I look at the consequences of current policy. In particular, I criticise the negative side effects of current policy for refugees and asylum seekers that have been highlighted by many scholars. Finally, I look at constructive ways in which policy can be improved so as to better protect all categories of people crossing international borders.

## 1. Definitions

As John Salt notes, “trafficking is a subject that divides those who come into contact with it. Much of the concern expressed about its causes and consequences have been emotional, for example, dwelling on the plight of women and children trafficked into prostitution and sex work.”<sup>4</sup> Despite this focus, reflected in the title of the Trafficking Protocol, which refers to *trafficking in persons, especially women and children*, international law does define a trafficked person more broadly as someone who is transferred across borders or within a state for the purposes of slavery or servitude. Drawing on the Protocol’s Article 3, we can characterise the crime of trafficking as consisting of three key elements:

- The recruitment, transportation, transfer, harbouring or reception of persons
- The threat or use of force or various forms of non-violent coercion, such as fraud or deception
- Exploitation, predominantly for forced labour in one of the many sectors mentioned above.<sup>5</sup>

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<sup>4</sup> John Salt, “Trafficking and Human Smuggling: A European Perspective,” *International Migration (Special Issue)* 1, (2000): note 3.

<sup>5</sup> The full definition is as follows:  
(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;

Smuggling on the other hand is defined as the illegal transfer of migrants across international boundaries for “financial or material benefit.” The Smuggling Protocol’s own Article 3 refers specifically to states “of which the person is not a national or permanent resident.”<sup>6</sup>

Mike Dottridge has argued that the definitions in the Protocols are hard to understand, leading to problems of implementation and operationalisation, as they are misinterpreted and misapplied by relevant actors.<sup>7</sup> Taking this into account, I have simply drawn out the key elements of the Protocols’ most relevant articles below. Thus, in the simplest sense, the Trafficking Protocol requires states party to:

- Criminalise trafficking and impose penalties
- Accept and facilitate the return of trafficked nationals
- Ensure this return occurs with due regard for the health and safety of trafficked persons and for ongoing legal proceedings
- Exchange information aimed at apprehending traffickers
- Provide/strengthen training for security sector actors
- Strengthen border controls

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(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;

(d) “Child” shall mean any person under eighteen years of age.

<sup>6</sup> (a) “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

(b) “Illegal entry” shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;

(c) “Fraudulent travel or identity document” shall mean any travel or identity document:

(i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or

(ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(iii) That is being used by a person other than the rightful holder;

(d) “Vessel” shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

<sup>7</sup> Mike Dottridge, “Introduction,” in *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, ed. Global Alliance Against Trafficking in Women (Bangkok: GAATW, 2007), 4.

- Implement carrier sanctions and other interdiction measures
- Improve document security.

In addition, the Protocol has a non-binding section relating to rights and protections—evidence of the lower priority these are given. Here the Protocol asks states party, “in appropriate cases and to the extent possible under its domestic law”, to:

- Protect the privacy of victims and provide them with appropriate information about legal proceedings
- Consider implementing measures to aid in physical and psychological recovery of victims
- “Endeavour to provide for the physical safety” of trafficking victims
- Make available under domestic law the possibility of accessing compensation
- Consider granting permission to remain in the destination state in appropriate cases with consideration being given to “humanitarian and compassionate factors”
- Endeavour to establish policies preventing revictimisation
- Endeavour to undertake additional measures to prevent trafficking, such as economic development, awareness raising etc.

Smuggling is, by contrast, assumed to be voluntary. Smuggled people are thus assumed to be in substantially less need of protection. Even more so than in the Trafficking Protocol, the focus is on strengthening border controls, especially sea borders—the Protocol being the first instance in international law of states being permitted to intercept vessels suspected of transporting smuggled migrants on the high seas.<sup>8</sup> In particular, the new smuggling laws attempt to funnel what were multiple crimes into a single crime, with a concurrent reduction in the amount of evidence required and a simultaneous increase in gravity.<sup>9</sup> The Smuggling Protocol requires states party to:

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<sup>8</sup> Anne Gallagher, “Trafficking, Smuggling and Human Rights: Tricks and Treaties,” *Forced Migration Review* 12, (2002): 26.

<sup>9</sup> Andi Pacurar, “Smuggling, Detention and Expulsion of Irregular Migrants: A Study on International Legal Norms, Standards and Practices,” *European Journal of Migration and Law* 5, no.2 (2003): 259-60.

- Criminalise the smuggling of migrants and related offences, including the production, provision and *possession* of counterfeit documents [emphasis added]
- Ensure document security, including by cooperating to stop fraudulent use
- Provide training to security sector actors to prevent, combat, and eradicate smuggling of migrants
- Implement legal and administrative measures (such as sanctions) to stop the use by smugglers of commercial carriers.

The Protocol also contains a number of articles aimed at protecting smuggled people from the worst forms of exploitation. But these are nowhere near as comprehensive as the protections contained in the Trafficking Protocol, and like their counterparts in that instrument, they are mostly recommendatory.<sup>10</sup>

The Protocol asks states party to:

- Ensure that, when criminalising smuggling, situations that endanger life, involve exploitation or inhumane and degrading treatment should be considered as aggravating circumstances
- Not make smuggled people liable for criminal prosecution
- Take all appropriate measures to preserve the internationally recognised rights of smuggled persons, particularly the right to life and the right not be subjected to torture or other cruel, inhuman or degrading treatment or punishment
- Provide protection from violence
- Assist those who have been put in danger by being smuggled.

While these definitions posit trafficking and smuggling at opposite ends of a long continuum—with trafficked “victims” at one end and smuggled “criminals” at the other—the reality is not nearly so simple.<sup>11</sup> Smuggled and trafficked people “overlap” at many points. I now turn to this overlap.

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<sup>10</sup> Gallagher, “Trafficking, Smuggling and Human Rights,” 26.

<sup>11</sup> Salt, “Trafficking and Human Smuggling,” 33-4.

## 2. Crossover and Overlap

### 2.1 Overlap Between Smuggled and Trafficked Persons

First, it is important to note that both trafficked and smuggled people most often choose to leave their homes,<sup>12</sup> whether as economic migrants, asylum seekers, or to be reunited with their families (among many other reasons).<sup>13</sup> While the image of the trafficked person, kidnapped in the dead of night, is a powerful one, it only describes a small minority of cases.

Thus, we can perhaps best describe what happens next as, in the words of Alexis Aronowitz, a “continuum of victimisation” along which migrants fall as their use of illicit migration channels exposes them to greater or lesser forms of vulnerability.<sup>14</sup> Smuggled people may, to take just a single example from the many available, become trapped in exploitative working conditions due to forms of debt bondage incurred vis-à-vis those who have arranged their passage.<sup>15</sup> As Beate Andrees and Mariska van der Linden suggest, “the forced labour process is perhaps best seen as an ever-narrowing labyrinth where one’s perceived alternatives become less and less viable.”<sup>16</sup>

John Salt supports this view, arguing that clear categories are almost impossible to define. Instead, Salt argues for a continuum of undocumented migration with considerable variation (and considerable exploitation) between the extremes.<sup>17</sup> Ronald Skeldon, in an article based on his extensive work on trafficking in Asia, agrees, noting that:

while the general intent of the term ‘trafficking’ may be clear, in practice it is difficult to apply. Networks of human smugglers have proved to be highly successful in moving large numbers of people illegally and in amassing substantial profits. Violence, coercion and exploitation are an integral part of smuggling, and it is virtually impossible to discuss smuggling without trafficking. A critical

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<sup>12</sup> Of course, questions of agency are difficult to properly assess, particularly when extreme poverty, repression, or discrimination is involved.

<sup>13</sup> Alexis A. Aronowitz, “Smuggling and Trafficking in Human Beings: The Phenomenon, The Markets that Drive It and the Organisations that Promote It,” *European Journal on Criminal Policy and Research* 9, no.2 (2001): 164.

<sup>14</sup> Ibid, 166-7.

<sup>15</sup> Claire Brolan, “An Analysis of the Human Smuggling Trade and the Protocol Against the Smuggling of Migrants by Land, Air and Sea (2000) from a Refugee Protection Perspective,” *International Journal of Refugee Law* 14, no.4 (2003): 579.

<sup>16</sup> Beate Andrees and N. J. Mariska, “Designing Trafficking Research from a Labour Market Perspective: The ILO Experience,” *International Migration* 43, no.1-2 (2005): 65.

<sup>17</sup> Salt, “Trafficking and Human Smuggling,” 33-4.

examination of the whole process will reveal that a clear distinction between coercion and freedom of choice becomes blurred. In fact, a clear distinction between trafficking, smuggling and other forms of population movement also becomes blurred.<sup>18</sup>

Skeldon elaborates on this theme, labelling the processes involved as a “continuum of facilitation”, spanning the divide from “completely transparent, fully invoiced and accountable recruitment on the one hand, through to the movement of people through networks entirely controlled by criminal gangs on the other.”<sup>19</sup> One of the reasons for this continuum is the opacity of bureaucratic migration procedures—procedures that are often so long and complex that would-be migrants have no choice but to use facilitators or intermediaries. These intermediaries, many offering diverse services such as interview coaching, bribe-paying, and document procurement, blur boundaries by exposing even otherwise legal migrants to illegal or semi-legal activities. The danger, of course, is that the use of intermediaries can in many cases expose migrants to exploitation or abuse.

The fact that intermediaries blur the boundaries between legal and illegal migration, as well as opening up possibilities for exploitation, further underpins my argument that between the extremes there is a broad grey area within which smuggled and trafficked people overlap. This is particularly the case if we accept, as Salt argues, that there are open questions regarding the true links between large-scale organised crime and trafficking—a question dealt with by John Picarelli elsewhere in this book.<sup>20</sup>

By treating trafficking as a purely criminal and illegal activity, one involving greater or lesser degrees of involvement by organised crime, we may fail to “apprehend those elements of migration that are associated with trafficking but which have quasi-legal status and those cases where the status of the migrant drifts in and out of legality during the process as a whole”,<sup>21</sup> as in the case of intermediary use. As Skeldon again posits:

it would be incorrect to assume that all trafficking or illegal migration is controlled by international criminal syndicates. There are many amateurs, either individuals or small groups of villagers, and small groups of criminals as well as transnational syndicates, involved in the

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<sup>18</sup> Ronald Skeldon, “Trafficking: A Perspective from Asia,” special issue, *International Migration* 38, no.1 (2000): 9.

<sup>19</sup> *Ibid.*, 10.

<sup>20</sup> See also Salt, “Trafficking and Human Smuggling,” 36.

<sup>21</sup> *Ibid.*, 36-7.



process. In fact, trafficking seems to lend itself to a fissiparous operation requiring little start-up capital and little in the way of organizational capital. Individual entrepreneurs and petty criminal groups are both capable of attempting to bring in or export small numbers of workers. The operative word appears to be 'flexibility', with groups responding to particular situations, constantly changing routes and tactics, involving whoever can assist at specific locations and specific times. Rather than any large organization, trafficking is the product of diverse groups constantly shifting in composition and alliance as the need arises.<sup>22</sup>

Because much of the counter-trafficking focus has been on its worst forms, what has often been ignored has been lower level exploitation on the margins of legality. Much of this low-level exploitation involves people often regarded as smuggled, or those at the trafficking/smuggling boundary (see Box 1).

**Box 1**

**Alfred (case 1)**

"Alfred", a Nigerian in Britain illegally, "took work involving cleaning up after undergraduates at a well-known London college. Although Alfred and his fellow workers - many of whom were also in Britain illegally - were paid the minimum wage, they worked in appalling conditions and suffered routine verbal abuse. His patience finally ran out and he started protesting about their treatment. A friend of Alfred's said: 'Everyone was being exploited, whether they were legal or not. When he started to make a fuss, he was told that if he didn't keep quiet he would be reported to immigration.' Alfred left the job soon afterwards and has since disappeared."<sup>23</sup>

**Children in West Africa**

Children moved and moving within West Africa well illustrate the confusion and difficulty of accurately tracing the trafficking/smuggling boundary. Children in the region either contact recruiters, or they or their parents are approached with lucrative-sounding offers of work elsewhere. As Anti-Slavery International argued in a 2001 report,

The prospect of good wages in a wealthier country, such as Gabon or Côte d'Ivoire, seems an acceptable option [to the children or their parents]. But the realities of what most of these children have to face along the route and once they reach their destination are not widely known. Although many of those who are trafficked

<sup>22</sup> Skeldon, "Trafficking: A Perspective from Asia," 12.

<sup>23</sup> Nigel Morris, "Amnesty on Illegal Immigrants is 'Worth £6bn to UK'," *The Independent*, 31 March 2006.

<sup>24</sup> Anti-Slavery International, "Trafficking of children in West Africa - focus on Mali and Côte d'Ivoire," June 2001, <http://www.antislavery.org/archive/other/trafficking-children-wafrica.htm> (accessed January 20, 2009).

ultimately do not earn the money promised and the conditions in which they are forced to live and work range from basic to brutal, the reality of one less mouth to feed for a poor household makes a significant difference.<sup>24</sup>

Looking more closely at this trafficking/smuggling boundary helps further elucidate the grey area between the two phenomena. As the case of “Alfred” neatly demonstrates, just as the levels of illicit activity involved may vary, so too do levels of control. At the overlap between smuggling and trafficking we find a control continuum that spans document confiscation and psychological control (through reference to “honour”, threats of violence against family members, and so forth), all the way to forced confinement and violence at the other.<sup>25</sup>

As I suggested above, in many cases of illegal or semi-legal migration, networks of facilitators are involved. Even in cases that would, according to the relevant sections of international law, be classified as smuggling, such facilitators can profit for many years from high interest on debt incurred by migrants seeking help to cross borders. The difficulty comes in attempting to distinguish between a trafficked person and an irregular migrant suffering exploitative working conditions and/or debt bondage.<sup>26</sup>

Debt bondage has been defined as a “status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”<sup>27</sup> Given that “loans” to migrants are often made in the informal and/or criminal sectors, the question of how the value of services may reasonably be assessed, as well as how the length and nature of those services might be properly limited and defined, is one of particular relevance to my examination of the trafficking/smuggling boundary. As a report on debt bondage by Anti-Slavery International notes, “there are very few cases where chains are actually used ... but the constraints on the people concerned are every bit as real and as restricting.”<sup>28</sup>

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<sup>25</sup> Aronowitz, “Smuggling and Trafficking in Human Beings,” 177.

<sup>26</sup> Beate Andrees and N. J. Mariska, “Designing Trafficking Research,” 66; Claire Brolan, “Analysis of the Human Smuggling Trade,” 579-580.

<sup>27</sup> Supplementary Slavery Convention on the Abolition of Slavery, the Slave Trade and institutions and Practices Similar to Slavery, 266 UNTS 3, 1956.

<sup>28</sup> Anti-Slavery International, *Debt Bondage* (London: Anti-Slavery International, 1998).

## 2.2 Crossover Between Smuggled And Trafficked Persons

The above discussion of facilitators and debt bondage hints at the fact that many people may start their journey in one category and end it in another, creating an operational link between trafficking and smuggling that the Protocols completely fail to recognise.<sup>29</sup> I call this link “crossover” and, while it is similar to the “overlap” described above, there are important differences.

I have argued elsewhere that the victim label is often inappropriate to describe trafficked people, the majority of whom have made some decision to migrate (at least at the outset).<sup>30</sup> If this is the case, then the single largest factor distinguishing those in the middle of the trafficking-smuggling continuum from each other is the level of coercion they have suffered.<sup>31</sup>

Both trafficked and smuggled people use or are coerced by opportunistic entrepreneurs/amateur traffickers, small scale criminal networks and/or international criminal networks.<sup>32</sup> Within this context, some migrants pay for transit-related services, believing they are acting illegally; some pay believing they are acting legally; some cannot afford to pay and accept they will have to work to clear the debt; and some are totally unaware of what is happening (see Box 2).<sup>33</sup>

### Box 2

Compare the story of Ana (case 2), who left her home willingly and travelled legally to her destination, with that of Reza (case 3), who fled persecution in Iran but ended up using illegal networks during his journey.

#### Ana (case 2)

“In 1999 Ana left her home in the coastal state of Bahia [Brazil] to travel to Switzerland at her

<sup>29</sup> Anne Gallagher, “Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis,” *Human Rights Quarterly* 23, no.4 (2001): 1001.

<sup>30</sup> Benjamin S. Buckland, “More Than Just Victims: The Truth About Human Trafficking,” *Public Policy Research* 15, no.1 (2008).

<sup>31</sup> Buckland, “More Than Just Victims”; Adam Graycar, “Trafficking in Human Beings,” in *Migration, Culture Conflict and Crime*, ed. Joshua D. Freilich, Graham Newman, S. Giora Shoham and Moshe Addad (Aldershot: Ashgate Publishing, 2002), 24.

<sup>32</sup> *Ibid.*, 25-31.

<sup>33</sup> *Ibid.*, 25-6.

<sup>34</sup> Frans Nederstigt and Luciana Campello R. Almeida, “Brazil,” in *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, ed. the Global Alliance Against Trafficking in Women (Bangkok: GAATW, 2007), 99.

aunt's invitation. Her aunt promised that she would be able to study, have a good job and also be able to send money to sustain her family living in the countryside. As soon as Ana arrived in Switzerland, she married a Swiss man, probably to arrange a permit to stay. However, her newlywed husband started almost immediately exploiting her with the help of her aunt. They kept all of Ana's earnings."<sup>34</sup>

**Reza (case 3)**

"First I went to Istanbul. The agent smuggled me over the border in the hills, at night. Just in case, he gave me a false Turkish passport. But the police stopped us in Istanbul and confiscated the passport. We hid in a house belonging to the agent's friend for two weeks, while he got me another passport. This time it was Spanish, and my name was Martin Sanchez. Then I came overland to Bulgaria. In Bulgaria the agent took away my passport. To come to the Netherlands I was hidden in the back of a van. We drove all the way from Bulgaria and entered the Netherlands without anyone knowing."<sup>35</sup>

Many of those involved are asylum seekers and refugees looking for help in traversing tightly controlled borders. Unable to make an asylum claim, many turn to smugglers and thus become more vulnerable to exploitation, or ultimately trafficking (see Box 2, the case of Reza).<sup>36</sup> Increased criminalisation of illegal entry only increases the difficulties faced by potential refugees and other migrants. As Jacqueline Oxman-Martinez, Andrea Martinez and Jill Hanley argue in their study of Canadian government policy and practice:

it is difficult to distinguish irregular movements (labour force immigration, brain drain, refugees and asylum seekers on various grounds including religion, colour, and ethnic origin) from other, illegal activities, such as trafficking in human beings, arms dealing, drug smuggling, or even terrorism; and the difficulty casts doubt on the efficacy of controls on migratory flows. If controls are ineffective and human rights are not safeguarded, do we not lose more by closing borders than we do by opening them?<sup>37</sup>

The authors contend that border controls result in the interception of illegal migrants without offering a genuine solution to the problem of human trafficking, noting that "far from punishing traffickers, the situation instead strips immigrants and refugees of basic rights."<sup>38</sup>

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<sup>35</sup> Khalid Koser, "Asylum Policies, Trafficking and Vulnerability," special issue, *International Migration* 38, no.3 (2000): 100-101.

<sup>36</sup> Jacqueline Oxman-Martinez, Andrea Martinez and Jill Hanley. "Human Trafficking: Canadian Government Policy and Practice," *Refugee* 19, no.4 (2001): 15.

<sup>37</sup> *Ibid*, 19-20.

<sup>38</sup> *Ibid*, 20.

### 2.3 Consent: A Problem The Protocols Failed To Resolve

The Smuggling and Trafficking Protocols largely ignore the overlap and crossover I have just described, preferring instead to paint a picture of smuggled criminals and trafficked victims. A careful examination of the way the two instruments deal with the issue of consent, however, further buttresses my argument. In seeking to establish clear criteria by which the two groups could be distinguished, consent is an issue that the Protocols never adequately resolve. I argue that, despite their best efforts, the Protocols are, ultimately, incapable of describing trafficking and smuggling more precisely than as mere points on a poorly defined continuum. In other words, reality has kept rearing its head.

The fundamental division between the current trafficking and smuggling definitions revolves around the question of consent. Basically, one consents to being smuggled but one is coerced into being trafficked. Sadly, however, the wording of the Trafficking Protocol blurs the issue of consent to a degree that the distinction is far from clear.<sup>39</sup>

Paragraphs a. and b. of the Trafficking Protocol's article 3 talks about consent being immaterial in cases where an "abuse of power or of a position of vulnerability" has occurred, but does nothing to define what vulnerability might mean. If, for example, a migrant arrives in London, having escaped a situation of extreme poverty, in which he earned one dollar a day, and accepts a new job paying five dollars a day, has his position of vulnerability been exploited? Should he be counted as having been trafficked, or merely as having been smuggled? The ambiguity of the concept of "exploitation" (at least as far as it is enunciated by paragraph a.), serves to break down the legal divide between trafficking and smuggling and both are left as mere points on a poorly defined continuum.<sup>40</sup> This is something that Vanessa E. Munro argues when she states that:

A person may be exploited while nonetheless gaining as a net result of the transaction ... [D]isagreements over the role of harm relate directly to debates over the relevance of consent in defining and responding to exploitation. Indeed, while some have argued that a party cannot be regarded as having been exploited unless the transaction or treatment in question was forced upon her, or her apparent consent to it laboured

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<sup>39</sup> Gregor Noll, "The Insecurity of Trafficking in International Law," in *Mondialisation, migration et droits de l'homme : le droit international en question*, ed. V. Chetail (Brussels: Bruylant, 2007), 346.

<sup>40</sup> *Ibid*, 349.

under some kind of crucial (personal or structural) qualitative defect, others have insisted that there can be exploitation ‘despite the exploitee’s full and voluntary consent’.<sup>41</sup>

The concepts of “abuse of power” and “abuse of vulnerability”, also contained in paragraph a. of the Trafficking Protocol, raise issues too. The *travaux préparatoires* (the official record of negotiations) do not cover the concept of “abuse of power” but they do state that “the reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.”<sup>42</sup> The Explanatory Report of the 2005 Council of Europe (CoE) Trafficking Convention<sup>43</sup> reflects the difficulty involved in giving vulnerability a precise meaning, stating that:

the vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim’s immigration status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce.<sup>44</sup>

Because the archetypal trafficked person is an innocent and powerless victim, they are thus assumed to be incapable of renouncing their rights (by agreeing to work under harsh conditions, for example), and consent is thus rendered void, then linked backwards to abuse and exploitation by the trafficker.<sup>45</sup>

Due to the difficulty of ascribing intentions and motives, it cannot be said here whether the confusion of the Protocol on the meaning of concepts such as “exploitation” and “abuse of power” is strategic, designed to play down the

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<sup>41</sup> Vanessa E. Munro, “Of Rights and Rhetoric: Discourses of Degradation and Exploitation in the Context of Sex Trafficking,” *Journal of Law and Society* 35, no.2 (June 2008): 260.

<sup>42</sup> UN General Assembly, Fifty-Fifth Session, Agenda item 105, *Crime Prevention and Criminal Justice Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on the Work of its First to Eleventh Sessions, Addendum, Interpretative Notes for the Official Records (Travaux Préparatoires) of the Negotiation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, UN doc A/55/383/Add.1, para. 63.

<sup>43</sup> Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005), Council of Europe Treaty Series, No.197.

<sup>44</sup> Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings: Explanatory Report, Para 83 of CM(83)32 Addendum 2 Final of 3 May 2005.

<sup>45</sup> *Ibid*, 351; Benjamin S. Buckland, “More Than Just Victims,” 42-47.

inequalities that drive migration while emphasising single actors in their place. What is clear, however, is that the definitions are constructed in such a way that consent is almost immaterial and that “the agency of the migrant is reduced to nil, even when it comes to choosing between different forms of misery.”<sup>46</sup>

Further hampering efforts to distinguish those who have been trafficked from those who have been smuggled is the fact that neither instrument contains any guidance on how to distinguish between the two groups. Cross-over and overlap, despite the fact that they appear to be extremely common, are not even mentioned (see Box 3).<sup>47</sup>

**Box 3**

**JZ (case 4)**

“[A] printer, JZ from China was brought to Melbourne and owed A\$ 10,000 (US\$ 7,823) to his Australian employer, even after paying upfront A\$10,000 to a recruiter in Shanghai. After the employer made deductions for the debt owed, rent, tax and health benefits, JZ only earned A\$280 per week (US\$220), even though he worked 60 hours every week. He lived with other workers in a rundown house owned by the employer. JZ slept on a mattress on the floor of the scantily-furnished house which had no heating. After a year, JZ paid back the A\$10,000 but was told his work was not up to standard and so his contract was terminated and he was going to be deported.

JZ’s case indicates debt bondage under Australian criminal law. Despite being widely reported in the media, the case was not investigated by the Australian Federal Police (AFP) as a debt bondage offence. The Department of Immigration and Multicultural Affairs (DIMA), although aware of it, did not seem to refer the case to the AFP. Government officials seem largely resistant to seeing the nexus between trafficking and migrant exploitation in industries such as manufacturing, construction and agriculture. As one AFP officer stated, JZ’s case was not a case for the Transnational Sexual Exploitation and Trafficking Strike Team: ‘We don’t deal with labour cases, we just don’t have the resources, if we did we’d get all sorts of cases like from fruit pickers, there would be so many.’<sup>48</sup>

This case illustrates both the difficulties involved in distinguishing trafficked and smuggled people, as well as the fact that, in many states, exploitation is tolerated, undermining human rights and the rule of law more generally.

<sup>46</sup> Noll, “Insecurity of Trafficking in International Law,” 352-3.

<sup>47</sup> Gallagher, “Trafficking, Smuggling and Human Rights,” 27.

<sup>48</sup> Elaine Pearson, “Australia,” in *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, ed. the Global Alliance Against Trafficking in Women (Bangkok: GAATW, 2007), 45.

### 3. Factors Contributing to Low Recognition of Overlap and Crossover

Despite the obvious links between trafficking and smuggling that I described above, the Protocols prefer to see the two phenomena as completely distinct. In fact, the links just described are not discussed at all, nor do the Protocols provide guidance on proper identification of migrants. Whether this is a deliberate weakness is open to debate.

One of the reasons for this division is that, while it is possible to look at smuggling and trafficking through a number of possible frames—as a labour market phenomenon, as a security issue, or as a human rights issue, the security frame has been clearly dominant.<sup>49</sup> This was the case even at a very early stage, evidenced by the fact that the negotiations took place under the auspices of the UN Crime Commission (the Commission on Crime Prevention and Criminal Justice) and by the fact that both smuggling and trafficking instruments were elaborated as additional Protocols to the UN Convention Against Transnational Organized Crime. As Melissa Ditmore and Marjan Wijers note in their critique of the Protocol negotiations:

many government delegates came from a law enforcement background and were not trained in human rights issues, which meant that especially in the beginning of the negotiations, a great number of them did not even see the connection between combating the crime of trafficking and the need to provide assistance to trafficked persons and protect their rights. Insofar as the need for assistance of trafficked persons was recognised in the course of the negotiations, this was viewed as a prosecution tool rather than a state obligation. Numerous delegates expressed the view that trafficked persons were valuable as witnesses and, therefore, deserving of protections during trials but that they should be deported immediately after the trial. One delegate even wanted assurances that the Protocol would not prevent his government from “prosecuting the victims.”<sup>50</sup>

It is difficult to say why security concerns so dominated early trafficking discourse, although several theories have been floated. Didier Bigo suggests that political expediency is to blame.<sup>51</sup> This is an explanation that has been built on by François Crépeau and Delphine Nakache who posit that, as States

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<sup>49</sup> Dottridge, “Introduction,” 3.

<sup>50</sup> Melissa Ditmore and Marjan Wijers, “The Negotiations on the UN Protocol on Trafficking in Persons,” *Nemesis* 19, no.4 (2003): 85.

<sup>51</sup> Didier Bigo, “Security and Immigration: Toward a Critique of the Governmentality of Unease,” *Alternatives: Global, Local, Political* 27, no.11 (2002): 63.



lose ground in other areas (due in part to globalisation) they seek to claw it back through the securitisation of immigration and border controls, trafficking being only one recent manifestation of this process.<sup>52</sup>

Despite uncertainty over the origins of the linkage, it is evident that the Trafficking and Smuggling Protocols reflect an immigration/security overlap. Central to this overlap is a presumption that through border controls the desirable can be sifted from the undesirable. This presumption has increasingly led to negative side effects in the realm of human rights and refugee law.<sup>53</sup> Ryszard Cholewinski, for example, argues that:

Illegal migrants are often portrayed as carriers of many ills and as the vanguard of a much larger migrant army waiting in the wings to invade and plunder the social welfare systems of affluent European nations. This negative picture, exaggerated frequently in the media and fuelled by political and electoral agendas, inexplicably turns a blind eye to the simple fact that illegal immigrants are human beings possessing fundamental and inalienable rights.<sup>54</sup>

The migrant, representing in the public mind a confluence of threats encompassing unemployment, terrorism and international crime, has come to be seen as a problem resolvable only through tighter border controls.<sup>55</sup> Even if we accept (and it is certainly contested) that tighter border controls are an effective counter-trafficking instrument, it is nevertheless clear that, as has been widely reported, trafficking of people occurs extensively *within* the boundaries of states. Such trafficking has been largely ignored because, viewed through a security frame, trafficking and smuggling have become tightly connected to issues of sovereignty and border security, excluding the question of internal trafficking.<sup>56</sup>

By choosing a security frame for counter-trafficking and smuggling efforts, both state and non-state actors have since been locked into a kind of path dependency, one that has subsequently played an enormous role in dictating

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<sup>52</sup> François Crépeau and Delphine Nakache, "Controlling Irregular Migration in Canada: Reconciling Security Concerns with Human Rights Protection," *Immigration and Refugee Policy* 12, no.1 (February 2006): 4.

<sup>53</sup> Howard Adelman, "Refugees and Border Security Post-September 11," *Refuge* 20, no.4 (2001): 5; 11.

<sup>54</sup> Ryszard Cholewinski, "The EU Acquis on Irregular Migration: Reinforcing Security at the Expense of Rights," *European Journal of Migration and Law* 2, no.1 (2001): 361.

<sup>55</sup> Tom J. Farer, "How the International System Copes with Involuntary Migration: Norms, Institutions and State Practice," *Human Rights Quarterly* 17 (1995); François Crépeau and Delphine Nakache, "Controlling Irregular Migration in Canada," 4.

<sup>56</sup> Skeldon, "Trafficking: A Perspective from Asia," 8.

key decisions and priorities. This path dependency has in many ways restricted human rights and other protections to the narrowest possible group of people. In consequence, protection is often denied to those at the less extreme end of the exploitation continuum I described earlier. Though he is talking about security in a broader sense, Jef Huysmans makes a relevant point when he suggests that:

Security professionals derive their authority from being experts in the definition of insecurities. Security knowledge is always knowledge about dangers, about what and how we should fear. Security experts do not usually reflect back extensively on how sustaining unease, fear and insecurity feeds back into politics; how it may challenge other values such as wealth and justice; how it may contribute to new procedures and institutions that undermine corner stones of liberal democracy, etc.<sup>57</sup>

In addition to the problem of path dependency, we can also attribute the failure of policies to address the full spectrum of those in need of protection to a series of misleading preconceptions among policymakers, opinion formers, and the general public. Perhaps foremost among these is the idea that women and children trafficked for the purposes of sexual exploitation constitute the vast majority of trafficked persons worldwide.

This group do represent the majority of people identified as victims of traffickers, due mostly to biases in the process of data gathering, yet available figures suggest that many thousands are also trafficked into agriculture, construction, industry and domestic labour worldwide.<sup>58</sup> The International Labour Organization, in a 2005 study, suggests that, of the 9.5 million people in forced labour in Asia, less than 10 per cent were in the sex trade.<sup>59</sup> While most media coverage of human trafficking in the UK has focused on the sex trade, research indicates that the use of forced migrant labour is probably equally prevalent in agriculture, food processing, seafood gathering and domestic service.<sup>60</sup> Yet the lives of agricultural workers in forced labour or debt bondage seldom feature in the fundraising literature of charities that claim

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<sup>57</sup> Jef Huysmans, "Minding Exceptions: The Politics of Insecurity and Liberal Democracy," *Contemporary Political Theory* 3, no.3 (December 2004): 323.

<sup>58</sup> UNODC, *Global Report on Trafficking in Persons* (Vienna: UNODC, 2009), 6.

<sup>59</sup> David A. Feingold, "Think Again: Human Trafficking," *Foreign Policy* 142 (September/October 2005): 26-7.

<sup>60</sup> Bridget Anderson and B. Rogaly, *Forced Labour And Migration To The UK* (Oxford: Centre for Migration, Policy and Society (COMPAS), 2005).

to work with victims of trafficking.<sup>61</sup>

In fact, it is possible to view the trafficking/smuggling divide itself as largely constructed around the inaccurate, yet widely held, preconception that smuggled “criminals” are men, while trafficked “victims” are women.<sup>62</sup>

Wendy Chapkis argues that current US trafficking legislation is, in fact, little more than “a politically strategic exception to a punishing rule”, an exception that divides “violated innocents” from “illegal immigrants” along gender lines.<sup>63</sup> In her view, protections afforded to the trafficked “innocent” serve merely to justify the severity of those punishments meted out to the complicit: smuggled people, economic migrants, “illegal immigrants”, and so forth.<sup>64</sup>

Underlining the problems inherent in what we might term the “innocent victim” approach, Chapkis notes that such “victims” are “commodities ... depicted as objects of exchange rather than as exploited workers.”<sup>65</sup> She contends that:

[the distinction between] the innocent victim and the wilful illegal immigrant used to determine punishment and protection is not only a dangerous one, but it is also a distinction that does not hold. Most trafficking victims are also economic migrants. Their victimization most often involves high debts and abusive working conditions, not outright kidnapping and imprisonment.<sup>66</sup>

Trafficked and smuggled people lie along a continuum of exploitation, one that is largely ignored by the relevant legal instruments. In the next part I turn to the manifestation of this situation in public policy, something that has important consequences for trafficked and smuggled people, for refugees and asylum seekers, for law enforcement and for trafficking and smuggling networks themselves.

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<sup>61</sup> Buckland, “More Than Just Victims,” 43.

<sup>62</sup> Ditmore and Wijers, “Negotiations on the UN Protocol,” 82.

<sup>63</sup> Wendy Chapkis, “Trafficking, Migration, and the Law: Protecting Innocents, Punishing Immigrants,” *Gender and Society* 17, no.6 (December 2003): 924.

<sup>64</sup> *Ibid.*, 925.

<sup>65</sup> *Ibid.*, 930.

<sup>66</sup> *Ibid.*, 931.

#### 4. Negative Side Effects

This part seeks to examine the policy disadvantages of ignoring the trafficking/smuggling crossover and overlap described above. Border and migration issues have been increasingly securitised over the past two decades. Counter-trafficking's chosen security frame and the blindness of policy towards the crossover and overlap of trafficked and smuggled persons has led to an overwhelming focus on interdiction measures.

We saw above that trafficked and smuggled people often lie along a continuum of exploitation. But by assuming that trafficked and smuggled people can be cleanly distinguished into groups of victims and criminals, current interdiction policy assumes that the border can act as an efficient filter—distinguishing those in need of protection (trafficked people, refugees, and so forth) from those who are not (smuggled people, illegal immigrants, and so forth).

The downsides to this assumption are no more apparent than for trafficked people themselves. Firstly, by raising operational costs for traffickers, many scholars have argued that interdiction policies may actually increase overall levels of exploitation as traffickers seek to make the maximum return on each trafficked person.<sup>67</sup> Because “dependency” is increased as a function of increased migration restrictions, such restrictions increase costs for traffickers and thus the amount of forced labour they seek in order to make a profit.<sup>68</sup> There is not a lot of good empirical evidence to support this assertion but scholars like Yuri Tamura have recently sought to fill the gap with sophisticated statistical analysis. Tamura's model suggests that by reducing the volume of smuggling or trafficking, the average level of exploitation experienced by each migrant will actually increase.<sup>69</sup>

In addition to the issue of increased exploitation, it is clear that interdiction policies push more people into illegal channels. As Ditmore and Wijers argue, “policies that restrict travel, and especially women's travel, actually encourage the practice of human trafficking. By closing legal avenues of migration, they leave would-be migrants no other option than to use the services of traffickers and smugglers.”<sup>70</sup> This is also an assertion supported by Tamura, who cites a

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<sup>67</sup> Chapkis, “Trafficking, Migration, and the Law,” 927.

<sup>68</sup> Siriporn Skrobaneck, Nattaya Boonpakdi and Chutima Jantakeero, *The Traffic in Women: Human Realities of the International Sex Trade* (London and New York: Zed Books, 1997), 16.

<sup>69</sup> Yuri Tamura, “On the Coexistence of Smuggling and Trafficking in Migrants,” Warwick Economic Research Papers No.730, Department of Economics, The University of Warwick, 2005, 30.

<sup>70</sup> Ditmore and Wijers, “Negotiations on the UN Protocol,” 87.

large number of studies that show that restrictive immigration policies increase the number of migrants who choose to use clandestine methods.<sup>71</sup>

Peter Andreas, in his pioneering study of the US-Mexico border, argues that the expansion in border policing has been less about achieving the stated goal of deterring illegal crossings and more about “politically recrafting the image of the border and symbolically reaffirming the state’s territorial authority.”<sup>72</sup> He suggests that “the escalation of policing has largely failed ... and has generated perverse and counterproductive consequences that reinforce calls for further escalation.”<sup>73</sup> First among the consequences he describes is the professionalisation and consolidation of smuggling and trafficking organisations. This is a point eloquently made by Anne Gallagher when she notes that,

Severely restrictive immigration policies are more likely to fuel organised, irregular migration than stop it. Tighter law enforcement controls on smuggling and trafficking push individuals and smaller, informal operators out of the market—helping to create a monopoly for the best and most sophisticated criminal networks.<sup>74</sup>

At borders where it was once possible to travel alone or with limited help, illegal entry now requires refined methods, provided by professional smugglers at ever increasing prices.<sup>75</sup> On the US-Mexico border, the increasingly complex requirements of their trade have also led to an increasing centralisation of the smuggling trade—reportedly concentrated among ten or twelve families—as well as an “arms race” as both sides seek the technological upper-hand.<sup>76</sup> As the European Union (EU) has strengthened its southern border, similar trends have occurred with the entrance of criminal gangs into the trans-border movement of people.<sup>77</sup> In the case of twenty-nine trafficked Iranians, interviewed in the Netherlands, Koser reports that all ceded control over their migration to traffickers due to the restrictive immigration policies in force

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<sup>71</sup> Yuri Tamura, “On the Coexistence of Smuggling and Trafficking in Migrants,” 7.

<sup>72</sup> Peter Andreas, *Border Games: Policing the U.S.-Mexico Divide* (Ithaca and London: Cornell University Press, 2000), 85.

<sup>73</sup> *Idem.*

<sup>74</sup> Gallagher, “Trafficking, Smuggling and Human Rights,” 28.

<sup>75</sup> Andreas, *Border Games*, 95.

<sup>76</sup> *Ibid.*, 97.

<sup>77</sup> *Ibid.*, 131-133.

around Europe.<sup>78</sup> As well as being linked to the expansion of smuggling networks,

tightening of migration laws and policies in many of the destination countries has led to a decrease in the legal opportunities for international migration, creating an environment that is very conducive to migrant smuggling. If stricter border controls are imposed, more people will turn to irregular means of migrating, including resorting to smuggling organizations, because they will feel they have little choice.<sup>79</sup>

**Box 4**

In two case studies of Iranian asylum seekers in the Netherlands, Khalid Koser illustrates the way in which desperate people turn to smugglers (called “travel agents” by the interviewees) when legal migration channels are closed.

**Ahmad (case 5)**

“When I paid him, the travel agent promised to bring me straight to the Netherlands. He said he would give me a passport and an air ticket, and everything would be fine. But in the end it took me two months to get here. First he took me to Istanbul by car. Then he hid me in the back of a van and took me to Bulgaria. We flew from there to the Netherlands.”<sup>80</sup>

**Koerosh (case 6)**

“I contacted the travel agent through a friend who knew him personally. It took 15 days to organize everything. This was a terrible time as I expected to be arrested any minute.”<sup>81</sup>

This is a view supported by Andrew Brouwer and Judith Kumin who note that “most enforcement mechanisms designed to prevent illegal or unauthorised migration, such as ... carrier sanctions and immigration control activities ... have the side effect of encouraging the expansion of smuggling and trafficking networks.”<sup>82</sup> Andreas reports that this is also the case in the EU where the migrant-smuggling industry has “boomed” as border controls have increased.<sup>83</sup> And while it is hard to draw direct lines of causality, it is clear that of the

<sup>78</sup> Koser, “Asylum Policies, Trafficking and Vulnerability,” 97.

<sup>79</sup> Crépeau and Nakache, “Controlling Irregular Migration,” 4-5.

<sup>80</sup> Koser, “Asylum Policies, Trafficking and Vulnerability,” 97.

<sup>81</sup> Ibid, 98.

<sup>82</sup> Andrew Brouwer and Judith Kumin “Interception and Asylum: Where Migration Control and Human Rights Collide,” *Interception and Asylum* (December 2003): 9.

<sup>83</sup> Andreas, *Border Games*, 120.

thousands entering the EU illegally each year, the percentage of those using some form of assistance has increased as a result of interdiction policies. Willy Bruggeman suggests a figure of 50 per cent.<sup>84</sup>

Closing borders completely may halt trafficking and smuggling altogether but this is, of course, increasingly difficult in today's interconnected world. In practice, tighter border controls have led to the expansion of smuggling and trafficking networks. For example, the case of Albania prior to 1989 showed that one can seal borders. But Kosovo during the late 80s and 90s (as well as other parts of the former Yugoslavia) provides evidence that informal sector travel agents flourish and create a culture of popular support for people who are regarded as smugglers and criminals under the terms of the Smuggling Protocol.

I argue that ignoring the smuggling/trafficking overlap means also ignoring the fact that the very vulnerable, particularly refugees and asylum seekers, increasingly turn to smugglers and traffickers in order to reach their destinations. Based on extensive interviews with Iranian asylum seekers in the Netherlands, Khalid Koser posits that trafficking and smuggling have become an integral part of applying for asylum in Europe, and this as a direct result of increased migration restrictions.<sup>85</sup> Koser goes on to suggest that this situation has led to increased vulnerability among both asylum seekers and migrants more generally.<sup>86</sup> This position is shared by Claire Brolan who equates the formal channels through which refugees and asylum seekers are encouraged to pass with "a lottery", noting that for many "being smuggled is a reasonable alternative to bureaucratic, time consuming, and therefore life endangering legal migration."<sup>87</sup> Where the costs (broadly defined) of legal migration are high, individuals turn to illicit activity.

This has led in many cases to asylum seekers suffering the "imputation of double criminality", having entered in an irregular manner, often with the assistance of people smugglers, and being aligned with "crime" by officials and the media, leading to assumptions about the (il)legitimacy of their claims.<sup>88</sup> This, of course, represents a distinct change in attitudes among European

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<sup>84</sup> W. Bruggeman, "Illegal Immigration and Trafficking in Human Beings seen as a Security Problem for Europe," Paper presented at the European Conference on Preventing and Combating Trafficking in Human Beings, Brussels, 18-20 September, 2002, 1.

<sup>85</sup> Koser, "Asylum Policies, Trafficking and Vulnerability," 105-6.

<sup>86</sup> Ibid, 106.

<sup>87</sup> Brolan, "Analysis of the Human Smuggling Trade," 577.

<sup>88</sup> Guy Goodwin-Gill, *The Refugee in International Law* (Oxford: OUP, 1996), 384-385.

governments among whom (prior to the mid 1980s) there existed a general consensus that it was acceptable for refugees to arrive illegally.

**Box 5**

The popular fusion of asylum seekers and criminals is well illustrated by an article in Britain's *Daily Mail* newspaper, entitled "Jailed: Gang Who Offered Club Class People-Smuggling." In this piece, Lucy Ballinger writes that:

"Turkish nationals were flown from France on a 'glamorous' six-seater plane with a plush leather interior to small airstrips around the M25 [the London ringroad] where there were no passport controls. The wealthy *criminals and asylum seekers* simply walked off the plane and were ferried to London in chauffeur-driven luxury to start a new life."<sup>89</sup> (emphasis added).

Of particular relevance here are border protection instruments such as visa regimes, carrier sanctions and interdiction and interception mechanisms, mechanisms that I suggest are contrary to the carrying out of obligations regarding refugees and asylum seekers in "good faith."<sup>90</sup> As Gallagher points out,

The border-control provisions in both instruments (the trafficking and smuggling Protocols) are especially worrying. Border enforcement measures such as readmission treaties, carrier sanctions or the posting of Airline Liaison Officers abroad are now routinely used by governments of the major destination countries. This is despite the fact that such measures risk denying *bona fide* refugees the chance of escaping persecution. Rather than addressing this conflict, the two Protocols contribute to confusion by endorsing strengthened border controls while at the same time nominally upholding the right to asylum.<sup>91</sup>

As I argued above, imagining that migrants can be delineated into clear categories—smuggled, trafficked, refugee, asylum seeker, economic migrant, and so forth—leads to a policy outcome whereby border management tools attempt to classify, separate, and process migrants according to relevant criteria. While this may work well in theory, it is clear that in practice

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<sup>89</sup> Lucy Ballinger, "Jailed, Gang Who Offered Club-Class People Smuggling," *The Daily Mail*, 19 December 2006.

<sup>90</sup> Crépeau and Nakache, "Controlling Irregular Migration," 12-14.

<sup>91</sup> Gallagher, "Trafficking, Smuggling and Human Rights," 28.



categories of migrants are much more fine-grained—the crossover between smuggled and trafficked people being only one example among many.

Carrier sanctions and stricter document requirements—both mandated by the trafficking and smuggling Protocols—are particularly problematic in this regard. Carrier Sanctions—the sanctioning of airlines and shipping companies for permitting insufficiently documented migrants to travel—mandate private actors with the task of differentiating between different categories of migrants, allowing some to travel and refusing passage to others. In practice, the private actors thus engaged often lack the training, experience and time required to adequately process migrants.

As Brouwer and Kumin argue, airline officers are seldom well equipped to examine the credibility of asylum claims.<sup>92</sup> Similarly, immigration control officers—often sent by states to aid carriers in their task—“do not appear to have any mandate to examine the intercepted person’s motivation for migration or to address any need for international protection.”<sup>93</sup> In fact, carrier sanctions may have the least effect on the so-called “economic migrants” that they purport to target. Such migrants may often have the means, time and connections to obtain tourist or other visas legitimately, something that is often impossible for refugees.<sup>94</sup>

Stricter document requirements also have a disproportionate impact on refugees and asylum seekers. This is because many people in need of protection have no possibility of gaining the necessary paperwork required to reach their destinations and make a claim. As an NGO report states, “desperate people will resort to desperate measures. With all other options closed, migrants and asylum seekers have been forced to make use of illegal and dangerous means of entry via sophisticated trafficking and smuggling rings.”<sup>95</sup>

Guy Goodwin-Gill supports this view, arguing that for many refugees, obtaining necessary passports from persecutory state authorities is too dangerous while, in countries where national institutions have broken down, consular authorities may be non-existent. Because flight is commonly very sudden there may be no time to obtain the requisite travel documents. Furthermore, visas are not generally issued for protection reasons, and even a

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<sup>92</sup> Brouwer and Kumin “Interception and Asylum,” 10.

<sup>93</sup> *Idem.*

<sup>94</sup> Farer, “How the International System Copes with Involuntary Migration,” 89.

<sup>95</sup> Human Rights Watch, the International Catholic Migration Committee, and the World Council of Churches, *NGO Background Paper on the Refugee and Migration Interface*, UNHCR Global Consultations on International Protection, Geneva, 28–29 June 2001.

standard tourist visa may not be granted if it is suspected that the individual will seek asylum on arrival in the destination state. In practice, individuals are either forced into trying to obtain a visa on false premises simply to gain entry into a State in which a protection claim may be lodged, or into moving illegally. Though States may lawfully control their borders, Goodwin-Gill maintains that “such control policies—if pursued in isolation—can be counterproductive.”<sup>96</sup>

The fact that many asylum-seekers rely on illegal methods becomes explainable when we recognise that states have introduced visa requirements in direct response to increased refugee claims from nationals of particular countries. The imposition of visa requirements on nationals of refugee-producing countries has been described as “the most explicit blocking mechanism for asylum flows”, since it hinders the individual’s ability to seek asylum and may force asylum seekers into illegal migration channels, such as trafficking and smuggling networks.<sup>97</sup>

## 5. Conclusions

I have argued here that the simple categories of smuggled and trafficked person do not adequately represent the fine-grained nature of international migration today. It would be easy to take away from this argument the assumption that the substantial advances made over the last decade in the protection, identification and care of trafficked people are for nothing. On the contrary, I suggest that what is required is recognition that a greater tranche of those crossing international borders each year are vulnerable and in need of protection of some kind. What is needed is not less protection for trafficked people but more protection for all.

In his introduction to *Collateral Damage*, a report on the human rights impact of counter-trafficking policies worldwide, Mike Dottridge argues that a rights-based approach means identifying those most vulnerable to human rights abuses and then designing policy to address their needs.<sup>98</sup> In practice, counter-trafficking and counter-smuggling policy has worked in the opposite direction. Assumptions have been made about who is most vulnerable, a framework for action has been chosen and policy has, ultimately, failed to adequately protect the rights of many migrants in all categories.

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<sup>96</sup> Goodwin-Gill, *Refugee in International Law*, 375-376.

<sup>97</sup> *Ibid*, 374-375.

<sup>98</sup> Dottridge, “Introduction,” 6-8.

As I argued in the first part, the strict categories of trafficked and smuggled person do not adequately reflect the fine-grained nature of international migration—a fact no better reflected than in the failure of the Protocol drafters to adequately define questions of consent and of exploitation. Rather, smuggled and trafficked people fall along a continuum of abuse—quite clearly distinguishable at the extremes but increasingly hard to tell apart at the centre.

Possible responses to trafficking can be divided into a series of frames—economic, security, human rights, migration, and labour market, are just some of the possible alternatives. What I argued in the second major part of this chapter is that because the security frame has been dominant, attempts to extend wide human rights protections to both trafficked and smuggled people, or to use labour market approaches to the problem, have been heavily curtailed. Furthermore, I suggested that misleading preconceptions about the problem have led to a failure among policy-makers to address the full spectrum of those in need of protection.

Ignoring the overlap between smuggled and trafficked people has led to negative consequences for a number of groups. To give just three examples, trafficked people may be subject to increased exploitation as traffickers seek to recoup higher operating costs incurred by tighter border controls and law enforcement pressure. Trafficking and smuggling networks may expand as more people are forced into using illegal migration channels. And, lastly, refugees and asylum seekers may be unable to access protection.

In the end, it is difficult not to conclude that the true beneficiaries of current policies have been migrant smugglers and trafficking networks, lawmakers and law enforcers.<sup>99</sup> This will continue to be the case until we face up to the difficult, complex and uneasy challenges of 21st century migration.

## **Recommendations**

### *Human Rights Protection Must Be Given As Much Emphasis As Law Enforcement*

Regardless of the category into which they fall, many irregular migrants need protection against human rights violations and should not be considered simply criminals.<sup>100</sup> The assumption that counter-crime tactics are sufficient to counter trafficking and smuggling needs reconsideration, particularly given the fact that

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<sup>99</sup> Andreas, *Border Games*, 85.

<sup>100</sup> Crépeau and Nakache, “Controlling Irregular Migration,” 17.

aggressive law enforcement may only seek to drive industries further underground.

#### *Protection Should Be Decoupled From Cooperation*

Linking protection with the willingness of trafficked people to cooperate with law enforcement can lead to further exploitation as the interests of victims is made secondary to the crime-fighting aspects of anti-trafficking action.<sup>101</sup> This is particularly the case given the fact that the deportation of non-cooperative persons can result in re-trafficking.

#### *Policy Integration Needs To Be Improved*

Asylum, smuggling and trafficking policy needs to be more tightly integrated, rather than subordinating policy related to these three to a priority to stop migrants entering a country. Khalid Koser argues that in the current situation, “asylum policies encourage trafficking and trafficking overcomes asylum policies.”<sup>102</sup> Immigration policy (broadly conceived) needs to reduce its emphasis on border security in order to minimise the number of refugees prevented from reaching their destination.

#### *Policy-Makers Must Use Careful Language*

Policy-makers must use careful language when speaking about migration. Criminals, economic migrants, refugees and trafficked people become all too easily confused in the public mind, leading to greater securitization of the debate as well as to greater public fear and racism.<sup>103</sup>

#### *The Labour Market Must Not Be Ignored*

Current security-focused strategies have drawn attention away from the more awkward task of recognising and regulating the cross-border labour market.<sup>104</sup> This needs more attention from policy-makers and more honest attention—attention that goes beyond allowing the entry of well-qualified migrants, when there is high demand for cheap, manual labour.

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<sup>101</sup> Nicole Lindstrom, “Transnational Responses to Human Trafficking in the Balkans,” International Affairs Working Paper 2006-09, International Affairs at The New School, New York, 2006, 17.

<sup>102</sup> Koser, “Asylum Policies, Trafficking and Vulnerability,” 106.

<sup>103</sup> Brolan, “Analysis of the Human Smuggling Trade,” 594.

<sup>104</sup> Andreas, *Border Games*, 85.

### *The Privatisation of Border Control Can Have Negative Consequences*

States have increasingly used private actors (through measures such as carrier sanctions) to control who crosses international borders. Such actors are often poorly trained and free from strict oversight. Their use can have negative consequences for many categories of migrants, particularly refugees and asylum seekers. If private actors are mandated with border management activities (via carrier sanctions, and so forth), their actions must be closely monitored by states and they must undergo rigorous training before deployment.

### *Visa Systems Must Not Discriminate*

Visa systems must not discriminate on racial grounds or obstruct access to protection for asylum seekers and refugees.<sup>105</sup> Training of consular and immigration officials needs to recognise this fact.

### *More Training for Migration Management Officials*

Emphasis has been placed on training border guards and immigration officials to recognise trafficked people. While this is important, training should reinforce the fact that many classes of migrant, whether they be smuggled or trafficked, are entitled to human rights protection.

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<sup>105</sup> Goodwin-Gill, *Refugee in International Law*, 374.



## **PART 2: *Actors***





# CHAPTER 5

## Human Trafficking & Policing: Good & Bad Practices

Jana Arsovska, Stef Janssens

### Introduction

This chapter looks at criminal justice responses to human trafficking, assessing the role of the police.<sup>1</sup> It argues that police forces play a vital role in the fight against human trafficking. Court cases against human traffickers are often initiated by the police who have frequent contact with victims, clients of prostitution, informants and offenders. Police must ensure that criminal networks are dismantled and that traffickers are arrested and have their assets seized. They need to identify victims, protect them from criminal retribution and ensure that they are not re-victimised. Victims need to be referred to social service providers, and given incentives to testify in court. These and other issues require effective, multi-faceted and well-coordinated police work. Police officials, however, are continuously facing numerous challenges, including both corruption and a lack of political will to deal with trafficking issues. Other challenges include a lack of national and international police cooperation, lack of intelligence to help support police activities, a shortage of trained staff, as well as ineffective cooperation between state and civil society agencies.

### 1. Policing and Counter-Trafficking

Human trafficking cases are complex in nature and difficult to detect and prosecute. According to interviews with EU law enforcement officials, the problem is exacerbated by the growing involvement of organised crime groups worldwide.<sup>2</sup> Despite numerous efforts in recent years, there are still many

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<sup>1</sup> The authors would like to thank Benjamin S. Buckland, Mike Dottridge, Cornelius Friesendorf, and Louise Shelley and for their valuable comments on earlier drafts of this chapter.

<sup>2</sup> See Austrian Ministry of Interior, *Development of Guidelines for the Collection of Data on Trafficking in Human Beings, Including Comparable Indicators* (Vienna: International Organization for Migration, 2008). Also, according to INTERPOL officials, nowadays, human trafficking is a multi-billion-dollar

challenges remaining with regards to the effective measurement, monitoring, prevention and combating of trafficking in persons worldwide. An Austrian-led Expert Group on Human Trafficking notes: “The result is that after more than a decade of tireless efforts by governments, international organizations, NGOs and academia, trafficking remains an issue. Valuable information ... is often scattered or unrecorded, hampering cooperation between competent authorities and playing into the hands of traffickers.”<sup>3</sup>

Law enforcement officials deal with a wide range of issues; from the rescue of victims and the protection of witnesses to the prosecution of traffickers. Initial actions taken by police in investigations are crucial to the ultimate success of prosecutions. Police have to identify trafficking victims. Trafficking investigations require careful treatment of such victims, upon whose testimony the prosecution often depends. Offering protection to witnesses is also an essential condition for effective intervention. After initial interviews with suspected victims and witnesses, often done in cooperation with NGOs, investigators begin collecting information and compiling evidence to build their case. Where possible, they also need to obtain the collaboration of offenders.

In recent years, however, changes in the operational methods of trafficking networks have taken place. Investigated files from Belgium and the Netherlands show that trafficking networks have become professional, entrepreneurial and less visible.<sup>4</sup> This makes the detection of victims more difficult than ever before. In many cases, law enforcement officials are not approached directly by victims who are willing to testify. Thus, police need to collect other types of evidence to build their case, or they need to obtain the victims’ cooperation. Overall, police forces have to be flexible, employing different investigative techniques to combat complex trafficking networks (see Box 1).

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form of international organised crime. They claim that tightening of border controls has made more potential migrants turn to organised crime groups for help.

<sup>3</sup> Ibid, 20.

<sup>4</sup> “Professionalisation” is discussed in 2009 reports of INTERPOL and Europol on ethnic Albanian organised crime groups.

### **Box 1: Investigative Police Approaches**

#### *Reactive Investigation*

A reactive investigation is a victim-led investigation which does not always lead to the successful prosecution of offenders. The need to intervene quickly to protect the victims affords little time for a proactive investigation aimed at obtaining additional evidence. The result is that investigators might be left with no evidence upon which to prosecute. Also, victims may initially promise to testify in judicial proceedings and then withdraw their cooperation.

#### *Proactive Investigation*

A proactive investigation is an intelligence-generated, police-led<sup>5</sup> investigation which often leads to successful prosecution of traffickers, even without having to rely upon the testimony of victims. By using a combination of intelligence, surveillance, undercover operations and investigative techniques, investigators can identify traffickers and ensure that they are prosecuted. The widespread use of this option confirms the difficulties law enforcement officials face when confronting trafficking victims who do not wish to testify.<sup>6</sup>

#### *Disruptive Investigation*

A disruptive investigation is a police-led investigation<sup>7</sup> used when neither the reactive nor the proactive approach is possible. It may be necessary for law enforcement officials to resort to tactics which disrupt human trafficking operations and force traffickers to reveal themselves. Disruption, however, does not provide long-term solutions and may only displace the crimes to another location.<sup>8</sup>

When proactive investigative techniques are applied, police have to ensure that the use of informants, surveillance, and other investigative techniques is in accordance with existing laws. The criminal use of cash and underground banking and the lack of police collaboration make financial investigations, the seizure of assets, the confiscations of proceeds of crime and the investigation of crime scenes challenging for police. Given that trafficking in persons often takes place across borders, law enforcement officials need to investigate broad criminal networks. This requires international police cooperation. Moreover, police officials need to cooperate with immigration officers, social workers, labour inspectors, prosecutors, judges, victim shelters and others concerned with ensuring successful prosecution. Through practical examples, the subsequent sections illustrate how police have been dealing with human

<sup>5</sup> See UNODC, *Toolkit to Combat Trafficking in Persons* (Vienna: United Nations Office on Drugs and Crime, 2006), Tool 5.2.

<sup>6</sup> The proactive option does not intend to disenfranchise the victims from the prosecution process. Their testimonies remain the prime evidence although testimonies are rarely forthcoming.

<sup>7</sup> See UNODC, *Toolkit to Combat Trafficking in Persons*, Tool 5.5.

<sup>8</sup> According to the UN Tool 5.5, the use of the disruptive option is appropriate: (1) Where the level of risk to the victims demands an immediate response; (2) Where the proactive option is not viable; (3) Where legislative or resource implications preclude the use of proactive tactics.

trafficking cases both domestically and internationally.<sup>9</sup> The chapter presents good and bad police practices at various levels: prevention, protection and prosecution.

## **2. Synchronising Police Work: Instruments, Laws and Regulations**

### *2.1. Defining Human Trafficking*

Clear criminal provisions are crucial during criminal investigations. Over the years, international authorities have been struggling to formulate common provisions designed to fight human trafficking and to protect victims. A common definition was included in the protocols to the UN Convention against Transnational Organized Crime: The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and the Protocol against the Smuggling of Migrants. Generally speaking, the UN Trafficking Protocol laid down the foundations for international action against human trafficking.<sup>10</sup>

The definition in the UN Protocol also underpinned the EU Council's Framework Decision on Combating Trafficking in Human Beings (Article 4).<sup>11</sup> Since 2005, police work is also regulated on a European level by the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings.<sup>12</sup> The CoE Convention elaborates extensively on measures designed to protect victims. It also covers not only trafficking for sexual or economic exploitation, but also trafficking for the purpose of organ removal.<sup>13</sup>

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<sup>9</sup> The chapter draws primarily but not exclusively on European examples (European police practices). Many of the court cases examined here are from Belgium, the UK and the Netherlands, although we include examples from the Balkan countries and other regions, too.

<sup>10</sup> Not all UN member states have ratified and implemented the UN definition. Also, in not a single Western European state does anti-trafficking legislation directly incorporate the provisions of the UN Trafficking protocol as far as minors are concerned.

<sup>11</sup> European Council, "Council Framework Decision of 19 July 2002," 2002/629/JHA, *OJ* L203 of 1/8/2002. The EU definition does not feature all of the UN Protocol components, while some parts of it are more specific.

<sup>12</sup> Council of Europe Convention of May 16, 2005 on Action Against Trafficking in Human Beings, adopted in Warsaw.

<sup>13</sup> Council of Europe, "Action Against Trafficking in Human Beings: Prevention, Protection and Prosecution," (conference proceedings, Oslo, November 1–2, 2006).

## 2.2. *Protection of Victims and Witnesses*

Article 5 (“Criminalisation”) and Articles 6–8 (“Measures for the protection and support of trafficked victims”) of the UN Protocol relate to the identification of victims. If trafficked persons are not identified as such, they may be treated as illegal immigrants, or they may be left without protection or support. Article 12 of the CoE Convention provides assistance for victims of trafficking. If victims are unaware of their right to protective procedural measures as well as compensation and legal redress, they might be reluctant to cooperate with the police. According to the CoE Article 28 (“Protection of victims, witnesses and collaborators with the judicial authorities”) victims must be provided with appropriate protection from potential retaliation. Protection measures must be applied with the consent of the victim. Special protection measures should be provided for child victims. Protection can also be relevant to victims’ families, persons cooperating in a different capacity with the judicial authorities, and members of NGOs that support victims of trafficking. The aim of the recovery and reflection period discussed in Article 13 of the Convention is to allow victims to escape the influence of traffickers, and to come to an informed decision on cooperating with the authorities.

## 2.3. *Confiscations*

Article 12 (“Confiscations and Seizure”) of the UN Convention attempts to bring member states into conformity with one another.<sup>14</sup> If this article is not implemented properly, states cannot respond to international requests to confiscate. Article 12 requires states to have the necessary legal framework to permit: (1) The confiscation of proceeds of crime derived from offences covered by the Convention; (2) The confiscation of property, equipment or other instruments used in those offences; (3) The identification, tracing and freezing and/or seizure of the proceeds of crime; (4) The application of confiscation powers against transforming property and proceeds, intermingled with legitimately obtained property, benefits or income derived from the proceeds of crime covered by the Convention.<sup>15</sup>

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<sup>14</sup> United Nations Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons*, Tool 4.2.

<sup>15</sup> *Ibid.* See also UNODC, *Toolkit to Combat Trafficking in Persons*, Chapter 4.

#### *2.4. Special Investigative Techniques*

Article 20 of the UN Organised Crime Convention endorses the following investigative techniques: (1) Controlled delivery;<sup>16</sup> (2) Electronic and other forms of surveillance; and (3) Undercover operations. Article 20 encourages member states to employ appropriate bilateral or multilateral agreements regarding the use of special investigative techniques in the context of international cooperation. Various states often have different regulations on the use of informants, electronic surveillance and undercover operations. But in international joint operations, common agreements are necessary for effective police cooperation.

#### *2.5. Travel and Identity Cards*

Article 8 of the CoE Convention requires states party to adopt the necessary measures to ensure the quality of travel and identity documents. These measures may include introducing minimum standards to improve the security of passports, as well as including more sophisticated preventive features that make counterfeiting, falsification and fraud more difficult.<sup>17</sup> Article 9 of the Convention, modelled on Article 13 of the Palermo Protocol, requires states party to check the legality of travel or identity documents issued by their authorities when they are requested to do so by another party and when it is suspected that the documents are being used for human trafficking. Documents used for trafficking may be outright forgeries. They may also have been issued by the requested party but later altered to produce a counterfeit. Documents which neither are counterfeits nor have been altered may likewise be used for human trafficking. Article 9 requires parties to cooperate in detecting such situations and to respond within a reasonable time.

### **3. Prevention**

#### *3.1. Targeting Those at Risk*

Although this chapter focuses on operational questions relating to prosecution rather than to prevention, the role of the police in prevention should also be acknowledged. Prevention measures vary, depending on conditions such as whether a country is one of origin or of destination, its level of corruption and

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<sup>16</sup> Out of concern for the safety of victims, controlled delivery is not appropriate in cases of human trafficking.

<sup>17</sup> Council of Europe, "Action Against Trafficking in Human Beings."

political will, and its economic and political situation. The sensitive nature of the issue reflects the unwillingness of some governments to acknowledge trafficking problems in the first place.<sup>18</sup> As Patsy Sorensen, Director of the Victim Shelter Payoke argues: “In all this, probably the most decisive ingredient is political will. If that is present, make it stronger, if it is lacking, we need to find ways to regenerate it.”<sup>19</sup>

Developing successful anti-trafficking prevention policies is difficult without up-to-date research, proper evaluation of existing policies, cooperation by victims, political will and intelligence-led policing. One does not work without the other. Police and victim shelters need to share knowledge with scholars, NGOs and policy-makers in order to construct a more realistic picture of risk populations, vulnerable communities, human traffickers, trafficking methods, and trafficking networks. The mapping of the situation should be based on multiple sources, such as: police records, victims’ statements, the experiences of social workers, migration officers and representatives from NGOs and shelters.

Police, immigration officers, border control officers and others who have contact with trafficking victims should be provided with relevant and regular training, particularly on high-risk populations. One promising police practice is to find, in cooperation with other concerned organisations, hot spots of trafficking as well as to help in the identification of risk populations, and then to implement proactive policing (Box 2).

<p><b>Box 2: Targeting at Risk Populations and Trafficking Hot Spots</b></p> <p>Operation “Paladin Child” was conducted in 2004. This initiative involved the recording of the personal details of every child arriving at border posts throughout the UK that was assessed as possibly being at risk of trafficking or exploitation. Each child was issued with an identification number, had his or her photograph taken and was asked to say where he or she would be living in the UK. If the child could not be located at the address given during subsequent visits by social services staff, an investigation would be opened. Details of the adults welcoming unaccompanied children at airports or ports were also recorded.<sup>20</sup></p>
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<sup>18</sup> Jana Arsovska, “Decline, Change or Denial: Human Trafficking Activities and EU Responses in the Balkan Triangle,” *Policing 2*, no.1 (2008): 50–63.

<sup>19</sup> Personal interview, Brussels, June 2007.

<sup>20</sup> The case is taken from a UNDP study. See also Reflex, “Paladin Child, A Partnership Study of Child Migration to the UK via London Heathrow,” January 2004, [www.mpa.gov.uk/downloads/committees/ppr/ppr-040712-14-appendix01.pdf](http://www.mpa.gov.uk/downloads/committees/ppr/ppr-040712-14-appendix01.pdf) (accessed June 30, 2009)

The police should be also able to recognise the gendered impact of trafficking—women into forced prostitution and/or domestic labour; men into construction or agricultural work; children into sport, begging, etc.<sup>21</sup> However, they should not generalise too quickly about gender-specific domains of exploitation because this can be misleading (see Chapter 1 in this volume). Thus, although profiling and identifying those at risk appears to be a useful preventive tool, unsubstantiated generalisations and discriminatory policing tactics should be avoided. Mapping of risk populations should not mean stereotyping women from specific countries and restricting their freedom of movement or treating them with disrespect. Police should also avoid stereotyping men from countries with high levels of trafficking, by immediately concluding that they are traffickers.

The concerned parties should be alert to the fact that traffickers adjust quickly to their environment. When they realise that people from their own nationality or gender are investigated by police, they often use people from other nationalities as a front for their illegal activities. Traffickers tend to deceive the police, keep a low profile and attract little attention, which makes the work of law enforcement officials more difficult. Profiling should remain a task of specialised police officers. One Belgian law enforcement official explains:

In the past, the Albanians were the main pimps and traffickers of women for sexual exploitation in Belgium. They used violence frequently and their crimes had high social impact ... [Therefore,] they quickly attracted international attention. The police focused extensively on the suspicious Albanians. Now, the offenders have learned from their mistakes. For various types of activities they make use of Belgian or Dutch women who look more innocent than the tough Albanians. The Albanian pimps and traffickers live in one city while the Dutch or Belgian “madams”—appointed by the traffickers to control the prostitutes—live in another. The Albanians come occasionally to check their business and to collect the money while the “madams” act as the main pimps. Since Albanians are involved in multi-crime, they also use the same madams, or other women with EU passports as drug couriers. The women drive the cars and transport cocaine from Belgium and Netherlands to Italy. The police are less suspicious of blond Belgian girls than of Albanian men driving frequently to Italy.<sup>22</sup>

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<sup>21</sup> Increasing gender diversity within law enforcement agencies can facilitate trust-building between different parties and supply greater information to the police. This usually improves career prospects for female staff.

<sup>22</sup> Personal interview, Belgian Federal Police August 2006.



### 3.2. Multi-Agency Collaboration

Practice shows that NGO representatives, labour inspectors, social workers, customs officials, police officers, prosecutors and others need to operate in a coordinated manner in order to develop effective preventive policies (Box 3). For instance, in 2001, a collaboration protocol was created between two inspection services in Belgium. The protocol provided the necessary framework for the execution of joint actions in high-risk sectors for human trafficking and illegal work. It served as a good operational platform and involved judicial authorities, social inspection departments, police and the tax office.<sup>23</sup>

#### **Box 3: Multidimensional Training Process**

The Italian Ministry of Interior participated in the project “Fight against Trafficking in Human Beings into the EU from EU Accession and Neighbouring Countries: Operational Network and Multidisciplinary Training Process.” The Project was implemented over a three-year period starting from 2004. It involved different sectors and people engaged in the fight against human trafficking, including governmental (Ministries of Justice, Interior and Social Affairs) and non-governmental organisations, law enforcement and judicial authorities, legal practitioners, social workers and training professionals. The project covered a wide geographical area with a total number of twelve participating countries. It resulted in the delivery of training courses structured around two manuals developed during the programme through a multilateral consultation process (the AGIS Guides on Best Practices for Students and Trainers). Following the drafting of these manuals, national training teams were identified (“training the trainers”). National groups made up of professionals from different operational areas acted as trainers.

Cooperation among border control services is also key to preventing human trafficking. Modernising border control systems, rationalising operational activities and establishing a system of direct exchange of information have a definite place in transnational and national cooperation in the field of preventive police measures.<sup>24</sup> Although cooperation often yields positive results, the strengthening of border control services alone might have the opposite effect. INTERPOL reported that operations conducted by Frontex, the main EU External Borders Agency, often result in positive but short-term solutions. Frontex provides one of the most advanced border protection and

<sup>23</sup> See Social Intelligence and Investigation Service (SIOD), *Bi-Annual Report 2005–2006 on the Illegal Employment of Foreign Workers and the Exploitation of Labour* (Brussels: SIOD, 2007), 100–101; Centre for Equal Opportunities and Opposition to Racism (CEOR), *Annual Report on Human Trafficking* (Brussels: CEOR, 2005), 88–89.

<sup>24</sup> Council of Europe, “Action Against Trafficking in Human Beings,” 44–45.

management services, but it does not reduce people's demand to emigrate abroad or human trafficking in general. Strict border control often forces illegal immigrants into trafficking/smuggling networks. Trafficking networks can produce forged documents and adapt their operational methods to avoid police control.<sup>25</sup>

### *3.3. Police and Awareness Campaigns*

Police officers often have the first contact with trafficking victims so they are able to distribute prevention materials and inform victims about their rights. The Belgian Federal Police's Human Trafficking Unit initiated the "Flyer" information project in 2001. Through a leaflet, this unit provided information to truck drivers about illegal immigrants and trafficked victims who, with the assistance of trafficking networks, often hide in trucks without the driver's knowledge.<sup>26</sup>

Internationally, INTERPOL's Expert Working Group on Trafficking in Human Beings has been meeting annually to raise awareness of emerging issues and promote prevention programmes. UNODC has also been active in raising awareness of the risks associated with trafficking by releasing video and radio broadcasts around the world. Via media channels, police officers can also share some experiences with the general population, including potential and actual victims. Although most evaluations have suggested that information targeting high risk groups is more effective than general information or "scare" campaigns (for example, recommendations against travelling abroad), some of these campaigns do provide people with good advice on how to minimise the likelihood of running into problems. Police, in cooperation with NGOs and International Organisations (IOs), can develop awareness campaigns that counter, for example, deceptive promises by traffickers.

### *3.4. Community Policing*

Community policing is an important prevention tool against human trafficking.<sup>27</sup> It is a transparent policing model, which involves the public in

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<sup>25</sup> Personal conversation, April 2009.

<sup>26</sup> The results of such campaigns are difficult to assess, considering the rapid adaptation of criminal organisations.

<sup>27</sup> See Skogan Wesley and Hartnett Susan, *Community Policing, Chicago Style* (New York: Oxford University Press, 1997).

achieving the mission of the police. This is important when it comes to human trafficking cases since victims (particularly those coming from post-communist or authoritarian states) often distrust the police (Box 6).

More thought should also be given to the idea of community vigilance committees. Some of these surveillance networks have been set up to monitor local sex trade activity for evidence of trafficking while others have been set up to protest against the presence of sex workers in particular areas. Overall, the idea mirrors efforts taking place in the US, where the federal government has set up “rescue and restore coalitions” aimed at all forms of trafficking.<sup>28</sup> Community policing has also been applied in many other countries faced with human trafficking problems. For example, the porous border between India and Nepal is an area of heavy cross-border human trafficking. In 2006–07, UNODC supported NGO initiatives such as the Community Vigilance project, led by local leaders and women’s groups, which mobilised thousands of villagers to detect and prevent trafficking. Similarly, a local study conducted in 250 villages in Bangladesh revealed that approximately 7,000 women and children are trafficked each year both internally and across borders.<sup>29</sup> Vigilance and Law and Order Committees have been established by the police in each village. Every police officer in the village has been working with people from the community who know each household of their community. The committees have remained vigilant about suspicious movements, new arrivals, and recruitment of people with the promise of jobs. They have also overseen local-level marriages with foreigners, marriages without registration, as well as child marriages. Although such community activities are problematic (due to the risk of locals providing information to traffickers; distrust and xenophobia; limiting people’s freedom of choice and movement), overall, involving vulnerable communities in prevention is a promising practice. It can yield positive results especially if the selected segments of the communities are guided by NGO and police experts.

### *3.5. Reducing Opportunities for Corruption*

Traffickers often use corruption as a strategy to achieve their goals. There are many cases where police, customs and immigration officers have enabled traffickers to proceed with their illegal activities in return for benefits.<sup>30</sup>

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<sup>28</sup> Child Trafficking Network News, e-mail message to author, February 2009.

<sup>29</sup> See Kamal Khairuzzaman, *Human Trafficking: Preventive Approach* (Bangladesh: BMSF, 2007).

<sup>30</sup> This assessment is based on court and police files as well as interviews with law enforcement officials from several European countries.

Particularly, SEE countries have been labelled as countries with serious corruption problems. The CoE's Programme against Corruption and Organized Crime in South-Eastern Europe (PACO) group stated that corruption linked to human trafficking is clearly an issue in SEE countries.<sup>31</sup> It backed up its claims with reports on specific cases of corruption that have not led to judicial proceedings or convictions. According to the report, networks involved in human trafficking cannot operate without the help of corrupt government officials. According to the *2007 CEOOR Annual Report*, it is significant that NGO representatives in these countries, who wanted to remain anonymous, were willing, during the PACO conference, to reveal that their government had put pressure on them to influence the way they refer to human trafficking and corruption issues.<sup>32</sup> While investigated cases indicate that police corruption is more common in less developed and poorer countries, internal reports demonstrate that this is also problem in Western countries.<sup>33</sup>

**Box 4: Corrupt Police Officials**

Case G-V (2001–2002) concerns an international, inter-ethnic criminal network composed of Italian, Bulgarian, Albanian and Greek traffickers corrupting police officials, and a disciplinary inquiry regarding seven agents of the Belgian police. A Belgian ex-prostitute accused two of those agents of corruption. During their working and private hours the policemen regularly visited prostitution bars to control prostitutes. The exploiter told the police that she received protection from Bulgarian and Albanian criminals but also from police officials.

According to PACO,<sup>34</sup> corrupt staff members at Western embassies are sometimes involved in human trafficking (Box 6). Corruption linked to human trafficking goes hand in hand with the forgery of documents and visa fraud. In the Belgian Federal Prosecution Service's Albanian case, one of the defendants used to be an officer in President Berisha's republican guard in Albania. In informal conversations, sources confirmed that the defendant was an ex-*Sigurimi* agent (the Albanian former security services). He was trailed in two human trafficking cases and played a role in an important prostitution and money laundering case. In late 1997, when the Berisha regime collapsed, the

<sup>31</sup> PACO, *Corruption and Organised Crime, Report on the Regional Seminar* (Portoroz: PACO, June 19–22, 2002).

<sup>32</sup> Centre for Equal Opportunities and Opposition to Racism (CEOOR), *2007 Annual Report on Human Trafficking* (Brussels: CEOOR, 2008).

<sup>33</sup> Ibid. See also the chapter of Leslie Holmes in this book. In most investigated cases from Western Europe it appears that police corruption occurs in a more subtle way and on an individual level; it is less systematic and organised when compared to the Balkans, for example.

<sup>34</sup> PACO, *Corruption and Organised Crime*.

defendant lost his job. During his cross-examination, he explained how he had bought a visa in the Greek embassy in Albania: “I acquired the Greek visa in the following way. A man I knew, who shall remain nameless because I am frightened of him, has ties with the Greek embassy. I handed in my passport and he took steps to secure the visa. I paid him Euro 2,500 for the Greek visa.”<sup>35</sup> Then, in March 2009, a former employee of the German Diplomatic Office in Kosovo was arrested and charged with espionage, for allegedly passing classified government information to people linked to organised crime and to foreign intelligence services in Kosovo and Macedonia. The diplomat worked together with a Macedonian Albanian man who was a translator in the German diplomatic mission in Kosovo between 2007 and 2008.<sup>36</sup>

**Box 5: Corruption and Visa Fraud in Western Europe**

*Case L*

Case L was a Belgian case of visa fraud and corruption from the 1990s, linked to money laundering and human smuggling and trafficking. A Belgian civil servant employed in the protocol service of the Belgian Ministry of Foreign Affairs arranged the distribution of diplomatic passports. He admitted to having sold at least 300 residence permits to people associated with the Russian mafia and people known for espionage. Four Philippino girls received illegal diplomatic passports. Three of them had jobs as domestic servants. One of the accomplices in this case was an important figure in a large Russian company. The case file contained information from INTERPOL that the company was laundering dirty money. Five diplomatic passports were given to this company illegally. The Belgian civil servant was trailed and convicted of forgery.<sup>37</sup>

*Case T*

This case concerns a mala fide Bulgarian travel agency. From 1993, the agency was owned by the family of a former senior Bulgarian intelligence official. In the mid-90s, the agency and a Western embassy in Sofia established close relations. Until July 1996, official tourist visas were delivered en masse to the travel agency. Then, one of the persons who applied for a tourist visa via the agency had the application denied and, shortly after, was convicted for sexually exploiting women. Another person, who also acquired a visa via the agency, was mentioned in a case on Kurdish PKK child soldiers and the smuggling of weapons. A third person appearing on the visa listings participated in the international trafficking of stolen cars. In an informal talk with an official of the security services of the concerned Western country, the official stated that the Bulgarian travel agency— in addition to smuggling/trafficking and issuing of visas illegally— was laundering money. In 1997, when the police started investigating, the agency changed its name. In 2000 it was declared bankrupt.<sup>38</sup>

<sup>35</sup> CEOOR, *2005 Annual Report on Human Trafficking*, 88–89.

<sup>36</sup> Internal Police News, “German Diplomat Arrested for Espionage in Kosovo,” March 19, 2009, personal communication.

<sup>37</sup> Based on a Belgian court file. See Johan Leman, “Human Trafficking: Case Studies,” (NATO Workshop, Sofia, November 16–18, 2007).

<sup>38</sup> Leman, “Human Trafficking: Case Studies.” The author argues that this was not an isolated case.

One problem of police corruption is that it creates distrust in the state. As a result, people are unwilling to report trafficking incidents to the authorities.

**Box 6: Gaining Trust in Authorities**

In the case V, the Belgian police in collaboration with a victim shelter managed to gain the trust of several sexually exploited trafficking victims from Romania. When the police asked the victims why they did not file a complaint against their exploiters earlier, the victims said they were afraid of the consequences. They did not know if they could trust the Belgian police because the Romanian police are very corrupt. The victims noted that if they knew that their problems could be solved without too much suffering (by the Belgian victim protection system and the correct attitude of the police) they would have contacted the Belgian police earlier. The victims claimed that the Romanian traffickers had strong links with Romanian political figures and policemen and often prepared sex parties for them.<sup>39</sup>

Anti-corruption policies cannot be reduced to a scapegoat approach where corruption issues are “solved” by removing only peripheral criminal actors;<sup>40</sup> all parties should be equally deterred. Some authors have argued that conviction rates could be increased along with penalties by setting up an international inspectorate, rather like the UN weapons inspectors, with the power to assist local police forces and to monitor judicial prosecutions. Such inspectorates could also monitor corruption cases. Besim Klemendi, the Head of the Anti-Corruption Agency in Kosovo and Deputy Prosecutor, however, argues:

It is not so simple. It is not only the Kosovo police involved in trafficking and corruption—many UN officials are also part of the game. Particularly people coming from Africa ... they have more problems with corruption than we do ... here they make profitable business. When we submit criminal files on trafficking, corruption or other incidents to UNMIK [United Nations Interim Administration in Kosovo]—which also involve some of their employees—they never deal with them. Such cases are never prosecuted.<sup>41</sup>

All people must be treated equally before the law. Governments should not prosecute only members of opposing parties. Western countries and IOs should not hide incidents of corruption linked to their own nationals and/or employees

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<sup>39</sup> Ibid.

<sup>40</sup> European Commission, Directorate-General Justice Freedom and Security, *Report of the Experts Group on Trafficking in Human Beings* (Brussels: EC, December 22, 2004).

<sup>41</sup> Personal interview, Prishtina, July 2006. These statements do not necessarily reflect the true situation in Kosovo, but may be intended to deflect criticism off Kosovan traffickers. See Arsovska, “Decline, Change or Denial..”

(Box 5). At the prevention phase it is crucial to “promote transparency, vetting on the basis of audits, the appointment of officials to act as ombudsmen and the creation of an open multi-level organisational culture.”<sup>42</sup> In SEE countries, for example, dealing with corruption may require a change of police mentality which can not be achieved overnight. Promoting local ownership and raising awareness of corruption among policemen and the public are some of the first steps towards effective prevention. Mapping sectors vulnerable to trafficking-related corruption (such as travel agencies, transport companies, border guard agencies, and consular and immigration offices) is another good starting point for police investigations.

<p>√ <b>Check List</b></p> <p><i>At the prevention phase the police should:</i></p> <p>Contribute towards the collection and analysis of reliable, up-to-date data and research on human trafficking.</p> <p>Make extensive use of existing research on human trafficking, find hot spots of trafficking, help in the identification of risk populations, and act proactively.</p> <p>Avoid unsubstantiated generalisations and discriminatory policing tactics. Be well-aware of the limits of criminal profiling and stereotyping.</p> <p>Strengthen cooperation with border control agencies as well as immigration and labour control officers by, among other things, establishing and maintaining direct channels of communication.</p> <p>Enhance cooperation between police and other concerned parties in checking the validity and legality of travel and identity documents.</p> <p>Actively participate, in collaboration with civil society representatives, in awareness campaigns, helping potential victims to obtain knowledge about the operational methods of traffickers as well as about their own rights and options.</p> <p>Support community-led policing and “community vigilance committees” that would monitor the local sex trade for evidence of trafficking.</p> <p>Get involved in relevant social activities outside the scope of police work in order to improve the image of the police, gain trust among potential victims and build confidence in people. For this, governments should change policing priorities.</p> <p>Avoid double standards with regards to victim assistance, protection, treatment of offenders, and corruption, as well as promote transparency.</p> <p>Treat corruption as a complex multi-level process. Provide incentives to law enforcement officials, encouraging them to report on cases of corruption.</p>
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<sup>42</sup> CEOOR, 2005 Annual Report on Human Trafficking, 102–3.

## 4. Protection

### 4.1. Victim Identification and Referral Systems

For law enforcement responses to be effective, they must take into consideration a wide range of issues. The detection and identification of potential or actual victims is the first step towards helping victims and prosecuting traffickers. Many investigations start with a declaration of a victim to the police (Boxes 7 and 12). Then, the police initiate a reactive, victim-led investigation to rescue the victims and to arrest the traffickers. In the case of “P” (Box 7), due to the victims’ collaboration, the police were able to obtain information about the trafficking network. The police managed to gain the victims’ trust by providing them with translators, assistance with formalities and protection, and referring them to a shelter. They also noticed that, on three occasions, the traffickers tried to influence the Chinese interpreters involved in the case. Some of the victims were civil parties in the trial, receiving financial compensation of 2,500 EUR per person. The initial victim’s declaration, however, was not the same as the one given six months later. Fortunately, the police also investigated proactively, not relying solely on the victims’ statements, which resulted in a successful conviction.

#### **Box 7: Successful Victim-Led Investigation**

The case “P” is about the recruitment, transport and exploitation of Chinese victims forced to pay (debt bondage) Chinese Triad groups for their illegal transportation to Western Europe. The investigation began when a victim approached the police in Liege, Belgium, providing information on the Triads. His family had sold their house to pay for the trip, but the money was not enough. To pay off his remaining debt of 12,500 EUR, he had to work three more years for free in a Chinese restaurant in Belgium. The magistrate of Liege sent the information to Bruges where the restaurant “P” was located. The police in Bruges found that back in 1996, they had intercepted several illegal workers in the same restaurant. The police then traced twenty-four bank accounts across three banks, and also located five houses belonging to the Chinese exploiters. In the restaurant, the police intercepted other victims who also spoke out. Looking at the files, the police realised they were dealing with a well-structured criminal organisation that used mala fide firms as a cover-up and that had been active in the Schengen area for several years.<sup>43</sup>

In many other cases, victims do not dare to file a complaint against their exploiters. The police must therefore identify them. But victims often stay

<sup>43</sup> Based on a Belgian court file. Elements of this case are described in CEOOR, *2006 Annual Report on Human Trafficking*.



“underground” due to their illegal status, and many are traumatised.<sup>44</sup> They tend to blame themselves for what has happened to them, which can stop them from seeking help. Moreover, systematic isolation makes them dependent on the traffickers. In some cases, they do not consider themselves victims at all and refuse to provide information. They may also distrust authorities. Studies show that only a minority of victims are identified by law enforcement. Victims often have some contact with law enforcement representatives who fail to understand the situation and take appropriate action.<sup>45</sup> Thus, there is a high risk of categorising trafficking victims as “illegal immigrants” and repatriating them to their country of origin (Box 8).

**Box 8: Problems With Identifying Victims**

The T case is about four trafficked women. When intercepted in a Belgian prostitution bar, three of them said they were victims of trafficking, and were taken to a police prison. There, they had to spend one night together with their exploiter, also arrested by the police. The next day the police brought the victims to a closed asylum center. The file administrator was absent and the police were told that all of the women were to be repatriated. The police contacted the file administrator personally, and the planned repatriation was stopped. The police then brought the women to a victim shelter.<sup>46</sup>

The identification of victims can be broken down into several stages: (1) initial identification to assess if indicators of human trafficking are present;<sup>47</sup> (2) enquiries to corroborate these indicators; (3) further action, such as offering victims access to recovery and support services; and (4) active review of the action to further corroborate the indicators or to assess if additional trafficking indicators are present.<sup>48</sup> Thus, once potential victims are identified they should be offered safe housing, medical, psychological and legal assistance, and other benefits. When the first contact is made by the investigating authority, the potential victim must be informed of the possibility of receiving support by an

<sup>44</sup> See Cathy Zimmerman et al., *Stolen Smiles: A Summary Report on the Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe* (London: London School of Hygiene and Tropical Medicine, 2006).

<sup>45</sup> OSCE, “Successful Prosecution of Human Trafficking—Challenges and Good Practices,” (conference proceedings, Helsinki, September 10–11, 2008).

<sup>46</sup> Based on a Belgian court File. See CEOOR, *2007 Annual Report on Human Trafficking*.

<sup>47</sup> Indicators are signs that suggest the possibility of human trafficking and can be discovered through events associated with the criminal activity, statements from the victim or signs of harm associated with trafficking. Some indicators are obvious, while others are not.

<sup>48</sup> See UN.GIFT, *Criminal Justice Responses to Human Trafficking* (UNODC working paper, The Vienna Forum to Fight Human Trafficking, February 13–15, 2008), <http://www.unodc.org/documents/human-trafficking/Marika-Misc/BP006CriminalJusticeResponses.pdf> (accessed June 16, 2009).

independent counselling service.<sup>49</sup> Establishing a referral system to guide victims towards assistance and guarantee them a minimum period to recuperate is essential (Box 9). A rescuer must know how to refer victims to experts for support. The police should ensure that they do not re-victimise trafficked persons, for example through improper interview techniques.

**Box 9: Optimal Referral Systems**

This file concerns an international prostitution network composed of a Belgian “manager”, Albanian and Turkish pimps, Nigerian pimps (“madams”), Turkish and Belgian bodyguards as well as Italian prostitution bar owners. In one year, the police intercepted more than one hundred women working as prostitutes, many of whom were trafficking victims. The police guided the women to a specialised reception centre. They hoped that if the women were in a safe environment and given proper assistance, they would reveal more information about the prostitution network. During the hearing, some of them stated that they were not victims of trafficking. Despite this, the police gave them a multilingual brochure on human trafficking. The police ensured that social workers from the reception centre were on hand to talk privately to the victims and to explain the meaning of “trafficking status” in a friendly environment. The social workers gave their contact details to each victim to make further contact possible. The case resulted in the successful prosecution of the pimps and traffickers.<sup>50</sup>

Smooth cooperation is often difficult to achieve. During the identification process, there may be conflicts of interest. For instance, while police focus on arresting and prosecuting criminal suspects, NGOs are more likely to have the best interest of the victim/s as their primary objective. Another potential conflict of interest is between the police investigators and immigration authorities. Immigration officers will often have deportation of persons residing illegally in a country as their priority response, whereas law enforcement will more likely recognise the value of the victim to the criminal investigation.

Moreover, not all victims are treated the same. In some cases, the police immediately sends the presumed victim to a reception centre. In other cases, trafficked persons are considered illegal immigrants and treated accordingly. Also, whether a victim is sent to a reception centre may depend on the quantity and quality of the information he/she provides. In one human trafficking case from Italy and one from Belgium, the police told the victims that they could help only if the persons said they were victims of trafficking. When the victims reacted negatively, the police chose not to call upon an interpreter and not to

<sup>49</sup> Council of Europe, “Action Against Trafficking in Human Beings.”

<sup>50</sup> Based on a Belgian court file. Elements are described in CEOOR, *2007 Annual Report on Human Trafficking*.

inform the reception centre. Furthermore, there is sometimes a difference in the treatment of victims of sexual exploitation and of labour exploitation— often labelled “undeclared work.” In a 2005 survey by the OSCE, only half of the responding countries recognised trafficking for labour exploitation as one of the main forms of trafficking in their jurisdictions. Labour trafficking remains an invisible problem (Box 10).<sup>51</sup>

**Box 10: Identification of Victims in Atypical Sectors**

In the transport sector, victim identification is a challenge. During a road check in Brussels, the police obtained the odometer of a Polish driver, who admitted carrying out undeclared work. Being unable to pay the 2,500 EUR fine, he was taken to a police station. He was working without a work permit or a contract. According to the instructions of his boss, the odometer records had to be cleared after every journey. He drove 1,900 km without taking breaks and slept four hours a night. He earned 40 EUR a day, and often stayed in his lorry for seven weeks. His boss had given him a mobile phone, so that he was always available. He was never asked if he had taken any breaks. The driver was afraid of talking to the police, assuming there was a danger of reprisals and that it was not possible to arrest his boss because the main office of his transport company was in Germany. The traffic police contacted the Belgian Federal Police to ask what they should do with the victim. The Federal Police advised them to contact the reference magistrate for human trafficking in Brussels, who, after being shown the facts, asked the police to contact the labour auditor. The labour auditor sent the police to the public prosecutor’s office of the district in which the suspect was living. The public prosecutor ordered the odometer to be seized. He promised to contact the labour auditor and confirmed that the vehicle would be given back to the driver after the fine was paid. Nothing was done for the victim and no further investigation was initiated.<sup>52</sup>

Victims from atypical sectors are often treated as illegal immigrants or illegal workers. They are held in detention centres with a view to being repatriated. One of the reasons for putting a foreigner in a detention centre is the suspicion of undeclared work. It appears that in many European detention centres, no

<sup>51</sup> Ibid.

<sup>52</sup> Similar situations can be observed in the horticultural industry, where Romanian victims were not considered as victims and the majority were repatriated. See CEOOR, *2006 Annual Report on Human Trafficking*, 46–47. Also in November 2008 a case of “human trafficking for purposes of economic exploitation involving members of the royal family of Abu Dhabi came to light in Brussels. The widow of a sheik and her family had rented out an entire floor of the Conrad Hotel in the Belgian capital for a period of eight months. The family employed 17 service girls. However, these girls were treated as slaves rather than as employees. They had to be available day and night, were paid a very low wage and many of them were forced to sleep in the hallway. Moreover, their passports and identification documents were taken from them to prevent them from escaping” no author, “Sjeika’s ontlopen wellicht straf,” *De Standaard* July 29, 2008; no author, “Payoke biedt slavinnen uit Brusselse Conradhotel onderdak,” *De Standaard*, November 8, 2008.

systematic screening is carried out to detect potential victims.<sup>53</sup> Consequently, detection often depends on the awareness of social workers and the philosophy of the detention centre. A major challenge in labour exploitation cases is understanding the difference between sub-standard working conditions and forced labour. The ILO highlights six elements of a forced labour situation:<sup>54</sup> (1) physical or sexual violence and/or threats; (2) restriction of movement of the worker; (3) debt bondage; (4) withholding or refusal of wages; (5) retention of passports and identity documents; and (5) threat of informing the authorities.

Reasons for the low number of prosecutions regarding labour trafficking include: (1) not all states have criminalised labour trafficking; (2) cases are not identified because victims stay “underground”; (3) law enforcement agencies and labour inspectors are not familiar with relevant indicators of exploitation; (4) authorities focus on the immigration status of the individual rather than on conditions of exploitation; and (5) there are evidential difficulties in establishing the standard of proof required.

#### *4.2. Reflection Periods*

If a victim is identified, a period of reflection should be offered to him or her regardless of the immigration status. A reflection period allows victims to remain in the destination or transit country to recover from their trafficking ordeal and to make an informed decision on whether or not to cooperate with police. This can enhance the victim’s ability to testify, as evidence given by victims who are traumatised may be unreliable.<sup>55</sup> However, many European countries do not systematically offer reflection periods.<sup>56</sup> Instead, the status of victims is mostly determined during the first police hearing. Victims are either immediately deported to their country of origin or receive the status of trafficked persons. Reflection periods are particularly vital when criminal organisations are involved and victims are scared to make a statement.<sup>57</sup> Moreover, many victims distrust the police, do not want to expose their contribution to illegal activity, and therefore say that they have not been trafficked. Building trust is therefore essential. During the reflection period, victims should be protected and assisted.

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<sup>53</sup> OSCE, “Successful Prosecution of Human Trafficking— Challenges and Good Practices.”

<sup>54</sup> International Labour Organization, *Tools for Prevention–Participatory Monitoring: Guidelines for Practitioners in the Fight against Human Trafficking* (Geneva: ILO, 2005).

<sup>55</sup> Council of Europe, “Action Against Trafficking in Human Beings.”

<sup>56</sup> CEOOR, *2007 Annual Report on Human Trafficking*.

<sup>57</sup> CEOOR, *2002 Annual Report on Human Trafficking*, 23–25.

**Box 11: Positive Impact of Reflection Periods**

In 2004–2005 trafficking networks brought girls from Romania to Belgium, where they were exploited in street prostitution or forced into begging. Initially, the victims showed no interest in the Belgian system for victims of trafficking, and presented the police with fabricated stories. But then they spoke out, and the police put the victims in contact with shelters for a reflection period. Social workers, assisting the victims, tried to win their trust. In the end, the victims were a civil party in this case, and some even testified against the suspects. The criminal clan offered 1,000 EUR to the victims to withdraw their complaints. When this did not work, the victims received threatening mobile phone messages.<sup>58</sup>

#### 4.3. Interview Techniques

The purpose of an interview is to establish the facts of the case, to use the facts to corroborate the victim's story and establish his/her credibility, to use the evidence to identify, arrest and prosecute the traffickers, and to continually assess the risk to the victim and those associated with the victim.<sup>59</sup> Without a statement from a victim, law enforcement authorities are often left without a case. Effective interview techniques are, therefore, vital. The needs, safety and well-being of the victim should be a priority at all times. Trafficked victims are vulnerable and they should be interviewed in a sensitive manner, ideally by a trained interviewer.<sup>60</sup>

Strategic level planning includes the availability and use of resources and staff and their abilities to interview, recording equipment and the possible need for translators. Tactical level planning concerns the management and conduct of the interview. Before conducting the interview, investigators should find out about the age of the victim, the language, and the country of origin, including culture and state of development. Risk assessments must ensure the safety of the victim. If victims are protected, they are more likely to trust the investigating officers. It is ideal to have two interviewers. One should pose questions, whilst the other should take notes. Ideally, law enforcement officials who are specialists in interviewing vulnerable persons should be employed to interview trafficked victims. The gender of the interviewer matters, too.<sup>61</sup>

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<sup>58</sup> Based on a Belgian court file.

<sup>59</sup> UN.GIFT, *Criminal Justice Responses to Human Trafficking*. See also UNODC, *Toolkit to Combat Trafficking in Persons*, Chapter 6.

<sup>60</sup> UN.GIFT, *Criminal Justice Responses to Human Trafficking*. See also Barbara Mitchels, *Let's Talk: Developing Effective Communication with Child Victims of Abuse and Human Trafficking* (New York: UNICEF and UNMIK, 2004).

<sup>61</sup> Whilst we are not aware of any direct evidence that the gender of an interviewer guarantees better interview outcomes, some countries have specific legislation requiring female vulnerable witnesses to be interviewed by female officers. Some scholars have recommended that only women interview girls

Translators also have an important role. They must be reliable and unbiased. Translators are often better able to win the trust of the victim if they have the same ethnic and cultural background.

#### *4.4. Protection of Victims and Witnesses*

Methods used by traffickers to control victims include confiscating travel documents, isolation and debt bondage, and convincing victims that the police will arrest and maltreat them if they are identified. Sexual abuse, physical violence, and threats are also frequent, particularly in cases of sexual exploitation. Thus, in addition to the detection of victims, the role of the police in providing protection to trafficking victims, witnesses and their families is vital. Measures include court security, police escorts, keeping the victim informed of the status of the legal proceedings, and counselling. More complex measures include identity protection, secure housing, confidentiality and, in exceptional cases, relocation to another country.<sup>62</sup> Importantly, the duty of law enforcement officers to protect should not end with the conclusion of a trial.

To be able to protect victims on a continuous basis there is a need for a system that grants permanent residence to victims, so they are not obliged to go back to their country of origin where they might be in danger. In the Belgian system, victims are given residence permits if they satisfy three requirements: break all contact with the presumed perpetrators of their exploitation, be supported by a specialised reception centre and, within the forty-five day period of reflection, make statements or file a complaint against their exploiter. This system, however, has several disadvantages: victims not interested in assistance lose their victim status, and only victims who benefit from their “trafficking status” have the right to various forms of aid (Box 12).

<b>Box 12: Protecting Vulnerable Victims</b>
<i>Case A</i> Statements of several trafficking victims revealed the existence of a trafficking network active in the Netherlands, Belgium and Bulgaria. The victims were forced to give their money to the exploiters and were sexually and physically abused on a regular basis. Moreover, violence and death threats were used against their families in Bulgaria. A family member of one of the victims

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suspected of having been trafficked for sexual purposes. However, some victims may relate better to members of the opposite sex. Victims should be given the choice to be interviewed by a man or a woman.

<sup>62</sup> Council of Europe, “Action Against Trafficking in Human Beings.”

was heavily injured and had to be hospitalised, when his sister, a prostitution victim, escaped from the criminals. The victims were afraid to enter the protection system for trafficking victims and to be civil parties at the trial. As a result of continuous threats, the victims' stories changed significantly during the trial. In the new testimonies, the victims spoke very positively of the accused. The Court considered these new testimonies unreliable. According to the judge, the testimonies pointed to the vulnerable position of the abused victims. The criminals were sentenced to between five and seven years of prison.<sup>63</sup>

#### *Case D*

This file concerns Bulgarian and Romanian trafficking victims. The investigation started in 2005, as a result of a statement from a Bulgarian victim who identified her exploiters. Several other victims testified against the criminals, too. The offenders were considered to be extremely dangerous, having murdered one prostitute in the past. The Bulgarian leader of the organisation, D., offered 5,000 EUR for the murder of one victim who had spoken to the Belgian police. The Bulgarian police informed the Belgian police via INTERPOL that the leader of the group was planning to kill two victims. The Bulgarian police tried to locate the victims in order to protect them. Eventually, they were found and put on a bus to Belgium, where their victim status was confirmed and where they were brought to a shelter. However, the victims wanted to continue their prostitution work on an independent basis. This was not compatible with the rules of the Belgian protection system. The victims therefore had to leave the shelter and hide independently from the criminal network.<sup>64</sup>

Before victims and witnesses decide to testify against their exploiters, the police should inform them about the risks involved, since they can never be fully eliminated. If victims decide to testify, in many European countries, trafficking victims, like victims of other serious forms of crime, can benefit from anonymity provisions.<sup>65</sup> It is vital that in reports prepared by law enforcement officials the names and addresses of victims and witnesses are not openly listed. Unfortunately, victims' names often appear in police and court files. Also, in various sexual and labour exploitation cases,<sup>66</sup> letters rogatory were produced to hear witnesses who had already gone back to their home countries. In such cases, law enforcement officials should provide full protection to victims travelling to foreign countries in which the main perpetrators reside.

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<sup>63</sup> CEOOR, *2005 Annual Report on Human Trafficking*.

<sup>64</sup> CEOOR, *2007 Annual Report on Human Trafficking*.

<sup>65</sup> In Europe, but also globally, complete anonymity is rarely granted to victims.

<sup>66</sup> CEOOR, *2006 Annual Report on Human Trafficking*, 43–47.

**Box 13: Witness Protection Programmes**

In 2005, a total of 851 requests were addressed via the Headquarters of the SECI Regional Center in Romania, a total of 28 per cent of which concerned human trafficking and illegal migration. The SECI Center has a unique witness protection programme. During 2004–2005, from Moldova alone, eighteen trafficked persons were assisted through the programme and travelled to Macedonia, Serbia and Montenegro in order to testify. During the travel to the countries where trials are taking place, victims receive special around-the-clock protection. Protection is provided to victims even after their return, and Moldovan police are invited to attend training courses in witness protection. Moldova is a small country with a small population, making it difficult to provide people with new identities and addresses. Therefore, Moldova negotiates with Romania and CIS countries to accommodate possible victims. One of the challenges is financial support, however.<sup>67</sup>

There are incidents where corrupt police officials have collaborated with traffickers, and, instead of helping victims, maltreated them. In other cases, allegedly for “tactical” or “political” reasons, some law enforcement officials have tolerated acts of exploitation, coercion, and violence. Journalist Ruth Hopkins writes:

In the Netherlands, the so-called abolition of the brothel ban in 2000 was intended to decriminalise prostitution. Nevertheless, women trafficking is a booming business in the Wallen. Vice squad inspectors from the local police station, Beursstraat, complain that nothing is being done about it. The police, bound by performance contracts, may only ‘hassle’ the people traffickers by fining them for petty crime. ‘We can no longer cope with the daily confrontation with women who are being raped and beaten up.’<sup>68</sup>

In a conversation with the authors, a police officer from Western Europe reports:

We see all that is happening on the ground. We know about illegal prostitution and maltreatment of women in some closed Turkish cafés, but we are not allowed to do anything to protect these victims. The hierarchy [senior officials and politicians] does not allow us, because these crimes do not have high social impact and are happening behind closed doors. The hierarchy do not want that such information goes in the media, making the citizens feel insecure. In other cases we tolerate the exploitation of women and we allow illegal prostitution to go on, because the small-scale pimps are our informants. They tell us about the big trafficking networks.

<sup>67</sup> Council of Europe, “Action Against Trafficking in Human Beings,” 47.

<sup>68</sup> Personal conversation with Ruth Hopkins. Quote based on the article “Slavenhandel op de wallen?” Debalie.nl, October 1, 2005, [www.debalie.nl/artikel.jsp?podiumid=digitale&articleid=44036](http://www.debalie.nl/artikel.jsp?podiumid=digitale&articleid=44036) (accessed May 26, 2009). Measures were taken against the notorious Turkish traffickers after the media exposure.



Such practices can have detrimental long-term effects on the work of the police. Traffickers are well-aware that cutting links between victims and police is crucial for their business. Sometimes they even send their accomplices, dressed up as policemen, into the prostitution bars they control in order to have sex with the victims. The police, in cooperation with civil society, should work on building a better image and on gaining trust among victims.

4.5. Socio-Cultural Background

In order to protect trafficking victims, police officers should be familiarised with socio-cultural factors affecting the attitudes of trafficked persons and used by traffickers to silence their victims. Knowledge and intelligence on such practices (e.g., voodoo rituals, revenge killings, honour codes, and machismo) can help police solve cases.

<p><b>Box 14: Nigerian Voodoo-Like Rituals</b></p> <p>A Nigerian criminal group involved in human trafficking transported Nigerian girls to Belgium, subcontracting them to local prostitution bars. The network threatened the victims and hired criminals in Nigeria (who were paid 10,000 EUR per month) to use violence against the victims' families. Some houses in Nigeria were set on fire. A typical Nigerian modus operandi is the voodoo-like ritual and the oaths associated with it, often using nails, blood and hair.<sup>69</sup> This was one of the tactics used by this group. Many Nigerian girls take an oath before leaving for Western Europe. They or their families swear to pay off the travel costs to the traffickers. The oath-takers are threatened by the criminals with divine retribution if they break their oaths. With such voodoo-like practices, the victims believe that the criminals can make someone sick, crazy or even die. In this way, the criminals control victims who prefer to stay in prostitution and pay off their debts.<sup>70</sup></p>
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There are also other cultural elements useful for understanding the mindset of traffickers and victims. Men, particularly those from a culture with a traditional view of masculinity, may not want to admit their victimisation because they fear that their disclosure of losing control of their lives may lead to perceptions of diminished masculinity. Trafficked women who suffer sexual abuse may be reluctant to seek assistance because of the shame and stigmatisation that may

<sup>69</sup> The term "voodoo" is often used to refer to religious rituals used in Southern Nigeria, but it is inaccurate as the term refers specifically to particular religious practices in the Southern part of the Republic of Benin and in Haiti. That is why we refer here to the practices as "voodoo-like" ritual oaths.

<sup>70</sup> Based on Belgian court files. See no author, "Spain Holds Voodoo Traffickers," *BBC News*, May 22, 2009, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/8063205.stm> (accessed June 30, 2009).

follow. Cases indicate that women coming from regions with strong traditional culture, such as Albania, are often afraid that their experiences will bring shame upon their families, leading the families to renounce them as daughters, wives or mothers.<sup>71</sup> Trafficked and sexually exploited victims are also sometimes married to their traffickers and pimps, and some do not dare go against the wishes of their husbands. In some Albanian villages, once a woman is married, her husband has the right to control her (Box 15).<sup>72</sup>

**Box 15: Subordination of Women**

The traditional cultural code, Kanun of Lek Dukagjini, makes the subordination of women acceptable in many Albanian villages. The Kanun stipulates that a woman is a sack made to endure and she is to be obedient to her husband. In the Ali case (1997–2002), the Albanian victim Bruna was married to an Albanian pimp. In 1997, they left Albania and went to Belgium. Ali asked his wife to prostitute herself in Antwerp. When the woman was repatriated to Albania (after a police control), she did not go to her parents but went to live with the parents of her husband. Ali injured his wife with a knife and threatened her with a pistol. The police also reported that Bruna had burns on her arms. During the questioning, the police were shocked by Bruna's nervousness. She stated: "I am the reason why the people you arrested are in prison now. They are coming from the same village like me. I really don't want that my family has problems because of me." Bruna wrote a letter to the judge stating that her husband had never forced her into prostitution. Ali was convicted for trafficking of people for the purpose of prostitution (1997) and for being part of a criminal organisation (1997–2002).<sup>73</sup>

Cultural traits such as honour, trust, modesty and gratefulness can be easily exploited by traffickers, and create dependencies that are very difficult to break (Box 16).

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<sup>71</sup> Jana Arsovska and Philippe Verduyn, "Globalisation, Conduct Norms and 'Culture Conflict': Perceptions of Violence and Crime in an Ethnic Albanian Context," *British Journal of Criminology* 48, no. 2 (2008): 226–246; Jana Arsovska, "Understanding a 'Culture of Violence and Crime': The Kanun of Lek Dukagjini and the Rise of the Albanian Sexual-Slavery Rackets," *European Journal of Crime, Criminal Law and Criminal Justice* 14, no.2 (2006): 161–184; Jana Arsovska and Mark Craig, "'Honourable' Behaviour and the Conceptualisation of Violence in Ethnic-based Organised Crime Groups: An Examination of the Albanian Kanun and the Code of the Chinese Triads," *Global Crime* 7, no.2 (2006): 214–256.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

**Box 16: Chinese Tradition**

During one investigation involving Chinese victims of trafficking for labour exploitation, several letters with victims' promises were retrieved. The contents typify the power and control that the criminal network's leader exercised over its victims. One of the letters stated: "Proof of promise: I (a, b, c) am family of X and Y. I feel myself honoured, privileged and very grateful to X who although very busy has chosen me from so many family members to help me to go abroad. I will remember this kind gesture forever. I will be always grateful to X and Y who have helped me to get a better life and escape poverty. For this reason, I want pay a voluntary sum of 10,000 US dollars as a thanks (the plane ticket and other costs included). I realise completely that with that amount of money I cannot thank enough those two people. I promise here voluntarily, from the bottom of my heart, that when I am abroad, I will always listen to X and Y. If I must work in the restaurant or assist the family, I will work always hard and I will never complain. I will do that on my own free will. I will do my work as good as possible and I will never be tired. I will never say bad things about X and Y to a third person. I will remember their kind gesture and all my future generations will be grateful as well. If I don't respect my word and do not do as I promised, then my family will always live in unhappiness. All the consequences will be carried out by me and my family. I confirm my promise solemnly! This is promised by (a, b, c)."<sup>74</sup>

**√ Check List**

*At the protection phase the police should:*

Undergo specialised training to be able to identify indicators of human trafficking, to understand situations which involve trafficking victims and to take appropriate action.

Undergo professional training in order to understand the difference between sub-standard working conditions and forced labour. For this, police should cooperate with labour inspectors and raise awareness about human trafficking among less specialised first-line police officials.

Refer potential or actual victims to protection or support services and establish contact with the counselling service and the special police unit responsible for protection.

Cooperate with victim shelters, social workers, immigration officers and detention centers in order to ensure that trafficking victims are not detained, accused, repatriated, re-victimised, or stereotyped.

Develop standard working procedures to guarantee the physical safety of victims, protect their privacy and make it safe for them to testify against their abusers.

Establish terms of reference between organisations involved in human trafficking cases and establish distinctive roles for each organisation in order to overcome conflicts of interests.

Have two interviewers in a trafficking investigation and ask victims whether they prefer male or female interviewers. Ideally, law enforcement officials who are trained in interviewing vulnerable persons should interview trafficked victims.

Inform trafficking victims about the risks of testifying against traffickers.

Do not list the names and addresses of victims and witnesses in police/court reports. The privacy

<sup>74</sup> CEOOR, 2007 Annual Report on Human Trafficking.

and identity of trafficked persons should be protected.

Ensure special protection when victims and witnesses travel to countries where traffickers reside and where trials take place.

Do not tolerate the existence of any inhumane practices due to political agendas, and cooperate with the media and victim shelters to expose such injustices.

Be familiar with the socio-cultural practices of the key criminal groups operating in their regions. This can help in better understanding criminal networks and the needs of victims.

## 5. Prosecution

### 5.1. Implementation of Laws

To successfully fight human trafficking, laws must be implemented. Many laws reflecting Western values have been imposed on post-communist societies. While governments have been ratifying Western laws and international conventions to become members of the EU and NATO, many citizens have not internalised the democratic values promoted by these laws.<sup>75</sup> Also, governments (post-communist or not), have implemented laws only sporadically.

In transitional and developing countries there is also no institutional capacity to deal with the complex issues covered by some international laws. For example, according to police sources, the Bulgarian legal system is structurally incapable of effectively dealing with organised crime cases, many of which relate to human trafficking.<sup>76</sup> Judges have imposed time limits of several months, within which an enquiry must be terminated. Such limits may be prolonged in the case of serious crime. Human trafficking falls outside this category because it is not considered a serious crime under Bulgarian law. If important witnesses are not present at the trial because they have “disappeared”, defendants are acquitted.<sup>77</sup>

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<sup>75</sup> Marta Valinas and Jana Arsovska, “Possibilities and Limits for Restorative Justice in the Kosovo Case,” in *Restoring Justice after Large-scale Violent Conflicts: Kosovo, Congo and the Israeli-Palestinian Case*, ed. I. Aertsen, et al. (Willan Publishing, 2008), 183–212; Jana Arsovska and Philippe Verduyn, “Globalisation, Conduct Norms and “Culture Conflict,”” 227.

<sup>76</sup> The European Commission has deplored the lack of results in this country as regards the fight against high-level corruption and organised crime.

<sup>77</sup> Based on personal interviews with magistrates and police. Aspects are mentioned in CEOOR, 2007 *Annual Report on Human Trafficking*.

### Box 17: Lack of Effective Implementation of Laws

#### Case D

In case D, the Bulgarian justice system refused to extradite the leader of a criminal prostitution network operating in Belgium. When the Belgian authorities asked for D's extradition, the Bulgarian authorities started their own investigation, arguing *non bis in idem* (a suspect can never be condemned twice for the same facts). The suspect was tried in Bulgaria and sent to prison for a few weeks. When his lawyer told the authorities that D suffered from epilepsy, the Bulgarian authorities set him free for medical reasons and granted him house arrest. According to a victim, the accused provided services to policemen, magistrates and judges, organising sex parties in Varna, Bulgaria. The victim stated: "He has many contacts with Bulgarian policemen who inform him about everything. He is not afraid of the Bulgarian police or the judicial authorities. He fears, however, the Belgian police."

#### Case L

According to police sources, in 2002–2003 the number of trafficked women in Macedonia was extremely high. One of the most important cases involved the notorious kingpin of the Balkan sex-trade, D.B.L, an ethnic Albanian who kept more than 120 Moldovan women as sex-slaves in brothels located in a village in western Macedonia. Local sources pointed out that many international and local policemen, as well as politicians, visited the brothels. Under enormous international pressure, in February 2003, D.B.L. was arrested in Macedonia. He escaped in June 2003, but a few months later he was apprehended in Montenegro. Charged only for "Mediation in Prostitution", he was released in April 2007. According to media reports, the judge inappropriately handled a number of indictments against the trafficker. The public also criticized the promotion of another Macedonian judge who had order the release of D.B.L. due to "effective repentance."<sup>78</sup>

## 5.2. Intelligence-Led Investigation Techniques

Trafficking networks have become more complex. Some have developed professional structures, keeping low profiles and using legal companies as a front for their illegal activities. In recent years, in Europe and beyond, sexual services have been on offer illegally outside traditional sex establishments, often in Turkish cafes, (Chinese and Thai) massage salons, (gay) saunas, couples' clubs and (Chinese) hairdressers. Sexual services are also offered for payment via the Internet.<sup>79</sup> The victims receive part of the money, much more

<sup>78</sup> Internal police reports (2005). See interview by Sam Vaknin, "Human Trafficking in Kosovo and Macedonia," *Los Angeles Chronicle*, November 20, 2008, [www.losangeleschronicle.com/articles/85731](http://www.losangeleschronicle.com/articles/85731) and [www.globalpolitician.com/25338-human-trafficking-prostitution-macedonia-kosovo](http://www.globalpolitician.com/25338-human-trafficking-prostitution-macedonia-kosovo) (accessed May 26, 2009).

<sup>79</sup> Internet prostitution appears to be on the increase. There are signs that escorts are using the Internet for advertising and to mediate between client and prostitute, and that dating sites are used as fronts for prostitution. It also seems that young male prostitutes work via the Internet, and that clients are resorting to webcam sex. See Corinne Dettmeijer-Vermeulen et al., *Trafficking in Human Beings: Fifth Report of the Dutch National Rapporteur* (The Hague: Bureau NRM, 2007).

than in the past. This reflects organisational learning, i.e., the process by which mismatches are identified and corrected.<sup>80</sup> By giving more money to trafficked persons, criminal groups reduce the risk of victims cooperating with the police.

Therefore, police officials, when possible, should not rely only on victims' statements but must be proactive, basing their investigations on solid intelligence. In many cases, and when authorised by law, an enquiry may begin with a combination of human and technical surveillance, undercover deployments and standard investigative techniques. Law-enforcement strategies should reflect the geographical, structural and commercial components of human trafficking. The geographical and structural components include: (1) State of origin (recruitment and export); (2) State of transit (transportation); and (3) State of destination (reception and exploitation). The commercial characteristics mean that, during the trafficking process, the traffickers are bound to get involved in some of the following activities: (1) Advertising (recruitment or exploitation); (2) Renting of premises (safe-houses, brothels, factories, etc.); (3) Transportation (obtaining identity documents and arranging transit); (4) Communications (recruitment and exploitation); (5) Financial transactions. Evidence can be collected at any one of these stages.

Traffickers, for example, often use ordinary methods of commerce for the activities in support of their crimes. The "Achilles heel" of traffickers lies in the evidence generated as result of commercial processes. Thus, an investigation may start by looking at ads for massage parlours. Other investigative methods, such as analysis of trash and correspondence, and reviews of wire transfer records, can also reveal pertinent information. Investigators should aim at touching the criminal groups where it hurts the most: their finances. Criminal profits and other assets should be traced, seized and confiscated.

In general, proactive operations are encouraged because they allow the investigators to agree in advance on the overall strategy best suited for tackling a criminal network. This includes: agreement as to where the main investigative focus should be, the tactics employed to collect evidence, the offences being targeted and the best location for instituting the prosecution.

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<sup>80</sup> Michael Kenney, "When Criminals Out-smart the State: Understanding the Learning Capacity of Colombian Drug Trafficking Organizations," *Transnational Organized Crime* 5, no.1 (1999): 97-119.

**Box 18: Proactive Investigation Approaches**

The investigation in this case (2005–2007) started with a declaration by a victim. The police then discovered various advertisements used by Chinese traffickers to recruit girls in China. Searching the massage salon where the victim worked, the police discovered that it was a brothel and identified two other victims. The victims and all other suspects were questioned through a Chinese translator. Besides thoroughly searching the salon, the police, together with immigration officials, also investigated the identity documents of the suspects and the victims. Subsequently, the victims identified the suspects in a line-up through a one way-mirror. The police questioned all possible witnesses and analysed the mobile phone records of the suspects. Some of the persons whose contact details were found in the mobile phones were questioned, too. The police also started financial investigations, looking into the money transfers and the bank accounts of the suspects. The financial investigation showed that the massage salon had been the object of another money laundering investigation, and that a bank account with 17,000 EUR belonging to the suspects had been blocked. The financial investigation led to the confiscation of 60,000 EUR. Four victims found by the police entered the protection system, claiming “trafficking victim” status and presenting as civil parties during the trial. All suspects were successfully prosecuted and convicted.<sup>81</sup>

Intelligence-led investigation techniques are important (Box 18). Evidence based on solid intelligence and diverse sources produces better results in the long term because, among other things, it leads to the conviction and arrest of large criminal networks, not only of individual traffickers. A law enforcement official reports:

The Nigerian file started on the basis of a proactive investigative project. The goal was to make a detailed analysis of the entire criminal network. We used financial analysis to detect the flow of the money as well as the role of each suspect. We analysed the advertisements that tried to attract Nigerian prostitutes. We then started with phone-tapping. On the basis of the phone-taps, we could specify the different roles of the suspects in the criminal network. Although I am aware that it is time-consuming to initiate comprehensive proactive investigations, and [despite the fact that] for political reasons police and magistrates often focus on quantity rather than on quality of cases, this was an example of how successful a proactive intelligence approach can be.

While not always implemented in practice, network analysis is essential for the effective prosecution of criminal groups. Investigators should focus not only on individual traffickers but also on the wider networks and their structural and commercial elements (analysis of the role of travel agencies, transport firms, night shops, restaurants, firms, etc.).

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<sup>81</sup> Based on a Belgian court file.

### 5.3. Electronic Surveillance

Electronic surveillance in the form of listening devices or the interception of communication is a common method used by law enforcement agencies in dismantling criminal groups. It is preferable where close-knit groups cannot be penetrated by outsiders or where physical infiltration would represent unacceptable risks for investigators. This method has proved to be very useful in dismantling Albanian organised crime groups. Albanian prosecutor Olsjan Cela argues:<sup>82</sup>

I don't know why people talk of a strict "code of silence" applied by Albanian groups when many Albanian offenders are caught with the use of electronic surveillance and phone-tapping. Albanian traffickers use their mobile phones too much and they say everything over the phone. That is why they always get caught. They should have learned so far that their phones are often intercepted by police, but obviously many of these groups are not that sophisticated. Phone-tapping is the best method to go against these groups.

Given its intrusiveness, electronic surveillance is generally subject to strict judicial control to prevent abuse. Surveillance should always be conducted carefully and creatively. Where investigators become aware through surveillance that victims are being harmed, they are obliged to intervene.<sup>83</sup>

#### **Box 19: Use of Special Investigative Techniques**

##### *Case C*

This is a case about a criminal organisation engaged in human trafficking between Albania, Western Europe, and the US. By using special investigative methods (surveillance, phone-tapping, etc.) the police identified the Albanian citizen C. as the leader of the organisation. C. covered his criminal activities under the pretence of the travel agency "Go West." For months, the apartments of the suspects were under surveillance. Above the apartment of C. the police detected a laboratory with machines used to produce EU visas, American Green Cards, Italian identity cards, and bank cards. The police seized 1,000 counterfeit passports, 200 Italian resident cards, 50 identity cards and 450 Italian driving licenses. The Albanian police searched the travel agency "Go West" and detected evidence related to illegal money transfers. Ten members of the group, including C., were arrested, and links to criminals in foreign countries were established.<sup>84</sup>

<sup>82</sup> Personal conversation, Workshop on Ethnic Albanian Organised Crime, Belgian Federal Police, Brussels, October 2–3, 2008.

<sup>83</sup> UNODC, *Toolkit to Combat Trafficking in Persons*, Chapter 5.

<sup>84</sup> In the police action leading to the arrest of the group, nine teams were involved. Only the team leaders knew about the objective of the operation. Information provided by Albanian Ministry of Interior.



#### 5.4. Informants, Infiltration and Undercover Operations

Investigators are often required to work in unfamiliar settings and in communities that distrust law enforcement authorities. Ethnic community groups and immigrants' rights NGOs can assist them in gaining access to culturally insulated communities. Law enforcement agencies should seek only the assistance of organisations with a proven record of assisting trafficking victims and collaborating with investigating authorities. Sometimes law enforcement officials can also make use of *informants* when they work in unfamiliar settings. An informant is a person who provides information to the police about a crime. He/she may be a member of the public, a victim of crime, a criminal or a police officer.<sup>85</sup>

Networks are often large and traffickers may come into contact with a great range of people; each one of them is a potential informant. Some informants are able to provide information from the heart of a criminal organisation and can be tasked to find specific information. The use of informants, however, must be carried out in compliance with national laws. In recruiting and using informants, consideration must be given to the safety of the informant and the victims. Protection of the informant's identity is essential, and the special techniques used by police (like infiltration) should not be mentioned in the juridical files accessible to all parties. In the Belgian case "AN", the local police wanted to arrest a pimp, but the federal police stopped the investigations because the pimp was an informant.

Moreover, potential informants must be carefully screened. Consideration must be given to the motives for providing information to police; some of those motives may be unethical or prejudicial to the success of an operation. Thus, using traffickers, pimps, and prostitution bars as a source of intelligence can be complicated. Informants can be very manipulative, and they might try to liquidate their criminal competitors by providing partial information to police. As a consequence, a juridical file should not start only on the basis of an informant's statement.

Preparing undercover operations is more complex than the simple use of an informant. Such operations may be used where it is possible for a law enforcement agent or other person to infiltrate a criminal organisation to gather

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<sup>85</sup> Informants can be used to provide information about: (1) The structure and nature of the criminal organisation; (2) Whether potential trafficking victims are at certain premises; (3) When victims are being moved and where; (4) The money trail of trafficking in persons (how much money is being paid, where is it being paid from and to, what is the money being used for?).

evidence. Undercover operations should only be carried out by trained staff.<sup>86</sup> The purpose of undercover policing is to: (1) Determine the nature and extent of criminal activities; (2) Identify the people involved; and (3) Obtain evidence that allows offenders to be prosecuted. Once again, the safety of undercover agents, as well as of victims and their families, should be a key principle in planning undercover operations.

### 5.5. Investigation of Finances and Seizure of Assets

An effective campaign against crime requires measures to attack the core features of the criminal business—the cash flows (Box 20).

#### **Box 20: A Profitable Business**

In a Chinese Triad case, a victim had to pay 13,000 EUR to be transported from China to the Netherlands. 10,000 EUR was provided as a down payment, while the remaining 3,000 EUR had to be paid by the family when the victim found employment in Europe. Another Chinese victim had to pay 22,000 EUR to be brought from China to the UK. Halfway through the trip she had to provide half the sum. During a search of the homes of the Chinese “snakeheads” police officers found a price list for services such as marriages of convenience (8,500 EUR).

A person from Nigeria forced into prostitution had to pay 60,000 EUR to buy her freedom. In a case involving Thai nationals, where the victims were exploited as prostitutes in Belgian massage parlours, a turnover of 34,676 EUR was made over a period of 202 days.

Payments in criminal networks are generally made in cash. Often, the money is also transferred to other countries through Western Union money transfers (Box 21). This method of payment is primarily used by immigrants anxious to send money to their families back home or by the victims' families who are still required to send money to the traffickers for their travel. Moreover, criminal organisations cannot operate exclusively in a criminal environment, but partly rely on legitimate or semi-legitimate companies. According to Europol, the Mafia's widespread use of legal structures makes it difficult to discover a clear line between what is legal and what is not, and to trace illegal money. For these

<sup>86</sup> Staff should have training on: (1) The definition of trafficking in persons in the relevant jurisdiction; (2) Other laws relevant to trafficking; (3) Defences which have been successfully used in relation to trafficking; (4) Commercial purposes of trafficking (to help plan objectives for the operation); (5) Mechanisms used by traffickers to control victims (so operatives understand that force or threats may not always be present, that control mechanisms may change, and that a person may have been trafficked even though they were only partially deceived). See UNODC, *Toolkit to Combat Trafficking in Persons*, Chapter 5.

reasons, law enforcement agents should frequently conduct proactive financial and money laundering investigations.

**Box 21: Financial and Money Laundering Investigations**

This criminal network organised illegal transport of Bulgarian and other victims to Belgium, the Netherlands and Spain. The court case states: “From various declarations and a number of observations, it appears that several members were active in the organisation, each with a specific role. In order to be able to conduct their activities, use was made of commercial structures, such as a bus company with the pretext of transporting tourists, and of financial institutions for the transfer of money from prostitution to Bulgaria.” The head of the network in Bulgaria owned a chain of restaurants, several cafés, a pawn shop, and a taxi company. He maintained good contacts with at least ten criminal organisations in Bulgaria, amongst them the insurance companies VIS and SIC.

The financial investigation conducted by Belgian law enforcement officials showed links between the commercial structures set up by this network and its leader residing in Bulgaria. The police investigated the international money transfers with Western Union and the bank accounts of the suspects. They also investigated the money transfers of the victims because the criminals in Belgium used the victims’ names to transfer money to the criminals in Bulgaria.

The Belgian police made use of phone-tapping during the investigation. The phone-tapping proved the criminal activities in Spain and gave information on the roles of the criminals within the organisation. It also showed the connection between the arrested criminals in Belgium and their counterparts in Bulgaria. The police discovered that the sister of the leader was also running a prostitution network in France. Moreover, the police regularly controlled the Belgian bars suspected of illegal prostitution and conducted several house, car and bus searches. An investigation of forged documents was carried out, trash was collected from the suspects’ homes and financial documents were analysed. The defendants were convicted by the Belgian Court for belonging to a criminal organisation. By tracing money transfers, the police also managed to convict the administrators of the travel agency involved in this trafficking case.<sup>87</sup>

It is also advisable to conduct proactive financial investigation both during the pre-arrest investigative phase as well as in the post-arrest phase. According to the UNODC Toolkit and in line with our findings,<sup>88</sup> in the pre-arrest phase, financial investigation is particularly valuable because:

1. The investigation of financial transactions often provides important information to law enforcement. For example, investigation of the purchase of travel tickets may reveal details of travel arrangements, and credit card expenditure can reveal airlines, hotels, restaurants or other venues frequented by traffickers.

<sup>87</sup> Ibid.

<sup>88</sup> UNODC, *Toolkit to Combat Trafficking in Persons*, Chapter 5.

2. Pre-arrest financial investigation can identify the amount and location of criminal assets derived from the crime.
3. Evidence of financial gain supports prosecution, and that same evidence forms the basis for post-conviction asset-confiscation proceedings.
4. The ability of law enforcement agencies to identify and confiscate assets sends a message to criminals that trafficking is not high profit/low risk.

Regarding the last point, in recent years many Western countries have made noticeable efforts in identifying and seizing the assets of traffickers. However, sometimes asset seizure is dealt with separately from the main case. Also, traffickers use techniques that make it difficult to identify their assets. When financial transfers have occurred via banking organisations or Western Union, they are much easier to identify than when they have occurred through the “Hawala” system,<sup>89</sup> the favoured informal money transfer system in India and Pakistan, or through bus drivers, as is often the case with Bulgarian criminal networks. When the funds are transferred via Western Union, the person making the transfer and the recipient are recorded in a data file. However, traffickers will frequently use fake names (aliases).

√ Check List
<p><i>At the prosecution phase the police should:</i></p> <p>Ensure that anti-trafficking laws are implemented and applied properly. Authorities should avoid the use of double standards.</p> <p>Not rely only on victims’ statement but be proactive, ensuring that strategies reflect the geographical, structural and commercial components of the trafficking networks.</p> <p>Start an enquiry— when authorised under the law— on the basis of a combination of solid intelligence, human and technical surveillance, undercover deployments and standard investigative techniques.</p> <p>Not focus only on individual traffickers and isolated incidents but on wider criminal networks (use of network analysis).</p> <p>Focus on the “Achilles heel” of the traffickers, which often lies in the evidence generated as a result of commercial processes (for example, advertising, renting property, transportation,</p>

<sup>89</sup> This system allows the transfer of money without any banking operations. The money is sent through a third party who acts as the guarantor for transmission into the destination country, in exchange for a small percentage.

communications and financial transactions).

Aim at hurting the criminal groups where it hurts the most: their finances. Some of the confiscated money should be given to trafficking victims as financial compensation.

Make use of electronic surveillance in the form of listening devices or the interception of communications, while bearing in mind that traffickers are often aware of surveillance techniques.

Make use of civil society organisations experienced in working with law enforcement agencies during investigations in culturally isolated and unfamiliar settings.

Make use of informants in compliance with national laws, and be familiar with any relevant legislation in their own jurisdiction and abroad.

Consider the safety of the informant and any threat posed to victims of trafficking in using them. Protection of the informant's identity is essential.

Consider the informant's motives for providing information to law enforcers since some of those motives may be unethical or prejudicial.

Ensure that undercover operations are carried out by properly trained staff.

Make sure that proactive financial and money laundering investigations are performed both during the pre-arrest and post-arrest investigative phase by trained law enforcement agents.

## **6. Patterns and Problems of International Police Cooperation**

Since human trafficking often has transnational characteristics and involves organised crime groups, international police cooperation is vital. One law enforcement official stated:<sup>90</sup>

You have to fight networks with networks. Criminal groups exploit the lack of cooperation between law enforcement agencies on both national and international levels. In one case, two brothers (call them Sami and Zakim) are, at present, the "bosses" of the criminal Albanian core in Verviers, also established in the Mons city and the Hainaut province. This group is active in multi-criminal activities including organised theft, trafficking of people, prostitution, and so on. With little hierarchy, the structure seems to function with easy efficacy according to its needs and activities. What is interesting is that the members of this group were living in one city while operating in others. This is a good tactic because in Belgium there is sometimes a lack of cooperation between law enforcement agencies from different cities. So the offenders pretended to be "good citizens" in Verviers while committing various crimes in Brussels, Liege, etc. Similarly, some criminals have been running prostitution rings in France and sending their "madams" to control the prostitutes there, while they have been living in Belgium.

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<sup>90</sup> Personal communication, Francois F., Belgian Federal Police (September 2006).

Europol plays an important role in this respect. Europol is allowed to store and analyse personal data through a computerised system that has two components: the Europol Information System (EIS) and the Analysis Work Files (AWF). The EIS database, shared with authorised users of all EU Member States, supports the automatic detection of potential cross-border crimes. AWF Phoenix concentrates on identifying particular structures from the trafficking-related data.

INTERPOL maintains databases on known criminals, lost and stolen passports, fingerprints and DNA profiles. Via a network of National Central Bureaus (NCBs) it helps states to share information globally. In 2003, INTERPOL established a global police communications system (I-24/7), connecting the NCBs to each other and to INTERPOL databases. I-link is the new criminal information management system being developed by INTERPOL to help connect investigations. The Human Smuggling and Trafficking message (HST) provides a standardised format for reporting cases of trafficking between countries but officials say it has proven to be ineffective since only ten messages have been exchanged so far. MIND/FIND technical solutions enable frontline law enforcement officers to receive instant responses for queries on stolen or lost travel documents, stolen motor vehicles and wanted criminals.

**Box 22: Network Analysis and International Police Cooperation**

*Case “Bluesky”*

The British operation “Bluesky” (2003–2005) was a co-coordinated response to the large-scale smuggling of illegal immigrants into the Nexus point of London. British authorities targeted known human smugglers within the Turkish and Kurdish communities.<sup>91</sup> Intelligence indicated that one Turkish network had facilitators, harbourers and lorry drivers in many countries. The British officials informed the Belgian authorities about the presence of this smuggling organisation on their territory. As a result, in October 2005, fourteen people were arrested in Belgium; twelve of them were sentenced to a total of fifty-five years imprisonment for human trafficking, criminal organisation, money laundering, weapons trafficking and falsifying documents. They were also given a 400,000 EUR fine.

*Case “Wexford”*

The investigation started with a phone call to the Belgian police. A Turkish man reported that some of the immigrants found suffocated in a truck in Ireland were his relatives. He explained that the transport of the immigrants was organised by a person called D (a Turk who lived in the UK), a man called M (a Turk who lived in France) and an unknown Albanian who lived in Brussels. The police linked D to several smuggling cases from the Netherlands (operation Huif),

<sup>91</sup> Although not properly investigated, there were indications that the Turkish smuggling network was also a trafficking network. The Turkish smugglers had links with well-known Turkish pimps, and traffickers often exploited the immigrants.

France and Belgium, and alerted other European authorities. By December 2001, police officials from Belgium, Turkey, Germany, France, UK, the Netherlands, Europol and INTERPOL started a joint investigation on this case. As a result, all suspects were condemned to prison sentences of two to ten years. In Belgium, eight people were charged. The British authorities also linked D with the famous Dover case, where fifty-eight Chinese victims were found suffocated in a truck heading for Dover from the Netherlands in June 2000.<sup>92</sup>

Cooperation with Europol and INTERPOL, however, has often proven to be complicated and bureaucratic. This can have harmful consequences for the smooth running of some operations. In an interview, one law enforcement official reported:

If I need some information from country A about case C, I will send an official enquiry to Europol, although I am aware that it can take several months until I get an official answer. Therefore, in the same time I will ask my personal contacts in country A and I will get the required information almost immediately. Probably after five or six months I will also hear something back from Europol regarding the same enquiry. It is not an efficient system. It is very time-consuming and sometimes we feel that it is more efficient to avoid the bureaucracy.<sup>93</sup>

Europol and INTERPOL, despite cooperation agreements and common projects, are often seen as competitors. INTERPOL is much influenced by the USA (which contributes most funding), leading Europe to rely on European law enforcement bodies. Smooth law enforcement cooperation is also hampered by the fact that sharing sensitive information with international police organisations is sometimes perceived as “quite a risky job.”<sup>94</sup> Some EU officials have expressed concern in sending information to INTERPOL because INTERPOL has 187 Member Countries, many of which are considered “high-risk” countries with regards to corruption and organised crime, giving rise to fear that some information might come to rest in the wrong hands. Yet, many of the cases that Europol officials are dealing with involve offenders from non-EU countries. For example, Albania is not a member of Europol. When it comes to Albanian offenders in the EU, cooperation between Europol and Albania is therefore not always smooth. Bilateral police cooperation is sometimes more efficient than cooperation with large-scale organisations such

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<sup>92</sup> Both cases are based on Belgian court cases.

<sup>93</sup> In a personal conversation with a EUROPOL official, S.H., the author was told that, nowadays, EUROPOL responds more quickly to requests from member states and timing is much less of a concern for law enforcement officials (May 18, 2009).

<sup>94</sup> Based on interviews with law enforcement officials in Europe.

as Europol or INTERPOL. Human trafficking networks obviously benefit from bureaucratic inertia and a lack of coordination.<sup>95</sup>

Another issue that serves the criminal interest is the lack of willingness of local authorities to initiate investigations beyond their jurisdiction. Since police authorities and prosecutors often need to present tangible figures to the public and to their superiors, they care more about the quantity than about the quality of investigated cases. This has serious long-term consequences for the work of police agencies since only the “small players” are prosecuted while the key figures go unpunished. The networks quickly re-build themselves and continue to operate. Arresting and investigating only parts of criminal networks also gives a distorted picture of what the notion “human trafficking network” means in practice. For example, it is often stated that trafficking networks are composed of three to five criminals. However, this only reflects the number of arrested and prosecuted individuals. Careful network analysis illustrates that these criminal networks are often composed of many more than five individuals.

**Box 23: Partial Investigations—Quantity Instead of Quality**

In one Belgian file dealing with a Turkish human trafficking network active in Belgium from 1995 to 2001, charges for human trafficking were made against two Turkish criminals, E. and C. The two brothers owned a textile firm and six houses in Belgium, one of which was on Rue Aerschot, the prostitution centre. In these houses, 120 asylum seekers were living for a number of months/years, 104 of them ethnic Turks from Bulgaria. Each immigrant paid 125 EUR for a room in the house of the traffickers, where living conditions were terrible. The traffickers also exploited the immigrants economically. Both of the prosecuted traffickers received one-and-a-half years imprisonment for human trafficking and a penalty of 100,000 EUR. The sentence was light because the investigation focused more on the poor living conditions and less on the trafficking itself. In order to avoid long trials, during which the criminals usually flee to their countries of origin, the police tend to charge them for whatever they can prove most easily. Although there have been indications that this network might have been active internationally, no further investigation was conducted.

<sup>95</sup> Personal interviews with law enforcement officials. See also Ludo Block, “Combating Organised Crime in Europe: Practicalities of Police Cooperation,” *Policing* 2: no.1 (2008): 74–81; Ludo Block, “Decentralisation Trends in EU Police Cooperation: Implications for Efficacy and Accountability,” (paper for the Third Challenge Training School on ‘Police and Judicial Cooperation in Criminal Matters in the EU: Which Future for EU’s Third Pillar?’ CEPS, Brussels, April 13–14, 2007).



## **Recommendations**

### *Investigate Effectively and Proactively*

The complex nature of human trafficking necessitates preventative, holistic and proactive police efforts based on solid intelligence analysis. Even though victims' statements play an important role, they are not the police's only means of opening an enquiry. An enquiry might start with the combination of surveillance, undercover operations, informants' information, financial investigations and standard investigative techniques. Police should take into account the geographical, structural and commercial components of trafficking, and pay attention to the trafficking network, instead of individual traffickers alone. Evidence generated as a result of commercial processes (for example, advertising, renting premises, transportation, communications and financial transactions) is particularly valuable to the police. Moreover, investigations should focus on the quality of investigations, not on short-term, politically expedient gains such as arresting low-level suspects.

### *Step up Cooperation*

Police work depends on regular interaction with other institutions. States should strengthen cooperation between police officers and border control agencies as well as between police officers and immigration and labour inspectors by, among other things, establishing and maintaining direct channels of communication. Issues of distrust, competition, political interference, and red tape should be addressed in order to improve law enforcement cooperation. Joint, international and proactive investigations have proven to be essential for the effective fight against complex trafficking networks, since they allow investigators to agree in advance on questions of overall strategy.

### *Protect Victims*

Professional training of police on how to detect victims in high-risk and atypical sectors is essential, too. Police, in cooperation with victim shelters, social workers and detention centres, should ensure that victims are not detained, accused, repatriated, and re-victimised. Since many victims exploited within the EU are residents of their own or another EU country, increased attention has to be given to factors other than immigration status. Continuous dialogue and communication between the various partners is essential, as is comprehensive training of less specialised first-line players. Reflection periods allow victims to recover, to escape the influence of traffickers, and to be able to testify against the traffickers. As part of the duty to protect, vulnerable and

traumatised victims should be interviewed in a sensitive manner by trained interviewers. When planning interviews, police must consider issues such as gender and the optimal number of interviewers.

#### *Raise Awareness*

Police, in collaboration with other state agencies and civil society organisations, should participate in awareness campaigns, helping potential victims to obtain knowledge about the operational methods of traffickers as well as about their own rights. Involvement in social activities outside the scope of police work can help police improve their image and be seen as trustworthy. In turn, this can lead to information on trafficking cases.

#### *Reduce Corruption*

Reducing corruption requires a long-term, multi-faceted strategy that will change policing mentalities. Changes in legislation and increases in salaries may provide a good starting point. In many countries, however, corruption is endemic, thus social and administrative control, implementation of laws, educational programmes and community-led activities would help. External inspection systems must be developed. Specialised anti-corruption police units should be created. Also, a rotating system or social control mechanisms can help to minimise the temptation for corruption. Moreover, law enforcement agencies have to set up internal control systems and sanction any wrong-doing. Other strategies are professional ethics training with an emphasis on recognising conflicts of interest; strong whistleblower protection; and administrative and security measures designed to increase transparency, accountability and oversight.

#### *Understand the Problems of Stereotyping*

Finding hot spots of trafficking and identifying risk populations are important preventive techniques. The police should, however, avoid stereotyping and discriminatory policing, or at least, should be aware of the limitations of criminal profiling. Trafficking networks are responsive to law enforcement pressure. Therefore, generalisations and stereotyping can be misleading.

#### *Understand Different Cultures*

Police should be familiar with socio-cultural practices of the key groups operating in their regions. This can help them to better understand the modus

operandi of the criminal networks and to better assist and protect victims of trafficking.

#### *Engage Civil Society*

An effective law enforcement response depends on the participation of all levels of society. The media, critical scholars, and NGOs are crucial for putting pressure on authorities to start an investigation against traffickers. Also, more thought should be placed on the idea of “community vigilance committees” that would monitor the local sex trade for evidence of trafficking and help victims rebuild their lives.

#### *Implement Policies*

Effective prosecution of human trafficking cases depends on the will of political actors to implement relevant laws and regulations that control the work of the police and other actors. Implementation hinges on the political acknowledgment of the problem of trafficking.



# CHAPTER 6

## Human Trafficking, Organised Crime & Intelligence

Fred Schreier

### Introduction

This chapter discusses the role of intelligence, intelligence services and intelligence-led operations conducted by all agencies and organisations mandated with fighting transnational organised crime (TOC) as crucial components of efforts to counter crime and human trafficking. Because intelligence is the prerequisite for all measures that aim at effective prevention, disruption and suppression of TOC and human trafficking, this contribution (1) explains what intelligence is. Part (2) shows why intelligence is important for fighting TOC and human trafficking. Part (3) demonstrates the application of intelligence to counter TOC, as well as the actual and possible contributions of intelligence-led operations to the fight against human trafficking. Part (4) explores the patterns and problems of intelligence cooperation. Part (5) explores some of the implications of intelligence-led operations for democratic control, supervision, oversight and accountability. Finally, key recommendations are listed.

### 1. What is Intelligence?

Though definitions of intelligence abound, a universally accepted definition remains elusive. The simplest of these is: “information plus analysis equals intelligence.” This clarifies the distinction between collected information and produced intelligence, namely: without analysis, there is no intelligence. Intelligence is not what is collected; it is what is produced after collected data and information is evaluated and analysed.

At the national level, the purpose of intelligence is to inform government: providing knowledge and understanding upon which national decisions can be made. Intelligence produces that particular knowledge that a state must possess

regarding the strategic environment, other states and hostile non-state actors to assure itself that its cause will not suffer nor its undertakings fail because its politicians, and the organisations and means for implementing security policy, plan, decide and act in ignorance. Intelligence is production of unbiased information about risks, dangers and threats to the national vision, the state and the population, as well as chances and opportunities for the advancement of national interests. The more accurate and timely the intelligence, the more it will allow for limited resources to be applied efficiently towards national security goals and policies.

Intelligence services exist to: (1) support the national decision-making and policymaking process; (2) ensure early warning; (3) assist good governance; (4) support national and international crisis management; (5) support national defence and military operations; and (6) maintain and protect secrets. All intelligence services have three basic functions: collection, analysis and counterintelligence. Covert action, the more occasional fourth function, may be performed by external intelligence services.

**Collection** is the bedrock of intelligence: the acquisition of data and information that forms the basis for refined intelligence and knowledge creation. Without collection, intelligence is little more than guesswork. The collection process involves open and secret sources, that provide information that is obtainable in no other way, as well as a number of secret technical collection disciplines using a variety of methods and means.

**Analysis** is collation, evaluation and analysis of data and information of all sources and their transformation into intelligence products. Analyses reflect the perspicacity of the human mind. No amount of data and information can substitute for an insightful analyst able to discern the critical policy or operational significance of an event, action or trend which may be hidden within a mass of confusing and contradictory information. Analysis and appraisal occur at all levels of intelligence and can be single source, multi-source, or all-source. Assessment is the final step in the analytical process, and strategic assessment is the final all-source intelligence product of actionable knowledge provided to government to anticipate risks and reduce uncertainty in its pursuit of furthering or protecting national political, economic and security objectives. While analysts must prove their capability to “connect the dots”, the overarching goal of analysis is to minimise uncertainty with which policymakers must grapple in making decisions about national security and foreign policy. Furthermore, analysis must help to make sense of complex issues and to call attention to emerging problems or threats to national interests.

The importance thereby is not only to determine what is accurate, but foremost what is relevant to the decision- and policymaker's needs.

**Counterintelligence** is intelligence designed to uncover hostile operations against the nation; the national effort to prevent foreign intelligence services and foreign-controlled political movements or groups from infiltrating the state's institutions at home and abroad in order to engage in espionage, subversion, sabotage and terrorism. It is not security, but intelligence on which security policies should be based. Straddling the foreign and domestic boundaries, counter-intelligence consists of offensive and defensive measures of protection: defensively by inquiries and vetting of civil servants and employees, through investigations, monitoring of known or suspected agents, and surveillance activities to detect and neutralise the foreign intelligence service's presence; offensively through collation of information about foreign intelligence services and their modus operandi, recruiting agents, and initiating operations to penetrate, disrupt, deceive and manipulate the services and related organisations to own advantages. Moreover, counterintelligence is an integral part of the entire intelligence process: to make sure that what is collected is genuine through continuous evaluation of the reliability of sources and the credibility of information. It differs from intelligence collection in that it exists to counter a threat and is to some degree reactive. Results are not generally produced in the short term, and counterintelligence investigations cannot be limited to arbitrary time periods.

**Covert action** comprises activities to influence political, military or economic conditions, situations and developments abroad, where it is intended that the role of the own government will not be apparent or acknowledged publicly. These may consist of propaganda measures, support to political or military factions within a specific country, technical and logistical assistance to foreign governments to deal with problems within their countries, or actions to disrupt illicit activities that threaten the own national interests or security such as terrorism, proliferation and organized crime. Covert action is an option short of military action to achieve objectives which diplomacy and other means of security policy alone cannot.

These functions or roles of intelligence services are common to most intelligence systems. How they are distributed between and among the intelligence organisations differs from state to state. These functions operate most effectively as part of a process in close conjunction with one another. Collection of intelligence cannot be done effectively without analysis that provides guidance or "tasking" to collectors. Counter-intelligence is necessary to protect collectors from becoming known, neutralised and exploited by

adversaries. A successful program of covert action must be grounded in effective collection, analysis and counterintelligence. Thus, the nature of intelligence is such that the several elements of intelligence are parts of a single unified system whose success depends on all parts working effectively.

### *1.1 What Types of Intelligence Services Are There?*

Four different categories of intelligence can be distinguished that have spawned separate intelligence services or agencies: foreign, domestic, military and, more recently in some countries, criminal intelligence.

- ***Foreign or External Intelligence Services*** collect, analyse and produce intelligence relevant to external security and for warning purposes. Protection of external security requires knowledge of the risks, dangers, threats, opportunities and chances, of possibilities and probabilities of developments, and the likelihood of events and outcomes. Intelligence is needed on intentions, capabilities, plans and activities of foreign powers, organisations, non-state groups and their agents that represent actual or potential threats to the state and its national interests.
- ***Domestic or Internal Intelligence Services***, often also called ***Security Services***, collect, analyse and produce intelligence relevant to internal security. Internal security aims to protect the state, the sovereignty, territory, critical infrastructure, society and people against malicious acts and hostile activities. What foreign intelligence covers externally, domestic intelligence does internally, depending on the situation with different priorities: uncovering terrorism; espionage; sabotage; subversion; political, ethnic and religious extremism; organised crime, money faking and laundering; proliferation of weapons of mass destruction (WMD); illegal arms dealing; smuggling in certain commodities, such as arms, narcotics, contraband and people (migrant smuggling and human trafficking); electronic attacks, hacking and data theft; dissemination of child pornography, etc.
- ***Military or Defence Intelligence Services*** collect, analyse and produce intelligence relevant for defence planning, the armed forces and support of military operations. Support to defence planning entails intelligence on foreign military capabilities or vulnerabilities; doctrines; order-of-battle data; operational concepts; tactics; and weaponry performance in order to shape the size, types and



deployments of the armed forces, to guide military R&D and future defence acquisitions. Support to military operations encompasses intelligence for force projection and targeting; to ensure transparency of the battle-space, localising the centres of gravity; and to enable decision dominance and the achievement of strategic and operational objectives.

- *Criminal Intelligences Services*—a more recent institutional development in response to the growth of organised crime—collect, analyse and produce intelligence on organised crime groups, their criminal activities and corruption with the aim to disrupt these organisations and activities and to prosecute those involved.

The distinction between internal and external intelligence services has never been absolute. There are states with a single agency having both internal and external roles. Since risks, dangers and threats are of expanding transnational reach, impact and consequences, ever more intelligence is collected by the different services on the same subjects. The traditional divisions between external, internal and also criminal intelligence are becoming increasingly blurred. Missions and objectives overlap, enhancing the opportunities for misunderstandings and rivalries. There is convergence, notably in countering the pre-eminent threats of terrorism, organised crime and proliferation. Hence, separation of external and internal intelligence services is becoming more artificial and thus questionable.

While separation might still be the best practicable solution for great powers with many large intelligence bureaucracies, it requires an ever greater effort of coordination and control, better regulated access to each other's information, and assurance of the production of joint assessments and estimates. This is why smaller countries with fewer resources might prefer to have just one intelligence organisation. It avoids wasting efforts, resources and time; solves risks of unhealthy competition and rivalry between the different agencies; simplifies contacts, liaison, information exchange and cooperation with intelligence services of other countries; facilitates high subordination of the intelligence agency in the state's hierarchy and cooperation and coordination with other ministries and agencies; and alleviates control and oversight of intelligence.<sup>1</sup>

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<sup>1</sup> Among others, the Spanish CNI, the Dutch AIDV, the Turkish MIT, and OSA of Bosnia-Herzegovina are examples of "fused" intelligence services that have found their own solutions to overcome the problem that different rules and laws apply to intelligence operations on national soil and abroad.

Today, the tasks assigned to intelligence services have become more complex, more volatile and more numerous than they ever were. Because of the expanding need to serve a much broader range of government and other clients with a growing variety of requirements, and this ever more speedily, intelligence services have become too demand-driven. The result is that intelligence services can no longer do everything at once and do it all well. This is also true for the fight against TOC and human trafficking—which is less a national security than a criminal, social and political issue.

## **2. Why is Intelligence Important for Fighting Transnational Organised Crime?**

Globalisation, accelerating technological innovation and the growing interdependence and vulnerability of modern states have enhanced the threats, dangers and risks of the transnational type, especially from non-state actors. The unholy trinity of transnational terrorism, proliferation of weapons of mass destruction (WMD) and TOC has become the pre-eminent security challenge confronting the world. TOC is growing in volume, geographic reach and profitability, and is well positioned for further growth because it is in many ways profiting from globalisation. The growth and spread of TOC increases the risks of proliferation and catastrophic terrorism as proliferators and terrorists collude with TOC groups to move money, people and materials around the globe, while the corruption practiced by TOC is weakening states' capacity to enforce the rule of law.

Unlike traditional threats to national security from rival nation-states, the threats posed by non-state actors are more difficult to anticipate, assess and combat. More than ever, intelligence is the prerequisite and most important tool for the prevention of, and timely counteraction against, clandestinely operating conspiratorial groups of often unknown non-state actors. The fact that terrorists, proliferators and TOC groups seek to hide their intentions, plans, capabilities and information about their activities and gains, and engage in disinformation, denial, deception and subversion, creates a need for a national organisation with secret and covert capacities, capable of being tasked to discover what is kept secret or hidden, and to collect information and fore-knowledge of the hidden and unpredictable. Such knowledge cannot be acquired better, more safely or more cheaply by any other means or organisation. Thus, intelligence services are a key factor for fighting the pre-eminent threats and have become the first line of defence.

However, countering the pre-eminent threats from multiplying non-state actors requires not just intelligence services. These threats can only be effectively counteracted, disrupted, pre-empted and prevented when the activities of all organisations that are mandated to deal with them are intelligence-driven or intelligence-led. This requires a radical new approach of more intensive collaboration, interaction and information exchange by these organisations with the agencies of the intelligence community. To improve information exchange, all organisations must be provided with classified, protected communication means and information management capacities. Moreover, it calls for the establishment of an intelligence function that produces operational and tactical intelligence in all organisations where it is absent. Foremost, these intelligence cells should analyse what is seen, heard and reported by the personnel of their own organisation, from open sources and from intelligence reports exchanged, so that they can accomplish their missions in smarter ways, more effectively and efficiently. This is particularly the case in all organisations that suffer from budgetary restraints and a lack of other resources. Intelligence-led operations are often cheaper overall. Prevention and pre-emption is more cost-effective than simple reaction. Further, proper operational or tactical intelligence allows better targeted and much more tailored operations, generally requiring less resources.

As to the countering of TOC, intelligence-led efforts are needed to anticipate major activities of TOC groups, their operational methods for moving various forms of contraband, innovations in money laundering, the development of new markets and, in particular, measures such groups take to counter law enforcement operations. The latter is of increasing significance, because eluding law enforcement control is the most important working principle of TOC. TOC is becoming ever more adept at concealment and disguise, and exhibits a degree of flexibility and adaptability in methods and modes that pose an increasing challenge to law enforcement and society at large.

The *raison d'être* of intelligence is knowledge of intentions, capabilities, methods and means. And its essence is information plus insights derived from subject-matter knowledge. Intelligence provides a sound basis from which inferences can be drawn to guide strategic, operational and tactical activity. Intelligence analyses and assessments inform decision-making and preventive, pre-emptive and disruptive actions in ways that make a positive difference in mission accomplishment. Timely intelligence warns of surprise and looming crises; identifies threats, dangers, risks and chances; monitors fast-breaking situations; illuminates issues and detects trends. And intelligence helps

policymakers consider alternative options and outcomes. All this is also needed in other agencies of the security sector that are mandated with fighting TOC.

The increasing sophistication of TOC makes it imperative to disrupt and demolish network structures instead of merely arresting individual criminals. But attempts to break up criminal networks will never be effective until all available information is developed and transformed into intelligence for use by all government agencies involved in countering TOC. Thus, intelligence-led operations are needed for the improvement and expansion of the fight against TOC in a more tailored and effective way. This is particularly true for all law enforcement agencies, which have to shift their modus operandi to intelligence-led policing. The same approach also redefines the intelligence functions as they exist or must be developed in other ministries and agencies: border guard, coast guard<sup>2</sup> and customs services. They cannot function effectively without close cooperation, information and intelligence exchange with passport, visa, consular, immigration, naturalisation, migration and health services; export-import, money laundering and financial controls; agencies of the ministries of communications and transport, air traffic control and others. For some time now, modern law enforcement has gained great benefits from intelligence-led policing. What has been learned from intelligence-led policing shows the way ahead.

### *2.1 What is Intelligence-Led Policing?*

Intelligence-led policing (ILP) can be defined as “a business model and managerial philosophy where data analysis and crime intelligence are pivotal to an objective, decision-making framework that facilitates crime and problem reduction, disruption and prevention through both strategic management and effective enforcement strategies that target prolific and serious offenders.”<sup>3</sup> Originating in the UK in the 1990s, the ILP paradigm has its foundation in the recognition of the inability of the traditional reactive model of policing to cope with the inexorable rise in crime. The police were losing the battle on the streets and public confidence with it. This brought the rapid growth of private sector security, which saw police marginalised in some areas of public safety.

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<sup>2</sup> See the striking difference between the UK and France. The UK with intelligence-led coast guarding, three times longer sea borders and less than a third of the means of France in patrol vessels, aircraft and helicopters, has for at least four consecutive years seized more or less the same amount of drugs as France has with very labour-intensive and time-consuming periodic search and inspection of every vessel in a defined sea area.

<sup>3</sup> Jerry H. Ratcliffe, “Intelligence-Led Policing,” in *Environmental Criminology and Crime Analysis*, ed. R. Wortley, L. Mazerolle, S. Rombouts (Cullompton, Devon: Willan Publishing, 2008), 6.

Concomitantly, this resulted in increasing calls for police to be more effective and more cost-efficient.<sup>4</sup>

The police search for a new strategy was helped by the 1993 Audit Commission report into police effectiveness<sup>5</sup> that advocated increased use of intelligence, surveillance and informants to target recidivist offenders, so that police could be more effective in fighting crime. The aim can be gleaned from the tactical tasking priorities of the UK National Intelligence Model as disseminated by the National Criminal Intelligence Service (NCIS),<sup>6</sup> the four essential elements of which concentrate on:

- targeting offenders, especially active criminals through overt and covert means
- management of crime and disorder hotspots
- investigation of linked series of crimes and incidents
- the application of preventive measures, including working with local partnerships to reduce crime and disorder.

This focus emphasises that crime is not randomly distributed, with the corollary that identification of hotspots of criminal activity is a worthwhile pursuit. It recognises the importance of working within partnerships to achieve crime prevention and, finally, that there should be a spotlight on targeting criminals rather than the crime itself. This latter principle is based on research which shows that a small percentage of active and repeat offenders commit a disproportionately large amount of crime.

ILP provided an argument for police to reengage with what they consider to be their core business: fighting crime and arresting serious offenders. Further publications provided the framework for implementation. To promote the idea to all police forces of the UK, Her Majesty's Inspectorate of Constabulary identified in 1997 the central tenets of a successful ILP model:<sup>7</sup>

- Enthusiastic and energetic leadership that endorses ILP and promotes it through a Director of Intelligence

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<sup>4</sup> Peter Gill, "Making Sense of Police Intelligence? The Use of a Cybernetic Model in Analyzing Information and Power in Police Intelligence Processes," *Policing and Society* 8, no. 3 (1998): 289-314.

<sup>5</sup> Audit Commission, *Helping With Enquiries: Tackling Crime Effectively* (London: HMSO, 1993).

<sup>6</sup> National Criminal Intelligence Service, *The National Intelligence Model* (London: NCIS, 2000).

<sup>7</sup> HMIC, *Policing With Intelligence* (London: Her Majesty's Inspectorate of Constabulary, 1997).

- A published strategy that sets the intelligence agenda for a force, as well as explains what is meant by “proactivity”
- An integrated intelligence structure, so that analysts can work at the hub of operational policing activities
- Criteria to measure performance to determine the effectiveness of the introduction of the crime intelligence function and the tasking of operational units
- The forging of effective partnerships with local agencies that may be able to help police combat local crime and disorder problems.

At its most fundamental, ILP involves collection and analysis of information to produce an intelligence end product designed to inform police decision-making at the tactical and strategic levels. It is a model of policing in which intelligence serves as a guide to operations rather than the reverse. It is innovative and, by some standards, even radical, but predicated on the notion that a principal task of the police is to prevent and detect crime rather than simply to react to it.

Intelligence is the end result of a process that starts with data, becomes information, that then becomes knowledge and—if employed to have an impact on decisions affecting the criminal environment—intelligence. As Ratcliffe explains, a computer database can store locations of drug-related incidents and arrests.<sup>8</sup> These records are data—which can come from open sources (the media or the Internet), government sources (motor vehicle or drivers license records), from suspects and informants, police records, and private but lawfully accessed data (like cellular phone records). When a crime analyst analyses the data and recognises a new pattern of drug market incidents at a particular street corner, then this becomes information—which is data given meaning and structure, and the understanding of the implications of that meaning. If the analyst shares this information with a narcotics intelligence officer and the officer remembers that this was a favourite corner for a particularly violent drug set and that the gang leaders have just been released from prison, this collective understanding of the context of the drug corner now becomes knowledge. Finally, when the analyst and the narcotics officer take their knowledge to a senior commander who agrees to mount both a surveillance operation to arrest ringleaders as well as a problem-oriented policing project to identify and resolve why the particular corner is attractive to drug dealers, then

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<sup>8</sup> Jerry H. Ratcliffe, “Intelligence-led Policing.”

this actionable knowledge becomes intelligence. Crime intelligence is therefore knowledge that is geared towards action.

Thus, ILP is a conceptual model that uses crime analysis<sup>9</sup> and criminal intelligence—collectively termed crime intelligence—in a strategic manner to determine offenders for targeting. Crime reduction tactics concentrate on enforcement and the prevention of offender activity with a particular interest in using crime intelligence against the activities of prolific and serious offenders—focussing on the small minority of offenders that commit a majority of crimes. The techniques to be deployed include an expanded use of confidential informants, analysis of recorded crime and calls for service,<sup>10</sup> surveillance of suspects and offender interviews.

Where ILP was revolutionary is in the use of intelligence derived from covert information as a strategic planning resource rather than as a means to develop case-specific evidence. Criminal intelligence provides information on prolific offenders and organised criminal groups while crime analysis provides the environmental crime context in which they offend. Both are essential to a full understanding of crime problems and recidivist criminality, and are prerequisites for good decision-making and effective crime reduction.

Beyond the UK, the attacks of 11 September 2001 served to fuel a growing international interest in ILP. Realising that a reactive, investigation-focussed approach was of diminishing comfort to a public seeking prevention and disruption of future incidents, rather than swift investigations, police in a number of countries began exploring ILP as a framework for the reduction, disruption and prevention of crime. In most, if not all, EU member states, there has been a noticeable shift towards a more proactive ILP approach to tackling all forms of criminal activity. With its adoption in the US, Australia, New Zealand and many other countries, ILP is now firmly established within the worldwide policing lexicon. Most of these police forces have regulated ILP, and have developed sophisticated crime analysis<sup>11</sup> and IT-supported crime mapping.<sup>12</sup> In 2000, authorities in the UK developed a multi-agency

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<sup>9</sup> See for example: Rachel Boba, *Crime Analysis and Crime Mapping* (Thousand Oaks: Sage, 2005).

<sup>10</sup> It is well known that service calls—as a majority of crime reports do—often cluster predominantly at specific locations or narrow, easily-defined areas.

<sup>11</sup> Austin, Texas Police Department, *Intelligence-Led Policing: The Integration of Community Policing and Law Enforcement Intelligence* (Austin: Texas Police Department, no date); International Association of Law Enforcement Analysts, *Intelligence Led Policing: Getting Started, Professionalizing Analysis World-wide* (Richmond: IALEIA, 2005); National Centre for Policing Excellence, *Practice Advice Introduction to Intelligence-Led Policing* (Wyboston, Bedfordshire: National Centre for Policing Excellence, 2007).

<sup>12</sup> ESRI, *Crime Analysis, GIS Solutions for Intelligence-Led Policing* (Redlands: ESRI, 2007).

operational response to tackle organised crime with intelligence-led operations.<sup>13</sup> And based on recommendations from the Criminal Intelligence Sharing Summit 2002, the US established a National Criminal Intelligence Sharing Plan<sup>14</sup> to promote information sharing and ILP.

The UN Convention against Transnational Organised Crime, the most global international legal reference in the fight against TOC, contains investigative, intelligence and preventive legal tools most conducive to the application of intelligence-led operations. While neither explicitly referring to, nor regulating, intelligence-led operations, Article 20, on special investigative techniques, is creating sufficient room for the application of intelligence-led operations. This, particularly “for the appropriate use of controlled delivery and, where [each state party] deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and under-cover operations, by its competent authorities in its territory for the purpose of effectively combating organised crime.”

Over the last four decades, the standard model of policing<sup>15</sup> in the US was reshaped by the theories of community policing,<sup>16</sup> problem-solving policing,<sup>17</sup>

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<sup>13</sup> Known as Reflex, this multi-agency approach brings together law enforcement, the intelligence community and government departments under a common strategy and shared objectives. It is chaired by the Director General of the National Crime Squad, the operational police organization responsible for spearheading the fight against serious and organized crime.

<sup>14</sup> IACP, *Criminal Intelligence Sharing: A National Plan for Intelligence-Led Policing at the Local, State and Federal Levels*, IACP Intelligence Summit (Alexandria: COPS and International Association of Chiefs of Police, 2002); “The National Criminal Intelligence Sharing Plan,” *The Police Chief, The Professional Voice of Law Enforcement* 70, no.11 (November 2003), [http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=137&issue\\_id=112003](http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=137&issue_id=112003) (accessed February 2009).

<sup>15</sup> The standard model of policing relies generally on a “one-size-fits all” application of reactive strategies to suppress crime and is based on the assumption that generic strategies for crime reduction can be applied throughout a jurisdiction regardless of the level and the nature of crime or other variations. Strategies such as increasing the size of police agencies, random patrols across all parts of the community, rapid response to calls for service, generally applied follow-up investigations, and generally applied intensive enforcement and arrest policies are all examples of this standard model of reactive policing. See: David Weisburd & John Eck, “What Can Police do to Reduce Crime, Disorder, and Fear?,” *The Annals of the American Academy of Political and Social Science* 593, no.1 (2004): 43-65.

<sup>16</sup> Community policing evolved not just as response to the limitations of the standard model, but mainly as a way to re-establish police legitimacy in communities that had lost confidence and trust in the police. It is based on the belief that police should consult with the public in determining operational policing priorities as well as collaborate with them in the search for solutions. The neighbourhood level empowerment of community officers working with local people on priorities determined by the community is certainly attractive to politicians and the media, but the lack of clear criteria for success has hampered efforts to label community policing a success. See: Trevor Bennett, “Community Policing on the Ground: Developments in Britain”, in *The Challenge of Community Policing: Testing the Promise*, ed. Dennis P. Rosenbaum (Thousand Oaks: Sage, 1994), 224-248.



“Broken Windows”<sup>18</sup> and CompStat.<sup>19</sup> These theories became powerful change agents for law enforcement agencies interested in providing effective, quality police services. ILP does not replace the concepts of problem-solving policing, or the community involvement and neighbourhood maintenance theories, nor the CompStat police accountability and information sharing practices. It builds on these concepts (see table) to keep pace with changes in society, technology and criminal behaviour. Incorporating research findings and advances in ICT, ILP encourages greater use of criminal intelligence, attends to offenders more than offences, and offers a more targeted, forward-thinking, multi-jurisdictional and prevention point of view to the business of policing.<sup>20</sup>

**Table 1: Key dimensions of five policing models<sup>21</sup>**

	<b>Standard model of policing</b>	<b>Community policing</b>	<b>Problem-oriented policing</b>	<b>CompStat</b>	<b>Intelligence-led policing</b>
<b>Easily defined?</b>	Yes	No	Fairly easy	Yes	Fairly easy, but evolving
<b>Easily adopted?</b>	Yes	Superficially	Difficult	Managerially challenging	Managerially challenging
<b>Orientation?</b>	Police admin. Units	Neighbourhoods	Problems	Police admin. Units	Criminal groups, prolific & serious offenders
<b>Hierarchical focus?</b>	Top down	Bottom-up	As appropriate for problem	Top down	Top down
<b>Who</b>	Police	Community	Sometimes	Police	Police management

<sup>17</sup> Herman Goldstein, “Improving Policing: A Problem Oriented Approach,” *Crime & Delinquency*, no.24 (1979): 236-258; Herman Goldstein, *Problem-Oriented Policing* (New York: McGraw-Hill, 1990); Mike S. Scott, *Problem-Oriented Policing: Reflections on the First 20 Years* (Washington D.C.: COPS Office, 2000).

<sup>18</sup> George K. Kelling & James Q. Wilson, “Broken Windows,” *The Atlantic Monthly*, (March 1982); George K. Kelling & Catherine M. Coles, *Fixing Broken Windows, Restoring Order and Reducing Crime in Our Communities* (New York: Touchstone, 1996).

<sup>19</sup> CompStat, short for COMPARative STATistics, is a management philosophy or organizational management tool for police departments. It is a multilayered dynamic approach to crime reduction, quality of life improvement, and personnel and resource management. It employs Geographic Information Systems and was intended to map crime and identify problems. See: William Bratton & Jack Maple, *Crime and Restoring Order: What America Can Learn from New York’s Finest* (The Heritage Foundation, Heritage Lecture 573, 1993) <http://www.heritage.org/Research/Crime/HL573.cfm> (accessed November 18, 2008); Jack Maple & Chris Mitchell, *The Crime Fighter: Putting the Bad Guys Out of Business* (New York: Broadway Books, 2000).

<sup>20</sup> The differences, advantages and disadvantages of these policing systems are well explained in Jerry H. Ratcliffe, “Intelligence-led Policing.”

<sup>21</sup> Idem.

<b>determines priorities?</b>	managem ent	concerns/deman ds	crime analysts but varies from problem to problem	management from crime analysis	from crime intelligence and analysis
<b>Target?</b>	Offence detection	Unclear	Crime & disorder problems & other concerns for police	Crime and disorder hotspots	Prolific offenders & crime problems and other areas of concern for police
<b>Criteria for success?</b>	Increased detections & arrests	Satisfied community	Reduction of problems	Lower crime rates	Detection, reduction or disruption of criminal activity or problem
<b>Expected benefit?</b>	Increased efficiency	Increased police legitimacy	Reduced crime & other problems	Reduced crime (sometimes other problems)	Reduced crime & other problems

### 3. Intelligence and Counter-Trafficking

#### 3.1. Conceptual Approach for Intelligence Collection, Analysis and Investigation on Human Trafficking

Intelligence collection, analysis and investigations must reflect the geographical, structural and commercial components that make up the crime of human trafficking. *Geographically* and *structurally*, these can be expressed as:

- country of origin—recruitment and export
- country of transit—transportation
- country of destination—reception and exploitation

Within these three divisions, the commercial characteristics inherent in the crime of human trafficking mean that the traffickers are compelled to become involved in one or more of the following activities at any or all of the three geographic divisions, irrespective of the nature of the planned exploitation: advertising; renting, buying and use of premises; transportation; communications; financial transactions, and so forth. One “Achilles Heel” of human trafficking exists in the “trail” of evidence that will be created within these commercial imperatives. Human trafficking for any form of exploitation can only function by utilising these processes to some degree, each one creating evidential opportunities for the investigator. More important, each of

these domains affords intelligence-collection opportunities for law enforcement and all agencies, offices or inspectorates directly or indirectly involved in the fight against human trafficking.

Strategic as well as operational or tactical intelligence is needed to effectively fight human trafficking. Such intelligence is data and information on all aspects of human trafficking, and on the environment in which it takes place, that have been subjected to the intelligence process of collection, collation, evaluation, analysis and dissemination. The purpose of such intelligence is to provide knowledge and understanding upon which strategic and operational or tactical decisions can be made by all agencies which contribute to counter-trafficking, in order to identify, prevent, pre-empt, disrupt, interdict or deter human trafficking.<sup>22</sup>

Since there is a need for a broad-based approach to collection and analysis of intelligence, two important factors must be borne in mind in order to avoid adopting an approach that is too narrow. First, all intelligence on the structure and methodology of a human trafficking network, from beginning of the process to the end, is highly relevant to intelligence collection and analysis on human trafficking, irrespective of whether they are done in a country of origin, transit or destination. Recalling the basic philosophy that intelligence is power, the more all those engaged in fighting human trafficking learn holistically about the subject, the greater will be their ability to counter it.

Second, it is important to avoid the trap of thinking that the sources of intelligence are conveniently divided into the three geographical distinctions of origin, transit and destination countries. While it would be logical to assume that intelligence on recruitment could best be adduced in the country of origin, it is also possible that the highest quality information on this topic may be obtained from interviews held with cooperating victims in the country of destination. The lesson here is that intelligence sources may be found across the spectrum of crime, and that all those mandated with fighting human trafficking should adopt a broad based approach to intelligence collection, analysis and investigative activities rather than focusing narrowly on offences committed within their jurisdiction.

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<sup>22</sup> Taken in amended form from Janet M. Bayda, Robert E. Brown, Vivienne Chin, Yvon Dandurand, Dillon Johnston, Vincent Cheng Yang, Ian Macdonald, Eileen Skinnider, Karen Shields and Yuli Yang, *Human Trafficking: Reference Guide for Canadian Law Enforcement* (Abbotsford, BC: University College of the Fraser Valley Press, 2005).

### 3.2. What Kind of Data and Information on Human Trafficking is Needed?

#### Strategic intelligence

The objective of collection and analysis of strategic intelligence is to conduct an overall intelligence assessment of the various strategic factors that underpin the existence of human trafficking in a particular state or a group of states, the risks, dangers and threats they pose, as well as the implications for the own nation and the neighbours. A large proportion of the data used to generate a strategic overview of the situation and an overall intelligence assessment is usually derived from intelligence gathered at the operational level. Areas of strategic intelligence may include:

- ***Socio-economic***—thematic data that can be gathered relating to factors such as economic hardship, unemployment, civil unrest, lack of access to healthcare facilities and medication, the feminisation and juvenilisation of poverty, absence of economic opportunities, or any other relevant factors that serve to create and enlarge the supply of actual and potential victims. Thematic intelligence should equally include an understanding of all factors that impact upon the demand side of the cycle.
- ***Cultural***—thematic intelligence on cultural factors that may affect the nature of crime and the manner in which it is perpetrated is also crucial. These may include cultural beliefs and attitudes that are used by offenders to recruit or exploit victims, or that may affect the attitude of the victims towards those who exploit them, their fears, their willingness to collaborate with authorities, or their eventual rescue, protection and repatriation.<sup>23</sup> Common language links may also be a contributory factor as in the case of human trafficking from Central and South America into the Iberian peninsula, from former colonies of the British Empire to the UK or from Albania to Italy.
- ***International relations***—thematic indicators relating to historical, ethnic, cultural, economic or colonial connection between countries can also be relevant. This could include information about internal and international conflicts; economic and trade relations and competition; military cooperation between states, the presences of foreign troops, of private military and private security companies, or of warlords,

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<sup>23</sup> Like “voodoo” rituals in the case of West African nationals or religious factors that may be relevant, such as, for example, the sensitive security issues involved with the repatriation of certain Islamic victims of sexual exploitation to their families in the state of origin.

paramilitary and armed crime gangs in a state; as well as on international or national labour movements; the affinity to corruption and blackmail; languages, clans and ethnicities, etc.

- ***Patterns and profiles***—intelligence on recurring crime, human trafficking and smuggling patterns; on patterns of associations, collaboration and division of labour between TOC groups; on patterns of deception, camouflage and elusion of law enforcement control; on transport, visa and identification requirements; on the strengths and weaknesses of border management, customs, immigration and other law enforcement and control measures, are all useful predictors that can be applied in developing prevention and disruption initiatives and in recognising the profiles of offenders and potential victims.

### Operational or Tactical Intelligence

Collection and analysis of operational or tactical intelligence affords immediate and timely support to counter-trafficking operations and ongoing investigations by identifying criminals, networks and gangs, and by providing advance information on their movements, activities and profits. It leads to specific intelligence-led operations, including arrests, further investigations, prosecution and seizure of profits. And it may serve to identify and assist victims and to prevent secondary victimisation.

There are some key areas of intelligence collection and analysis activities at the operational level. While not an exhaustive list, the following domains require special attention as common elements may assist in investigations as well as in prevention measures.<sup>24</sup>

- ***Recruitment methods***—use of deception, coercion, abduction or kidnapping? What is the person being recruited for?<sup>25</sup> Where was the person or child recruited from? Intermediaries?
- ***Advertising media***—internet; TV; radio; newspapers or printed media; travel or tourist office; temporary or permanent employment agency; labour unions; or “word of mouth”, etc.

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<sup>24</sup> For a good presentation on profiling the traffickers see: The Vienna Forum to Fight Human Trafficking, 13-15 February 2008, Austria Center Vienna, *Background Paper, 016 Workshop: Profiling the Traffickers*, UN Global Initiative to Fight Human Trafficking (UN.GIFT). Equally see: *Background Paper, 017 Workshop: Technology and Human Trafficking*.

<sup>25</sup> For example: promise of legitimate work in the service, agricultural, construction, or hospitality industries, or as au-pairs, students, escorts, dancers, models, and factory workers.

- ***Stolen or forged passport, travel documents and identity documentation***—preparation; acquisition; payment methods used; location of agents or forgers; faking methods and means.
- ***Immigration and visa fraud***—preparation and acquisition; faking methods and means; by corruption or blackmail, where and how?
- ***Travel routes and means***—routes followed; mode of travel; patterns of itinerary; ticket procurement and payment methods, etc.
- ***Rentals or safe house accommodation***—location and provision; conditions and particulars of accommodation; owner or intermediaries; access and observation opportunities, etc.
- ***Means of communications***—e-mail; mobile phones; telephones; fax machines; mail; dead-drops; brush passes; codes and ciphers; steganography, etc.<sup>26</sup>
- ***Financial transactions in respect of all of the above activities***—modes, methods, means and places used for transactions, payments and money laundering.
- ***Information from visa sections, consular, customs and migration services***—all relevant personal data, particulars, conditions and addresses, phone numbers, etc.
- ***Information from transportation or travel means***—airlines; shipping companies; railway companies; trucking firms; truck, bus and car rentals; taxi services; tourist or travel agencies.

It is essential that this kind of intelligence is transmitted to those who are in a position to use it in intelligence-led operations. Expeditious transfer of the intelligence is often an issue. A vital factor in effective exchange of intelligence is the speed at which the material can be transmitted to the relevant agencies or investigators who may be in a position to respond to it. Intelligence very quickly becomes obsolete in the fast moving field of human trafficking operations.

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<sup>26</sup> Steganography is the art and science of writing hidden messages in such a way that no one apart from the sender and intended recipient even realises there is a hidden message. By contrast, cryptography obscures the meaning of a message, but it does not conceal the fact that there is a message. Today, the term steganography includes the concealment of digital information within computer files. For example, the sender might start with an ordinary-looking image file, then adjust the colour of every 100th pixel to correspond to a letter in the alphabet—a change so subtle that no one who is not actively looking for it is likely to notice it.

### 3.3. Planning Effective Responses

Effective responses to TOC and human trafficking call for collaborative, multi-agency, coordinated, well-planned strategic action. Planning for action must be based on a sound assessment of the problem and of the existing capacity to respond to it. Intelligence collection, analysis and exchange between all relevant agencies and across borders are crucial to the success of all measures in the fight against TOC and human trafficking.

In a world of decentralised, adaptable criminal networks, the time available between intelligence collection, analysis and operations is dwindling quickly. Assigning these tasks to separate agencies no longer works. This is why government has to defragment: to bring together the scattered efforts in order to be more effective and efficient. The external, internal and criminal intelligence service, police and law enforcement agencies, financial investigative units, border management and all other organisations mandated with fighting TOC and human trafficking must work as one enterprise. Even when their activities are distributed across different ministries and multiple agencies, all functions and organisations must be aligned around the same mission, must work together to achieve the same goals, and must integrate their respective information seamlessly within the requirements of privacy legislation. In this, they must aim at harmonising practices, utilising as much as possible common procedures and standards, common risk assessment techniques, and selection of equipment and logistics that facilitate interoperability and joint operations.

Ever more states are forming national task forces or specialised inter-ministerial and interagency units, often under the overall leadership of the criminal intelligence service, for the fight against TOC.<sup>27</sup> These assist in intelligence collection, analysis, assessments and intelligence exchange. Coordination of intelligence collection, analysis efforts and intelligence exchange are key functions of such entities. It is important that they all assess the situation requiring a response. The problem usually presents itself in a different way in each jurisdiction. Proper assessment of the situation and careful planning of an intervention are usually the hallmarks of successful responses. The best assessments are those that are based on existing effective collaboration and information sharing between the various agencies that need to be part of the response to the problem.

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<sup>27</sup> See also: Theda Kröger, Jasna Malkoc & Bärbel Heide Uhl, *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook* (Warsaw: OSCE ODIHR, 2004).

For national and international collaboration alike, a concrete plan of action must be developed to delineate mutually agreed-upon objectives, priorities for action, and strategies, as well as the many tasks to be achieved, the resources required, and the respective responsibilities of each agency. There are a number of examples of regional, national or even local plans of action. UNDP and other entities have developed handbooks and best practice manuals that provide useful assessment tools that can be readily adapted to specific circumstances.<sup>28</sup>

International cooperation is imperative. However, working with others is never easy. Stories of international collaboration undermined by corruption, non-compliance or absence of trust litter the headlines. But in the case of illicit trade, the alternative to international cooperation is to cede the field to traffickers, who will find ways to penetrate even those states that invest the most in patrolling their borders. Thus, the alternative is not an acceptable one. Better ways have to be found to make international cooperation against illicit trade work.

A novel approach that has shown some success is peer review. It is the method the Financial Action Task Force, the G-8 group of industrial countries' anti-money laundering and financial crime outfit, has employed. The model is based on a few critical countries opting in by meeting a list of qualifications. Not every country is invited into FATF. The key to FATF's successful operation is mutual trust, which is generated the only possible way—through a careful, deliberative process.

The EU makes adherence to its norms on a wide range of issues, including prevention of and the fight against illicit trade, a prerequisite for new members. The shared commitment, as well as the existence of political institutions to enforce it, means that types of collaboration at which other countries might balk are more likely to succeed among European countries. What is needed is some degree of flexibility with regard to the concept of national sovereignty. The FATF, the EU and other multilateral organisations all limit to a degree the exercise of sovereignty by their member countries with respect to a specific set of issues. This approach in fact provides the only hope of limiting the constant and far more harmful violations of national sovereignty that illicit traffickers inflict daily on states. The lesson here is a difficult one for governments. It is that the most effective forms of cooperation to curb illicit trade are also the

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<sup>28</sup> See, among others, Paul Holmes, Maria Magdalena Rădulescu, and Maria Velikonja, *Best Practice: Law Enforcement Manual for Fighting Against Trafficking of Human Beings* (Bucharest: UNDP Country Office Romania, 2003). <http://www.undp.ro/governance/Best%20Practice%20Manuals/> (accessed November 18, 2008).



ones that invite the most mutual scrutiny—what governments are usually quick to call “meddling.” Yet without allowing such meddling, it seems unlikely that governments will ever trust one another, learn from one another, and work together fast enough to keep up with trafficking networks.

#### *3.4. What are the Contributions of Intelligence-Led Operations to the Fight against TOC and Human Trafficking?*

Main contributors are the external, internal and criminal intelligence services, different police and law enforcement agencies, financial investigative units, border management, and joint operations within the EU framework.

Strategic intelligence, consisting of clandestinely collected information on who these actors are, their intentions, plans, capabilities and potential impact, is essential to any government response to this problem. For the collection of strategic intelligence and the provision of strategic analysis on TOC, governments primarily rely on their foreign intelligence and security services. Their relationship with counterparts abroad examining TOC issues play a key role in their work.

##### External or Foreign Intelligence Service and Internal Intelligence or Security Service

While foreign intelligence services may occasionally conduct covert actions against some of the most notorious TOC groups abroad, they generally do not participate directly in the fight against TOC through apprehension of criminals, seizure of illicit or trafficked goods and laundered money, interruption and closing down of businesses, etc. This remains the mission of law enforcement jointly with the judiciary, customs, the border guard and coast guard, the offices of export-import and money laundering controls, and the inspectorates of the labour, goods, health and intellectual property markets. Rather, foreign intelligence services concentrate on exploring the influence of TOC groups and figures within selected countries, what threats this influence presents to the own national interests, and prognostications for the future.

They may be required to examine the “bona fides” of certain large commercial entities operating out of so-called “zones of chaos” in the former USSR, Eastern Europe, parts of Asia, Africa and Latin America, seeking to do business in the own country and the region. Due-diligence work of this nature resulting in individual and company profiles is useful to government and

economic policymakers. And intelligence assessments of attempts by TOC actors to infiltrate, influence, co-opt and corrupt both foreign governments and the own are of essential interest to government.

The internal intelligence service does comparable work internally. But their reporting is mainly strategic and primarily serves as valuable aid to national decision-making involving national interests, policies and strategies to be pursued with regard to the subject country and for fighting TOC. In this, human trafficking is not among their top priorities. In comparison with other crimes, terrorism and proliferation, human trafficking is less a national security issue than a criminal, social and political issue. The criminal issue is the crimes against the person which make exploitation possible, as well as offences involving illegal migration and the illegal earnings gained. Foremost, this demands a rapid, vigorous and professional response on the part of the criminal intelligence service together with law enforcement agencies at both the national and international level.

The main contribution of foreign intelligence and security services to the fight against TOC is intelligence collection where they are instrumental. Foreign and domestic intelligence services are able to collect in ways for which law enforcement, customs, border management, homeland defence and offices engaged in prevention of proliferation of WMD have neither the resources, skills, nor special access. International money laundering, for example, depends on electronic money transfers on which signals intelligence of foreign intelligence has the monitoring facilities, the duplication of which, due to the great expenses involved, would be unaffordable for most states. Hence, they do the largest part of the collection of data and information that is needed in order to acquire the knowledge about TOC groups, their intentions, plans, organisation and activities. Such knowledge is then disseminated to all agencies and organisations that are able to act on it with intelligence-led operations, but in particular to the criminal intelligence service and to law enforcement.

### Criminal Intelligence Service

Criminal intelligence services are becoming the main contributor and ever more often the lead investigation agency and overall coordinator of the fight against TOC. The criminal intelligence service uses crime analysis and criminal intelligence in a strategic manner to determine offenders for targeting. In addition, it has an important watchdog function over all intelligence collection and investigative activities of law enforcement, because all

intelligence-led, proactive investigative measures must be implemented in strict compliance with the legislative and procedural requirements of the country concerned. This is not just a case of legal and ethical probity, it is a simple case of professionalism. Intelligence-led, proactive techniques require resources in time, personnel and equipment to achieve their full potential and it would be pointless to expend such resources on gathering quality evidence that is ruled inadmissible in criminal proceedings because of non-compliance with the law. Not only would non-compliance be pointless, it would serve to discredit the activity and professionalism of the whole national and regional counter-trafficking response, and this must be avoided at all costs.

### Intelligence Contribution by Law Enforcement and Police

The intricacies of law enforcement intelligence, the intelligence cycle, analysis and the legal, ethical and management issues arising from an intelligence function are presented and discussed in a number of publications.<sup>29</sup> Here, we look at intelligence collection and investigations while focusing on the intelligence-led proactive side, since law enforcement uses three major investigative approaches that are not mutually exclusive:

- reactive investigation—victim-led<sup>30</sup>
- proactive investigations—intelligence generated, police-led
- disruptive investigation—police-led option in cases where the other options are not possible.<sup>31</sup>

Experience and best practice have shown that the proactive option is the most effective method of combating human trafficking.

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<sup>29</sup> See for three good examples: Paul Holmes, et al., *Best Practice: Law Enforcement Manual for Fighting Against Trafficking of Human Beings*; David L. Carter, *Law Enforcement Intelligence: A Guide for State, Local and Tribal Law Enforcement Agencies* (Washington, D.C.: Office of Community Oriented Policing Services, 2004); Joseph A. Schafer, ed., *Policing 2020: Exploring the Future of Crime, Communities, and Policing* (Washington, D.C.: Federal Bureau of Investigation, March 2007).

<sup>30</sup> Reactive, victim-led investigations are well explained in Paul Holmes, et al., *Best Practice: Law Enforcement Manual for Fighting Against Trafficking in Human Beings*, 2-4, Section 4 and 6; UNODC, *Toolkit to Combat Trafficking in Persons* (Vienna: United Nations Office on Drugs and Crime, 2006), 69-70; Yvon Dandurand, et al., *Human Trafficking: Reference Guide for Canadian Law Enforcement*, 22-23.

<sup>31</sup> Also the disruptive investigative option is well explained in the documents cited above.

### The Proactive, Intelligence-Led Approach

The proactive option provides the means whereby law enforcement agencies can take steps to combat the traffickers without a complaint and evidence of victims. Proactive operations are an effective weapon and should be considered wherever possible. Experience shows that traffickers are particularly vulnerable to intelligence-led operations. The explanation for this can be found by considering the crime from the same commercial perspective as that used by the traffickers. These may vary their modus operandi, alter the routes, switch their identities and use a range of other tactics to maximise their profits and avoid detection. But there is one feature of the crime that the traffickers cannot disassociate themselves from if their business is to be profitable: the need to market the product by advertising its availability to potential customers. This commercial imperative creates an “Achilles Heel” that traffickers cannot escape and law enforcement can exploit. If the victims can be located so can the traffickers.

Once it is known where forced labour or sexual exploitation is taking place, law enforcement can identify and locate traffickers and ensure that they are effectively prosecuted by sustained efforts based on solid intelligence collection, analysis and multi-agency collaboration: using a combination of intelligence, human and technical surveillance, under-cover deployments, special investigative techniques and means.

The objective of the proactive, intelligence-led option is to use the most effective and lawful range of investigative techniques as well as surreptitious entry techniques—defined as entry by stealth—in order to secure sufficient, sustainable evidence to arrest and prosecute the trafficker, and to identify, sequester and confiscate his or her assets.

For the attainment of this objective, the strategy to follow is to capitalise on the most promising developments already underway, by deploying the newest technology. The extraordinary pace of technological innovation is yielding tools with unprecedented potential to help fight illicit trade—tools that counteract the anonymity-enhancing developments and border porosity of the recent past. Identification, surveillance, tracing and detection are the new watchwords of R&D.<sup>32</sup> Most of these means are already in use, such as biometrics, radio frequency identification devices,<sup>33</sup> global positioning satellite

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<sup>32</sup> For a good overview over such developments see: Robert Wallace & Keith Melton, *Spycraft: The Secret History of the CIA's Spytechs from Communism to Al-Qaeda* (New York: Dutton, 2008).

<sup>33</sup> Radio Frequency Identification Device (RFID) is an automatic identification method, relying on storing and remotely retrieving data using tags or transponders that overtake the now familiar barcode as the

location-tracking technology, surveillance and eaves-dropping devices,<sup>34</sup> other detection<sup>35</sup> and security devices,<sup>36</sup> computer and data-mining tools<sup>37</sup> as well as computer network exploitation.<sup>38</sup>

To achieve its full potential, intelligence gathering has to be conducted holistically. The potential of front line officers “on the beat” to gather and contribute vital intelligence must be recognised and harnessed to the more specialised work of the counter-trafficking units. Because intelligence-gathering activity cannot and should not be separated from the investigation of the crime, there will always be a degree of duplication, overlap and a blurring of the functions on the issue of when in-depth intelligence gathering become actual investigations.

Best practice is to bring investigator and prosecutor closer together in the investigative process through investigator-prosecutor consultation and planning

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best way to identify an item and confirm its authenticity, register its origin and date of manufacture, and record its price. An RFID tag is an object that can be applied to or incorporated into a product, animal, or person for the purpose of identification using radio waves.

<sup>34</sup> Especially the products born of the revolution in nanotechnology, such as wireless micro-electro-mechanical sensors as small as a grain of sand in size. Scattering such ‘smart dust’ sensors that can detect, compute and communicate by means of 2-way-band radio human trafficking-related activities and changes in the level of such activities, can vastly improve the gathering of intelligence. Smart dust makes it possible to track individual traffickers over great distances without detection.

<sup>35</sup> These can identify suspect items or pick up traces of drugs, explosives and chemical, biological, nuclear and radiological (CBNR) materials far more reliably than the standard x-ray machines, traditional metal and other detectors. Backscatter scanners can contour the body to reveal any foreign items. And “puffers” can be used, which blow air on passengers and analyse the particles set loose. Exploiting new parts of the spectrum, such as hyper-spectral imagery, can be used to identify effluents from buildings as well as thermal emissions by humans.

<sup>36</sup> Today, stores, building lobbies, parking garages, bank transactions, traffic intersections, streets and subway stations are constantly monitored, videoed or photographed. The combination of the Internet with digital cameras has made monitoring a very common and inexpensive activity, even at great distances or from high up in the sky. Satellites and new scanning devices can home in on conversations and decipher certain people, vehicles, specific locations, or patterns of words.

<sup>37</sup> These take detection to extraordinary new levels. Banks are spending considerable sums for implementation of anti-money laundering software in order to conform to the requirement that they will “know their customers.” Behaviour detection applications can monitor hundreds of millions of transactions that large banks process and immediately spot events that fall into suspicious patterns. They can also identify patterns not patently obvious from individual items of information through cluster-, link- and time-series analysis. Crime fighters use similar software for “social mapping”— logging huge numbers of transactions and interactions to establish the structure and behaviour of networks. Data-mining software can review in a matter of minutes millions of intercepted radio messages, phone calls, faxes and e-mails to find individual items of intelligence. With the proper voice recognition technology, these systems can also match voices contained in thousands of phone intercepts, even if the speaker changes phones constantly while trying to avoid detection.

<sup>38</sup> Attacks on information processing equipment are possible by exploiting equipment emanations and by direct or indirect access to equipment software. Easier still is network exploitation by remote access to data and databanks via Trojan Horses, Trapdoors and more sophisticated means.

meetings. Before proactive operations are initiated, a review and planning process is needed that enables the different but interrelated skills and expertise of the specialists to be combined in the assessment of the proposal and the selection of the best legal and operational strategies and tactics to protect the trafficker's victims and to secure the objective of successfully prosecuting the trafficker. There is no point in investigators pursuing evidence-gathering tactics that may be inadmissible or of no practical use to the prosecutor in the conduct of the trial. Prosecutors need to be made aware of the operational difficulties that investigators may encounter in the conduct of the tactical surveillance options or may encounter in the seizing and securing of evidence. The intention of such meetings is to conduct a full and frank review of the options so as to identify and formulate the most effective and realistic plan for success of proactive, intelligence-led investigations. What such meetings of investigators and prosecutors should consider in detail is well presented in the UNDP Manual.<sup>39</sup>

### Intelligence Contribution by Border Management

There are a number of measures states can take to make it more difficult for traffickers to move people across borders. These are included in the *Trafficking in Persons Protocol* and the *Migrants Protocol*. Under article 11 of both protocols, states party are required to strengthen border controls to the extent possible and, in addition to measures pursuant to article 27 of the *Organised Crime Convention*, to consider strengthening cooperation between border control agencies, including by the establishment of direct channels of communication. Under article 12 of both protocols, states party are required to ensure the integrity and security of travel documents. Under article 13, they are also required, at the request of another state party, to “verify within a reasonable time” the legitimacy and validity of documents purported to have been issued by them. In addition, there are the measures recommended by the OSCE.<sup>40</sup>

At its most basic, effective border management requires identification of people and goods, collection and analysis of relevant information, and timely dissemination of relevant information to help officers make informed

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<sup>39</sup> Paul Holmes, et al., *Best Practice: Law Enforcement Manual for Fighting Against Trafficking in Human Beings*, 4-6.

<sup>40</sup> OSCE, *The OSCE Action Plan to Combat Trafficking in Human Beings*, PC.DEC/557, and PC.DEC/557 Rev.1, July 7, 2005, [www.osce.org/documents/pc/2005/07/15594\\_en.pdf](http://www.osce.org/documents/pc/2005/07/15594_en.pdf) (accessed November 18, 2008). And the OSCE Action Plan concerning children, PC.DEC/685, July 2005.

admissibility decisions regarding travellers and cargo. For this, an integrated border management environment must be created that enables low-risk persons and cargo to move conveniently across borders, while law enforcement agencies must work together to efficiently identify and investigate individuals of higher risks.

Integrated border management requires promoting increasing cooperation at three different levels that are central to raising border management efficiency and effectiveness:<sup>41</sup> (1) improving the vertical flow of information within border services from the ministry to the units working at border posts; (2) improving horizontal cooperation between officers of the different services active at the border, as well as among the central ministries responsible for the services; and (3) international cooperation between agencies involved in border issues in different countries, which is important for confidence building and to facilitate joint action on common issues.

With this, the preconditions can be established for: (1) an intelligence-led approach, understood as border management that relies on information gathered by, and exchanged among, all relevant agencies within a state, aimed at decision-making on resources, operations and investigations, and (2) intelligence-led cross-border cooperation via interstate intelligence sharing with emphasis on risk assessment and joint investigations, for which multinational and multi-agency cooperation are imperative to be successful.

***Border guard, customs and immigration services*** are the main actors responsible for managing the movement of people and goods across borders. In every country a variety of other actors are involved in tasks related to border management. While their focus may be different—as are their objectives—they should all work towards a common goal: ensuring open but well controlled and secure borders. Achieving this balanced approach is often a complex and delicate task.

***Border guards*** can be a civilian or paramilitary law enforcement service. Their main objectives are: (1) preventing cross-border criminal activities and unlawful entry; (2) detecting national security threats through surveillance of all land and water borders; and (3) controlling persons and vehicles crossing the border at designated points.

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<sup>41</sup> On this definition of integrated border management, see Guidelines for Integrated Border Management in the Western Balkans, EU Commission Staff Working Paper, Updated version, January 2007. In the framework of the CARDS Programme “Support to and Coordination of IBM Strategies (contract n 81242), the International Centre for Migration Policy Development (ICMPD), together with EU border management experts, drafted and updated these Guidelines.

*Customs* are a fiscal service whose responsibilities typically include: (1) ensuring that customs duties are paid; (2) ensuring that all goods are identified and accounted for when entering the territory of a country; and (3) enforcing restrictions on entry and exit of goods when this is justified on grounds of public policy and security; protection of health and life of humans, animals and plants, of national treasures, or of industrial and commercial property.

*Immigration services* generally have responsibility for: (1) enforcing restrictions on the entry and exit of people on grounds of policy or security; (2) ensuring travellers have the required documents to cross international borders; (3) raising revenue by issuing entry/exit visas at border crossing points; (4) identifying and investigating trafficking and smuggling and (5) identifying and assisting those in need of protection such as victims of human trafficking, refugees and others seeking asylum.

Border management is one field of state activities that most requires an integrated approach to be effective. The wide range of national and international border management agencies with specific roles, and the close links these must entertain with law enforcement; intelligence and security services; export-import, financial and money laundering controls; migration and health services; the non-proliferation, environmental, agricultural, food, trade and intellectual property inspectors, etc., makes it imperative that all operate as one enterprise in countering human trafficking. This may include the defence and military intelligence services and the armed forces. These can support border management with reconnaissance, surveillance and observation means to improve control of land and sea borders.<sup>42</sup>

What is legal and what is illegal is determined by the law and implemented by state institutions. However, standards and norms are not the same in all societies, and the level of effective implementation varies widely. When a transnational element enters crime, successful prosecution often becomes more difficult. When the criminal acts take place in different jurisdictions, the criminals can only be successfully tried if all parts of the international investigative puzzle are laid next to each other and interlinked. This requires international police and judicial cooperation. Yet there are many obstacles to such cooperation—different legal systems, bureaucratic inertia, the pervasiveness of corruption in some law enforcement services and judiciaries, the simple lack of resources or skills, and even linguistic incompatibility. Nonetheless, enhanced cooperation and exchange of information must stretch

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<sup>42</sup> Means include UAVs, radars, airplanes and helicopters, infrared, ultraviolet, hyper-spectral, acoustic, magnetic and movement sensors as well as range of MASINT means.



from countries of origin for human trafficking to countries of transit and to countries of destination. And success requires a clearly defined strategy across all border management functions, policies to support the strategy, and a governance and leadership structure that provides continual, clear direction.

#### **4. Patterns and Problems of Intelligence Cooperation**

##### *4.1. Intelligence and Law Enforcement Cooperation*

More than ever before, intelligence and law enforcement must find new and better ways to work together to deliver integrated results for the government and the security and safety of the nation. Valuable insights can derive from close correlation of information from differing intelligence, security or law enforcement sources. The US is certainly not the only country that has learned with painful clarity that failure to share, coordinate and connect available intelligence can have devastating consequences.<sup>43</sup> Thus, much more sharing is required—vertically and horizontally, internally and externally.

Bringing law enforcement and intelligence closer together is not without some challenges. The two communities have long-established roles and missions that are separate and based on constitutional and statutory principles. Both use the word intelligence in very different ways. For intelligence services intelligence means puzzle solving<sup>44</sup> or mystery framing<sup>45</sup> that is good enough for action. The goal is policy. The context is a blizzard of uncertainty, often one that cannot be melted down into clear contours. And the standard is “good enough to act.” By contrast, for law enforcement, intelligence is instrumental in another sense, not for policy but for cases. Intelligence means tips to wrongdoing or leads to wrongdoers. The goal is convictions. The context is individual cases. And the standard is that of the courtroom—to be beyond reasonable doubt.<sup>46</sup>

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<sup>43</sup> See: Steward Baker, “Wall Nuts: The Wall Between Intelligence and Law Enforcement is Killing Us,” *Slate*, December 31, 2003, <http://www.slate.com/id/2093344/> (accessed November 18, 2008).

<sup>44</sup> Puzzle solving is seeking answers to questions that have answers, even if these are often and long not known. Basically, puzzle solving is frustrated by a lack of information. Collecting secrets is crucial in solving puzzles.

<sup>45</sup> Mysteries pose questions that have no definite answers because the answers are contingent, depending on a future interaction of many factors, known and unknown. A mystery cannot be answered; it can only be framed by identifying the critical factors, and applying some sense of how they have interacted in the past and might interact in the future.

<sup>46</sup> Gregory F. Treverton, *Reshaping National Intelligence for an Age of Information* (Cambridge: Cambridge University Press, 2001), 167.

Intelligence work is essentially forward-looking, seeking to predict and forestall emerging threats to the state and society. Law enforcement is intentionally a reactive tool and usually involves collecting evidence on a case-by-case basis after a crime has been committed with a view to prosecuting the perpetrator. Investigators seek to determine whether elements of a crime are present and whether they can be associated with a given suspect or a given set of facts. Law enforcement becomes proactive when a suspect threatens to break the law. For intelligence, which must warn, that is simply too late. Intelligence collection seeks to understand those indications of hostile intent that may be cause for alarm.

Moreover, police most often want to arrest and charge criminals, while intelligence services want to leave them in place, at least in the short term, to see how far their networks lead and where the top bosses are. Thus, information sharing difficulties abound. Because intelligence services are careful not to reveal their sources and methods, intelligence officers try hard to stay out of the chain of evidence so that they cannot be asked to testify in a court. As a practical matter, that means that intelligence's role is limited to tipping off other agencies.<sup>47</sup> Intelligence agencies are unwilling to let covert intelligence material be used in making a criminal case against the perpetrators of crimes, while police will not allow evidence crucial to an ongoing investigation to be passed outside the bounds of the investigation. True, information used in judicial proceedings is often of a different type than that collected by intelligence services. It is collected differently, stored differently, and must usually be shared to some extent with opposing prosecution and defence attorneys. However, this problem may be still more prevalent in the US than in Europe, where in most countries initiatives have been undertaken to enhance the usefulness of information collected by intelligence services for law enforcement agencies and vice versa.

For information sharing to succeed, there must be trust. Building trust is a process of change that requires strong leadership, clear laws and guidelines and advanced technologies to ensure that information sharing serves its purpose and operates consistently with national values. Both communities must ensure compliance with the law and make commitments visible to the public. Since people have a natural tendency to resist change, leaders throughout the law enforcement and intelligence communities must consistently and repeatedly deliver the message of change, and ensure that everyone understands the importance of sharing information. It is no longer enough to share intelligence:

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<sup>47</sup> Ibid, 167-168.

there is a responsibility to provide it. Moreover, the public wants and deserves collaborative intelligence and law enforcement communities that work together effectively to prevent harm and destruction. Leaders must understand and nurture change that emphasizes the responsibility for providing information, not just for sharing it. They must communicate to their subordinates a willingness to accept risk in sharing data, and must deemphasise data ownership. What is also needed is greater inculcation of civic values: that the success of others is a shared success in service to the nation and its citizens.

Effective training can improve the confidence of community members and the public's perception that information is being handled appropriately. The right training, coupled with good policies, clear guidelines and rules, will help enable sharing and ultimately will help change the cultures of the organisations involved. These steps, along with intercommunity training, exchange of "lessons learned" and the effective use of technology, can open doors for cooperation that have been closed for too long.

#### *4.2. Cooperation With and Within the EU*

The EU has made significant progress in developing an integrated border management system and for border management agencies operating as one enterprise. Integrated border management consists of the following five dimensions: (1) border control (checks and surveillance) as defined in the regulation establishing the Community Code, including the necessary risk analysis and criminal intelligence; (2) investigation of cross-border crime; (3) a four-tier access control model (measures in third countries, cooperation with neighbouring countries, border control, and control measures within the area of free movement); (4) cooperation between the authorities in the field of border management at the national and international level (border control, customs and police authorities, security services and other relevant authorities); and (5) coordination and coherence of action taken by member states and institutions. The key principle is that border management must cover all border related threats.

The Schengen system—the Community Code on the rules governing the movement of persons across borders<sup>48</sup>—represents an exemplary model of

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<sup>48</sup> Relevant norms and best practices can be found in the OSCE, Ljubljana Ministerial Council, *Border Security and Management Concept*, MC.DOC/2/05, December 6, 2005, [www.osce.org/documents/mcs/2005/12/17436\\_en.pdf](http://www.osce.org/documents/mcs/2005/12/17436_en.pdf) (accessed November 18, 2008). EU integrated border management rules are spread across a number of legal and administrative instruments, representing a multi-layered compilation of provisions, with only the basic ones found in the formal

border security management as regards reconciliation of the two opposing trends, one pushing for the opening of borders to facilitate trade and economic growth, and the other that calls for efficient prevention of the pre-eminent threats and combating TOC. The EU disposes of its own agencies for the production and exchange of intelligence: Europol for criminal and security intelligence; the Joint Situation Centre—SITCEN—for external intelligence; the intelligence division of the EU military staff—INTDIV—for military intelligence; and the EU Satellite Centre—EUSC—for imagery intelligence.<sup>49</sup>

The 11 March 2004 Madrid terrorist attacks have given a strong impetus for further developments fighting the pre-eminent threats and put intelligence at the forefront of border security management and policy. The EU Council reached agreement on political strategic guidelines with the Integrated EU Border Management Strategy,<sup>50</sup> the European Arrest Warrant, on biometrics in passports, on the establishment of the European border agency FRONTEX, on the exchange of information on lost and stolen passports with Interpol,<sup>51</sup> and on the introduction of EURODAC that seeks to prevent asylum seekers from submitting multiple asylum applications in different EU countries. The European image archiving system False and Authentic Documents FADO<sup>52</sup> makes possible the speedy verification of documents and fast, comprehensive notification of relevant law enforcement or immigration authorities in other participating states when misuse of a document or a fraudulent document is detected.

In 2008, the European Commission's communication on an integrated EU border management strategy suggested the creation of a European Border

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texts such as the Treaty on the European Community or the Schengen instruments of 1985-90. Much of the rest has been adopted through informal arrangements like the *Common Manual* on external borders adopted by the Schengen Executive Committee, and the *Catalogue of Best Practices* drawn up by the Working Party of Schengen Evaluation.

<sup>49</sup> Björn Müller-Wille, "Building a European Intelligence Community in Response to Terrorism," *European Security Review* 22 (April 2004): 3-4.

<sup>50</sup> Sergio Carrera, "The EU Border Management Strategy" (CEPS Working Document No. 261, March 2007).

<sup>51</sup> The number of stolen or lost travel documents recorded internationally has gone from just over 3000 in 2002 to over 10 million in 2005. This astronomical increase of more than 3000 percent is alarming. It shows not only the need for improved technological systems to detect false passports but also for improved training of staff on how to identify counterfeit or forged documents.

<sup>52</sup> See: EU Justice and Home Affairs, "Making EU Visa and Residence Documents More Secure," (Europa, Justice and Home Affairs, 2005), [http://europa.eu.int/comm/justice\\_home/fsj/freetravel/documents/printer/fsj\\_freetravel\\_documents\\_en.htm](http://europa.eu.int/comm/justice_home/fsj/freetravel/documents/printer/fsj_freetravel_documents_en.htm) (accessed November 18, 2008).

Surveillance System EUROSUR,<sup>53</sup> the main purpose of which is to prevent unauthorised border crossings, reduce the number of illegal immigrants losing their life at sea, and increase the internal security of the EU by contributing to the prevention of cross-border crime. EUROSUR should support EU member states in reaching full situational awareness<sup>54</sup> at their external borders and in increasing the reaction capability of their law enforcement authorities by using new technologies such as satellites. It will provide the common technical framework for streamlining the daily cooperation and communication between member states' authorities and facilitate the use of technology for border surveillance purposes.

At the same time, the Commission's communication proposes the introduction of new tools, including: (1) an entry/exit system, allowing the electronic recording of the dates of entry and exit of third country nationals into and out of the EU using the Schengen Information System (SIS II) and the Visa Information System (VIS); (2) facilitate border crossing for bona fide travellers through the introduction of automated border crossing facilities that read the biometric data—facial image and fingerprints—in travel documents for EU citizens and certain categories of third country nationals; and (3) parameters for the introduction of an Electronic System of Travel Authorisation ESTA, and the development of common access to EU databases. In addition, the Commission wants to strengthen the role of FRONTEX by “implementing the current mandate of the Agency in full, in particular by intensifying joint operations between member states, including sea border patrols.” Among others, the possibility of creating a European Border Guard, improved cooperation between customs and border control authorities, and better exploitation of FRONTEX technical equipment by the recently established Rapid Border Intervention Teams RABITs is foreseen.<sup>55</sup>

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<sup>53</sup> See: EUROPA RAPID, “Examining the creation of a European Border Surveillance System (EUROSUR),” press release, February 13, 2008. <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/86&format=HT> (accessed November 18, 2008).

<sup>54</sup> See: ESRI, “Public Safety and Homeland Security Situational Awareness” (ESRI White Paper J.9698, February 2008). <http://www.esri.com/library/whitepapers/pdfs/situational-awareness.pdf> (accessed November 18, 2008).

<sup>55</sup> See: Franco Frattini, “Providing Europe with the Tools to Bring its Border Management into the 21<sup>st</sup> Century” (Ministerial Conference on the Challenges of the EU External Border Management, Brdo, Slovenia, March 12, 2008) [www.libertysecurity.org/article1939.html](http://www.libertysecurity.org/article1939.html) (accessed November 18, 2008).

## Interpol

European governments have been officially working together against organised crime since Interpol was founded in 1923. Today, Interpol has developed into a global body. Based in Lyon, it has 186 members, sharing information via a network of national central bureaus (NCBs). Interpol maintains databases on known criminals, lost and stolen passports, fingerprints and DNA profiles. In 2003, it rolled out a global police communications system called I-24/7, securely connecting the NCBs to each other and to Interpol databases, widely praised as a clever solution to the problem of how to share sensitive police data electronically in a multilingual environment.<sup>56</sup> The cooperation agreement with Europol was approved by the Council of the European Union in 2001, and Interpol and Europol have since implemented various joint projects, mainly on human trafficking, money laundering and counterfeiting.

## Europol

The establishment of Europol reflected the ambition to create an integrated system of police cooperation and analysis across the EU. Europol is the EU's main tool for assisting investigations into TOC. It gathers and analyses intelligence on crimes ranging from human trafficking to counterfeiting and terrorism, and produces an annual threat assessment for member states,<sup>57</sup> which highlights the dangers to the EU from TOC and suggests ways member states can tackle it. Until 2003, the standard tool for assessing organised crime in the EU was the annual European Union Organized Crime Report (OCR), which had met with some criticism regarding its meaningfulness and has been replaced by the EU Organized Crime Threat Assessment (OCTA). However, OCTA has also met with fundamental criticism.<sup>58</sup> Because many member states follow their own course, there are substantial obstacles to developing a

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<sup>56</sup> In 2005, police used 'I-24/7' to exchange almost 10 million messages worldwide.

<sup>57</sup> See: EUROPOL, *OCTA 2008 EU Organised Crime Threat Assessment* (The Hague: EUROPOL, 2008), [http://www.europol.europa.eu/publications/European\\_Organised\\_Crime\\_Threat\\_Assessment\\_\(OCTA\)/OCTA2008.pdf](http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_(OCTA)/OCTA2008.pdf) (accessed November 18, 2008).

<sup>58</sup> Tom Van Der Beken, ed. *Measuring Organized Crime in Europe: A Feasibility Study of a Risk-Based Methodology Across the European Union* (Antwerp-Apeldoorn: Maklu, 2004); Petrus C. van Duyne & Maarten van Dijck, "Assessing Organized Crime: The Sad State of an Impossible Art," in *The Organized Crime Community: Essays in Honor of Alan A. Block*, ed. Frank Bovenkerk & Michael Levi (New York: Springer, 2007), 101-124; Klaus von Lampe, "Measuring Organized Crime: A Critique of Current Approaches," in *Threats and Phantoms of Organized Crime, Corruption and Terrorism*, ed. Petrus C. van Duyne, M. Jager, Klaus von Lampe & J.L. Newell (Nijmegen: Wolf Legal Publishers, 2004), 85-116; Klaus von Lampe, "Making the Second Step Before the First: Assessing Organized Crime – The Case of Germany" *Crime, Law & Social Change*, no.42 (2004): 227-259.

harmonised European approach to assessing TOC, making it difficult for Europol analysts to make valid cross-European comparisons.

Europol's office is organised in a hub-and-spoke system. All member states send police officers to its headquarters in The Hague. These officers act as spokes, sharing information directly with each other as well as a hub of Europol crime analysts. The analysts comb the combined body of European criminal intelligence for TOC trends and links that can be missed by national or regional police forces. Since 1999, Europol has focused mainly on developing analytical abilities that it needs in order to add value to national investigations. Initial sceptics among police throughout Europe have come to view Europol more favourably as a potentially useful channel for coordinating the fight against TOC.

It must be noted that Europol has yet to become indispensable in cross-border investigations. It has been criticised for inefficiency, cumbersome procedures, and has been plagued by intra-institutional and political expediencies. But Europol can only work on the basis of the data that its national contact points provide, and input from some states has been minimal.<sup>59</sup> Recurring lack of trust constitutes a major obstacle to the development of the Agency, which is also surrounded by concerns regarding its accountability and democratic control. However, EU governments want to give the office a greater role in supporting member states investigations aimed at putting top-level criminals behind bars. And there are plans that by 2010 Europol will become a full EU agency.

#### Multilateral Police Cooperation

Efforts to enhance police cooperation in the EU have been taking place for many years. Articles 29 and 30 of the Treaty on European Union, also known as Maastricht Treaty, and the Europol Convention provide the legal basis for EU police cooperation. Major steps have been the creation of the 3<sup>rd</sup> pillar in the Maastricht Treaty and the incorporation of the Schengen *acquis* into Community law by the Amsterdam Treaty, signed on 2 October 1997, and entered into force on 1 May 1999. In parallel with the Amsterdam negotiations, the member states came up with the first EU Action Plan to fight TOC, which recommended the establishment of Europol, EU-level action to fight money laundering, practical steps to improve cooperation between national police, customs and judiciaries, and priority areas for harmonisation of laws to fight

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<sup>59</sup> In 2006, while one member state contributed over 500 pages of criminal intelligence to Europol's first Organized Crime Threat Assessment, another offered only a single page.

TOC. The governments added new goals to this list in 2004, renaming it the Hague Programme. This, and the subsequent Action Plan<sup>60</sup> to implement it, attempted to remedy some shortcomings by both building on existing EU initiatives and calling for the tabling of new measures at EU level.

Its most important goal has been a promise to revolutionise how European police forces share information across borders by adhering to the *principle of availability*, in effect since January 2008. The principle of availability means that throughout the EU, police forces no longer need to formally request information from each other, or rely on informal “old boys” networks to get information. Police from one EU country now have access to police files in any other country, and the law enforcement agency in the other state which holds this information will make it available for the stated purpose, unless a good reason is given to the contrary.<sup>61</sup> As to cooperation between law enforcement and intelligence agencies, the Hague Programme called for particular consideration to be given to the special circumstances that apply to the working methods of intelligence and security services—including sources of information, methods of collection and confidentiality.<sup>62</sup>

#### Cooperation Within the Framework of Justice and Home Affairs

Combating TOC has also become a priority area for EU legislation and its fast-growing Police and Judicial Co-operation Matters (PJC), formally Justice and Home Affairs (JHA). In 2004, member states agreed on a radical expansion of EU powers in crime and policing, issues which cut to the bone of national sovereignty. In negotiations on the EU constitutional and reform treaties, governments agreed to drop national vetoes on decisions about crime and

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<sup>60</sup> Council of the European Union, *Council and Commission Action Plan Implementing the Hague Programme on Strengthening Freedom, Security and Justice in the European Union*, 9778/2/05 REV 2, JAI 207, June 10, 2005. [http://ec.europa.eu/justice\\_home/doc\\_centre/doc/action\\_plan\\_jai\\_207\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/doc/action_plan_jai_207_en.pdf) (accessed November 18, 2008). See also the earlier Commission Communication Council of the European Union, *The Hague Programme: Ten Priorities for the Next Five Years*, COM (2005) 184 final, November 4-5, 2004. <http://europa.eu/scadplus/leg/en/lvb/l16002.htm> (accessed November 18, 2008).

<sup>61</sup> Council of the European Union, “Council and Commission Action Plan Implementing the Hague Programme,” 27, point 2.1; Council of the European Union, *Proposal for a Council Framework Decision on the Exchange of Information Under the Principle of Availability*, COM (2005) 490 final, October 12, 2005. <http://europa.eu/scadplus/leg/en/lvb/l33257.htm> (accessed November 18, 2008).

<sup>62</sup> Council of the European Union, “Council and Commission Action Plan Implementing the Hague Programme,” 29, point 2.2; Council of the European Union, *Council Decision on the Transmission of Information Emerging from the Activities of Security and Intelligence Services with Respect to Terrorist Offences*, COM (2005) 695 final, December 22, 2005.



policing, though law enforcement will remain strictly national. They also agreed to make it easier for the EU to initiate criminal legislation and align national court procedures.

Interior and justice ministers now regularly meet in the EU's Council of Ministers—the JHA Council—and discuss how to implement The Hague Programme. They do so by closing legal loopholes between member-states' criminal laws, and agreeing legislation and practical steps to make cross-border police investigations easier. Officials develop new proposals in an enormously complicated web of committees that make up four different levels of decision-making. These include working groups on police, customs and criminal justice cooperation, and the “multidisciplinary group on organised crime.” The latter is a group of national policing experts with powers to evaluate crime-fighting methods throughout the EU. Officials from both the Council and the Commission help governments to draft legislation. They also give views on the effectiveness of previous EU agreements.

### Eurojust

A major part of the JHA Council involves replacing the slow Council of Europe procedures for police and criminal justice cooperation with faster, more efficient EU rules, such as warrants speeding up the extradition of suspects and the sharing of evidence between the member states. Eurojust, a unit of senior prosecutors, judges and police officers nominated by the member states, helps with making these legal arrangements work in practice. It also has the day-to-day role of coordinating multi-country prosecutions in the EU. The year 2007 was an important landmark for Eurojust—the historic crossing of 1000 cases handled, representing an increase of 314 cases or forty-one per cent over 2006.<sup>63</sup> It opened seventy-one human trafficking cases, compared to twenty-nine in 2006. And it aims to establish a centre of expertise on human trafficking.

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<sup>63</sup> Eurojust, *Annual Report 2007* (The Hague: Eurojust, 2007), 7, 33.  
[www.europarl.europa.eu/document/activities/cont/200803/20080307ATT23374/20080307ATT23374EN.pdf](http://www.europarl.europa.eu/document/activities/cont/200803/20080307ATT23374/20080307ATT23374EN.pdf) (accessed November 18, 2008).

## The European Criminal Intelligence Model

In 2005, interior ministers agreed on a European criminal intelligence model (ECIM),<sup>64</sup> a policing plan for coordinating investigations against TOC and intelligence-led policing throughout the EU. The idea is to get police from different countries to plan investigations together, using the best intelligence available. The ECIM sets out how the EU can achieve this by ensuring that national police forces, Europol's criminal intelligence analysts and the police chiefs' COSPOL operations—the Comprehensive Operational Strategic Planning for the Police—work together against the same criminal threats. The model works in a number of steps. First, member-state police forces share intelligence with Europol, which draws up an assessment of the overall threat facing the EU from TOC. Based on this, the Council of Ministers agrees on the law enforcement priorities that police forces should tackle together. The EU Police Chiefs then mount joint operations against the criminals and feed back information and lessons learned into Europol, in time for the next threat assessment to be prepared.

EU member states tested this new way of working together in 2006. Based on Europol's first threat assessment, EU governments set four regional priorities in the fight against TOC in Europe: (1) drug trafficking and human trafficking by African gangs operating in the Mediterranean; (2) Albanian gangs trafficking both heroin and women from the Balkans; (3) commodity smuggling in the Baltic Sea region; and (4) illegal factories for synthetic drug production in Belgium, Germany, the Netherlands and the UK. It is too soon to tell if governments or police are taking ECIM seriously enough. Nonetheless, the adoption of a EU law enforcement model is a significant step forward in coordinating internal security. The police model is also a subtle attempt to promote use of intelligence-led policing methods throughout Europe. However, law enforcement cooperation across Europe as a whole has yet to match the degree of cooperation achieved by criminals involved in TOC. This is due to a number of basic difficulties.

## Different Police Organisations

Europe's 1.2 million police officers operate in very different, and at times, incompatible ways. Ireland, Denmark and Finland each have a single national police service, centralised under a clearly designated "chief", whereas in the

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<sup>64</sup> See: UK Presidency of the EU 2005, *Annex—A European Criminal Intelligence Model*, JHA Informal Media Brief discussed at the Justice and Home Affairs Informal, September 8-9, 2005.

Netherlands and the UK the police are decentralised, with the UK having as many as fifty separate police forces. This means the smaller regional forces may not be able to answer requests for information or cooperation from counterparts in other countries. Moreover, in a number of countries, police have independent powers of investigation, while in others they still take their lead from national prosecutors. Police answerable to prosecutors tend to be reactive, acting only after a crime has been committed, and do less preventive work. This difference in roles means that both police officers and prosecutors from different countries divide into *proactive* and *reactive* when deciding how TOC should be tackled.<sup>65</sup>

#### Different Rules for Investigations and Admissible Evidence

Another problem hampering cooperation is that countries have different rules for starting investigations and gathering evidence. There are more than twenty-seven legal systems in the EU, each one with its own rules for starting investigations. In the UK, for example, it is illegal to use phone taps as evidence in court, but police and prosecutors can and do rely on closed circuit television (CCTV). By contrast, France sees phone tapping as legitimate and human rights-compliant, but considers indiscriminate use of CCTV footage to be far more intrusive. In other EU countries, public CCTV cameras are as yet unknown, or, as in Denmark, even banned by law.

#### Deficiencies of the Council of Europe Convention on Mutual Assistance in Criminal Matters

Police may be able to get around these differences when working informally with their foreign colleagues. But they, and the courts, still face a range of obstacles to the conduct of cross-border investigations and prosecutions. If they need a witness summons, an order to compel somebody to produce evidence, a search-and-seizure warrant or an order to freeze bank accounts, they may have to ask a court in another country to issue one. The main tool for getting this kind of work done is the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters, under which judges approve requests for help with investigations and prosecutions from abroad. In 2000, the Council of Europe updated the convention to include requests for undercover operations

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<sup>65</sup> Hugo Brady, "The EU and the Fight Against Organized Crime" (Centre for European Reform, Working Paper, April 2007), [http://www.cer.org.uk/pdf/wp721\\_org\\_crime\\_brady.pdf](http://www.cer.org.uk/pdf/wp721_org_crime_brady.pdf) (accessed November 18, 2008).

abroad, the interception of phone and Internet communications across borders and surveillance operations such as “controlled deliveries”, where authorities secretly monitor crimes such as drug trafficking to unearth a criminal network.<sup>66</sup> Even revamped, the convention is too complex and inflexible to provide a basis for modern crime-fighting: the new changes are taking years to ratify, and requests can take weeks, months and even years to be answered. The UK, for instance, requires too much detail from countries making requests, while the Spanish bureaucracy is known to misplace requests altogether.<sup>67</sup>

#### The Extra Powers of Police Forces from Schengen Countries

Aside from the pitfalls of formal legal cooperation, European governments have made efforts to boost operational cooperation among police. This is particularly true in the now passport-free zone of the EU: the “old” EU minus Britain and Ireland, with the addition of Norway, Iceland and Switzerland, and the exception of Cyprus. Police forces from Schengen countries have extra powers to pursue crimes with a cross-border dimension. For example, Dutch officers can carry out surveillance on suspects in Belgium, with or without prior notification. Italian policemen can follow suspected criminals in “hot pursuit” into Austria, until the local police arrive. This is thanks to a patchwork of bilateral or multilateral agreements. Cooperation is most sophisticated where countries share land borders, have similar legal systems and face common threats from the same TOC groups or terrorists. Police in the Benelux countries assist each other in every day law and order matters. The Nordic countries have been running joint patrols and police stations in sparsely populated border regions for years. So too have the Spanish with their French counterparts.

#### The Headway Made by the Treaty of Prüm

In 2005, Austria, the Benelux countries, France, Germany and Spain formed an information-sharing avant-garde outside the EU by concluding the Treaty of Prüm. It aimed to further the development of European cooperation, to play a pioneering role in establishing the highest possible standard of cooperation, especially by means of a much speedier exchange of information, particularly in combating terrorism, TOC and illegal migration, while leaving participation in such cooperation open to all EU members. Security cooperation measures

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<sup>66</sup> Idem.

<sup>67</sup> Eurojust, *Annual Report 2005* (The Hague: Eurojust, 2005): 46.

comprise among other things: sharing of DNA and fingerprint data, common rules on flight security, vehicle registration and cross-border “hot pursuit” of officers without prior consent of the convention parties in urgent situations.

Some observers feared the convention would undermine efforts to facilitate information-sharing in the EU as a whole, since it involved only a handful of countries, ignored related initiatives by the European Commission, and created a new hierarchy within the EU and a new form of the Schengen process. But it turned out that the Prüm Treaty was the best way to encourage wider information-sharing. Members have acted as a laboratory, working out the complicated technical arrangements for querying each others’ police databases quickly and effectively in a small group.<sup>68</sup> The rapid progress has encouraged the rest of the EU to adopt the Prüm system and, in February 2007, the member states agreed to incorporate the information-sharing bits of the treaty into the EU’s legal order. The goal is that every EU member state will have automatic access to others’ DNA, fingerprint and vehicle registration databases, “a quantum leap in cross-border sharing of information.”<sup>69</sup> The challenge for the future is to make the Prüm information-sharing arrangements work well with twenty-seven countries. Overall, the Prüm experience is an important case study for the future of police cooperation in the EU.

### The Way Ahead

Any reform of national policing structures must be based on the country’s constitutional order and its specific traditions. Not all countries will want to follow Britain in setting up a powerful separate agency, such as the Serious and Organised Crime Agency (SOCA), which integrates several police organizations devoted to gathering criminal intelligence, as well as law enforcement parts of the UK customs and immigration services.<sup>70</sup> But all member states should at least have common platforms, such as the French

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<sup>68</sup> Austrian and German police claim that adopting the Prüm procedures produced over 1,500 new leads in unsolved cases.

<sup>69</sup> Council of the European Union, "2781st Council Meeting Justice and Home Affairs Council: Main Results of the Council," Press Release, February 15, 2007. [www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/jha/92800.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/92800.pdf) (accessed November 18, 2008).

<sup>70</sup> SOCA has powers to use phone tapping, undercover officers and new surveillance techniques to make sure that previously convicted criminals do not reestablish their networks. SOCA handles all international cooperation between Britain’s assorted police forces and their counterparts abroad. It deals directly with Interpol and Europol, and cooperates with Schengen area countries on behalf of all UK police.

Section Centrale de Coopération Opérationnelle de Police (SCCOPOL), where representatives from the different law enforcement agencies work together and are on hand to coordinate investigations with colleagues abroad. In Italy, a similar unit in Rome maintains such a platform, where representatives from all six Italian police forces work on TOC.

Another aspect urgently needing improvement for rendering the fight against TOC more effective is that representatives to both Europol and Eurojust need to have equivalent powers if either organisation is to function properly. The obvious way to overcome such challenges would be to merge both Europol and Eurojust to form a single European law enforcement coordination body, incorporating also the police chiefs' task force. A single body could underpin a uniform level of cooperation across the EU whatever the national law enforcement structures. It would prevent duplication in intelligence gathering and analysis, and ensure better follow-through from investigation to prosecution in cross-border cases. Both Eurojust and Europol are due to co-locate in 2009, the ideal opportunity to initiate this merger—and a convincing answer to the persistent problems caused by differing legal systems, divergent traditions and the high risk of duplication of efforts.

One of the most useful things the EU does for improving cooperation against TOC is also one of the most basic: it helps the member states to copy each others' best practice. EU officials carry out "peer evaluations" of police methods in each member state and draw up recommendation for improving their law enforcement systems based on best practice. If member states aligned their investigative methods, technology and training, they would benefit far more from cross-border cooperation. The JHA Council should give more weight to these evaluations, should agree on headline goals for the use of ICT and modern police equipment as well as for the adoption of modern policing methods, including procedures for seizing criminal assets and conducting financial investigations.<sup>71</sup>

## **5. Intelligence Operations, Crime Fighting and Democratic Oversight**

External, internal and criminal intelligence services, as well as all the security sector agencies that conduct intelligence-led operations, have to collect as much information as possible on threats to the state. Intelligence is wanted on everything which is, or can become, a danger. However, wherever this involves intelligence collection on individual citizens there is the danger that collection

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<sup>71</sup> Hugo Brady, "The EU and the Fight Against Organized Crime," 30.

activities impinge on human rights and, in particular, on the right to privacy. Collecting information on individuals immediately raises the issue of respect for civil liberties, individual rights and freedom. Increased intelligence collection capacities thus enhance the potential damage intelligence can do to the vital values of democratic societies: to human rights and, in particular, to the enjoyment of the rights of freedom of expression, association, and privacy.

This danger is greater today because new threats require a trans-national and network-based response from the state that involves proactive and closer operational collaboration between the intelligence and security agencies, police, customs, immigration, border guard, export-import, financial and money laundering control authorities and other state bodies. Such an integrated multi-agency effort can only be successful with greatly enhanced interagency communication, collaboration and intelligence sharing. Operating as one enterprise, aligned around the same mission and working together to achieve the same goals while integrating their information and intelligence seamlessly, renders democratic control, supervision, oversight and accountability more difficult. Control, even by government, is made more difficult by the very nature of secret intelligence collection, where government becomes more dependent on the special knowledge of the experts. International cooperation is exacerbating the problem. Existing control mechanisms not only tend to be institutional, focussing on single agencies, but are nationally limited, as each state looks exclusively at its own agencies, and none looks at the international network of cooperation as a whole.

Moreover, intelligence is now used in more varied ways, for example for security screening, and in relation to decisions on entry into a country, to grant citizenship or to deport aliens. It is therefore essential that there be internal and external controls and certain limits to intelligence collection activities. Furthermore, individuals must be better protected against abusive or illegitimate use of the information collected about them. This is why there is a need for tighter democratic control, supervision, oversight and accountability, and also for a different kind of control.

Better solutions for these problems can be found: (1) by clear redefinition of accountability of all intelligence services and all agencies that conduct intelligence-led operations; (2) by tighter executive control and supervision; (3) by reinforcing checking mechanisms outside executive control with independent committees and by strengthening expert accountability; and (4) by improved complaints mechanisms.

## **Recommendations**

### *Intelligence-Led Operations are Essential*

Today, countering the pre-eminent threats from multiplying non-state actors requires not only security and intelligence services. The threats can only be effectively counteracted, disrupted, pre-empted and finally deterred and prevented when the operations of all the security sector organisations mandated to deal with them are intelligence-led.

### *Closer Collaboration, Interaction and Information Exchange are Required*

Intelligence-led operations require a radical new approach, involving more close collaboration, interaction and information exchange of all these organisations with agencies of the intelligence community. And they call for the establishment of an intelligence function that produces operational and tactical intelligence in all organisations where it is absent.

### *Intelligence-Led Operations Are More Effective and Efficient*

Foremost, these intelligence cells should do analysis of what is seen, heard and reported by the personnel of the own organisation, from open sources and from intelligence reports exchanged, so that they can accomplish their missions in smarter ways, with more agility, more effectively and efficiently, particularly by agencies that suffer from a lack of resources.

### *Good Intelligence Practices Can Save Resources*

The more holistic the intelligence collection approach, and the more accurate and timely the intelligence analysis and assessments on TOC and human trafficking activities and actors, the more this will allow for limited resources of all the organisations of the security sector to be effectively used to achieve the national security goals of countering TOC and human trafficking.

### *Both Crime Analysis and Criminal Intelligence are Essential*

ILP is synonymous with greater integration of criminal intelligence and crime analysis. Criminal intelligence provides information on prolific offenders and TOC groups while crime analysis provides the environmental crime context in



which they offend. Both are essential for a full understanding of the crime problems and prerequisites for effective crime reduction.<sup>72</sup>

#### *Intelligence Must Look at All Aspects of the Problem*

Intelligence collection, analysis and investigations must reflect the geographical, structural and commercial components that make up the crime of human trafficking, thus must cover the countries of origin, transit and destination as well as all the commercial human trafficking activities of advertising, renting and use of premises, transportation, communications and financial transactions, and so forth.<sup>73</sup>

#### *Strategic and Operational Intelligence Is Needed*

Strategic and operational or tactical intelligence is needed to effectively fight human trafficking. Strategic intelligence serves for an overall assessment of the various strategic factors that underpin the existence of human trafficking, while operational or tactical intelligence must enable specific intelligence-led operations that lead to arrests, further investigations, prosecution and seizure of profits.<sup>74</sup>

#### *Commercial Imperatives Are an Exploitable “Achilles Heel”*

As to investigations by law enforcement agencies, experience and best practice show that human trafficking is particularly vulnerable to proactive, intelligence-led operations. The commercial imperative to market the product creates an “Achilles Heel” for the traffickers, which law enforcement can fully exploit. If the victims can be located so can the human trafficking actors.<sup>75</sup>

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<sup>72</sup> Jerry H. Ratcliffe, “Intelligence-led Policing”; Austin, Texas Police Department, “Intelligence-Led Policing”; International Association of Law Enforcement Analysts, “Intelligence Led Policing”; National Centre for Policing Excellence, “Practice Advice Introduction to Intelligence-Led Policing.”

<sup>73</sup> Paul Holmes, et al., *Best Practice: Law Enforcement Manual for Fighting Against Trafficking of Human Beings*, 2-10; OSCE, *The OSCE Action Plan to Combat Trafficking in Human Beings*; UNODC, *Toolkit to Combat Trafficking in Persons*, 81-84; Yvon Dandurand, et al., *Human Trafficking: Reference Guide for Canadian Law Enforcement*, 31-34.

<sup>74</sup> Yvon Dandurand, et al., *Human Trafficking: Reference Guide for Canadian Law Enforcement*, 32-34; Rachel Boba, *Crime Analysis and Crime Mapping*, 111-164, 165-240.

<sup>75</sup> Paul Holmes, et al., *Best Practice: Law Enforcement Manual for Fighting Against Trafficking of Human Beings*, 4-1 Section 4, 4-9, 6-1, 6-3 Section 6; Yvon Dandurand, et al., *Human Trafficking: Reference Guide for Canadian Law Enforcement*, 63-68; UNODC, *Toolkit to Combat Trafficking in Persons*, 70-71.

### *Technological Innovation Is Key*

The objective of the proactive, intelligence-led option is to use the most effective and lawful investigative techniques in order to secure sufficient, sustainable evidence for arrests and prosecutions. The strategy to follow is to capitalise on the technological innovation that yields high-tech tools with unprecedented potential to help fight illicit trade and human trafficking.<sup>76</sup>

### *Investigators and Prosecutors Should Work More Closely*

Best practice for investigations is to bring the investigator and prosecutor closer together in the investigative process in consultation, planning and risk assessment meetings, so as to avoid the investigator pursuing evidence-gathering tactics that may be inadmissible or of no use to the prosecutor in the trial, and to acquaint the prosecutor with operational difficulties.<sup>77</sup> Such meetings of investigators and prosecutors serve to decide on the operational subject and intelligence profile, the operational objective, and on strategies and tactics to be used to deliver the objective. They also serve to make rigorous risk assessment in respect of victims and the operation, to establish a risk management plan, and for proper decision logging.<sup>78</sup>

### *Regulation of Intelligence Sharing and Exchange is Needed*

Intelligence sharing and exchange have to be clearly regulated nationally and internationally. Recording, retention, classification, evaluation and dissemination of all intelligence material must be in strict accordance with the relevant laws on data protection and confidentiality, and a system for “flagging” or labelling intelligence into categories should be established.<sup>79</sup>

### *Some Separation is Needed Between Intelligence and Law Enforcement*

Though there is convergence between law enforcement and intelligence since they have to collaborate ever more closely, some walls of separation should be maintained in order to prevent the infection of domestic law enforcement by

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<sup>76</sup> Paul Holmes, et al., *Best Practice: Law Enforcement Manual for Fighting Against Trafficking of Human Beings*, 2-1, 2-10 Section 2, 6-1, 6-3 Section 6.

<sup>77</sup> *Ibid.*, 6-1, 6 Section 6.; UNODC, *Toolkit to Combat Trafficking in Persons*, 77-81.

<sup>78</sup> Paul Holmes, et al., *Best Practice: Law Enforcement Manual for Fighting Against Trafficking of Human Beings*, 6-4, 6 Section 6.

<sup>79</sup> *Ibid.*, 4-9, 4-17 Section 4.

foreign intelligence methods, and foreign intelligence should not be asked routinely to help law enforcement bust criminals.

*Democratic Control and Oversight Should Not Be Sacrificed*

Increased intelligence collection capacities enhance the problems relating to democratic control, supervision, oversight and accountability. In order to minimise damage intelligence can cause to civil rights and liberties, accountability must be redefined, executive control and outside checking mechanisms must be reinforced, and complaints mechanisms must be improved.



## CHAPTER 7

# Human Trafficking & Migration Management

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*[S]uppose that several distinct societies maintain a kind of intercourse for mutual convenience and advantage, the boundaries of justice still grow larger, in proportion to the largeness of men's views, and the force of their mutual connexions.*

David Hume, *An Enquiry Concerning the Principles of Morals*

### Introduction

Human trafficking is, in its modern form, a phenomenon that is inextricably linked to, and shaped by, the dynamics of contemporary global migration, including the interests, capacities, and structures of nation states, international and non-governmental organisations, private companies and criminal groups.<sup>1</sup> Not to be forgotten are those most often regarded as the central players in this drama; the migrants who are the victims of the trafficking crime, and the movement of whom constitutes a direct challenge to the ethos of effective migration management.

Trafficking in persons is properly decried as a gross violation of human rights,<sup>2</sup> and yet the leading international legal instruments that define and address the

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<sup>1</sup> The views expressed herein are those of the authors writing in their personal capacities, and do not necessarily reflect the views of IOM. The authors would like to thank Paul Tacon, Mumtaz Lalani, Sarah Craggs, Lance Bonneau, Anh Nguyen, Rebecca Surtees, Khalid Koser and William Lorenz for their contribution to this chapter.

<sup>2</sup> UN High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. Addendum to the Report of the UN High Commissioner for Human Rights to ECOSOC. UN document E/2002/68/Add.1, May 20, 2002. Note that, by definition, a human rights violation is committed by a state against an individual. While most cases of human trafficking involve criminal acts committed by one individual against another, it is arguable that a state's failure to protect an individual victim of trafficking from a trafficker constitutes a human rights violation by omission. For more on this discussion, see Ryszard Piotrowicz, "The UNHCR's Guidelines on Human Trafficking," *International Journal of Refugee Law* 20, no.2 (2008): 246.

problem—the 2000 United Nations *Convention against Transnational Organized Crime*, and its supplementary *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*—have a clear criminal justice focus, while the human rights dimension is secondary. It is against the backdrop of this central paradox that this chapter argues for an effective counter-trafficking response to be rooted within a broader migration management approach; an approach which emphasises a coherent response to migration challenges at points of source, transit, and destination, but which also prioritises the human rights of all migrants as a means of ensuring better protection for trafficked persons.

This chapter begins by outlining the concept of migration management and by identifying the key actors and their roles in countering trafficking in persons. This is followed by a brief review of some current practices that ostensibly aim to prevent trafficking, protect victims, and prosecute traffickers; including an assessment of several inherently-flawed assumptions that have been made in its execution, their implications, and suggestions for their remedy. The chapter proceeds to situate both the crime of human trafficking, and some good counter-trafficking practices, within the broader migration management framework, before concluding with a summary of recent efforts to step away from unilateral regulatory schemes towards more cooperative management approaches.

## **1. What is Migration Management?**

The task of formulating a workable global approach to the management of international migration remains a formidable challenge, and one that will require a merger of diverse political interests and a dramatic increase in political will if it is to be realised. The word “management” has occasionally been criticised as a euphemism for “restriction” or “control”, as a word that fails to recognise adequately the legitimate human rights concerns of migrants. As used in this chapter, “migration management” carries no such implication; referring instead only to a multilateral and inclusive approach to migration policy that aims to provide a sustainable benefit to migrants as individuals, as well as to their sending and receiving communities.

Nation states have sovereign authority to regulate migration to and from their territories; a function most often exercised by ministries of home affairs, interior, labour, and foreign affairs, although other ministries may also have roles, particularly the judiciary in states where it is distinct from the executive branch. This sovereign authority is, however, balanced by international

obligations, including those to protect the rights and freedoms of individuals. The patchwork of international human rights instruments includes explicit migration-related rights, such as the right to leave one's own country and return to it, and the principle of *non-refoulement*,<sup>3</sup> as well as those which are less explicitly migration-related, such as the right to family unity, which stand as a small but significant counterweight to state authority to regulate migration.

Where previously the logistical difficulty and prohibitive cost of international travel had prevented large-scale trans-continental migration, modern transportation and communications infrastructures have largely negated these challenges. Today, a state's migration regime and border controls are the most significant determinants in regulating transnational migration flows. Given that migration is one of the key variables in determining the social and political fabric of a national community, many states regard the formulation and implementation of migration policy as central to the exercise of their sovereignty.

With the complexity of current global migration patterns, states face fundamental questions about who to allow across international borders, under what conditions, and how to reconcile decisions in this regard with international human rights obligations and international refugee law. Further challenges have been posed with the increase in mixed migration flows<sup>4</sup> in which it is difficult to distinguish migrants with real protection needs from those without them. The very notion of "forced" migration is increasingly open to debate as the traditional concept of a person fleeing persecution or conflict has now broadened, in the eyes of some, to cover, for example, escape from severe poverty or environmental degradation.<sup>5</sup>

Given the diversity of interests, capacities, and migration challenges of each state, the systems and structures that have evolved to regulate migration vary considerably between states. Some of these may be identified as good practices in their respective contexts, but there is likely to be no one system or structure that would ensure mutually beneficial outcomes for all. Nor are states the only actors to consider. International organisations also have roles to play. Two of

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<sup>3</sup> The term *non-refoulement* derives from the French word *refouler* which means to drive back or to repel. In the context of international refugee law, the term *non-refoulement* makes reference to the obligations of states to not return a person to a country where he or she is likely to face persecution, other ill treatment, or torture. See Guy Goodwin Gill and Jane McAdam, *The Refugee in International Law* (New York: Oxford University Press, 2007), 201.

<sup>4</sup> See Box 5 for more information on mixed migration flows.

<sup>5</sup> For a discussion on how states have tried to limit the concept of refugee see Goodwin Gill and MacAdam, *The Refugee in International Law*, 51.

the most established of these are IOM, which aims to support migration management efforts “for the benefit of both migrants and society”, and UNHCR, with its mandate to protect refugees. The private sector also has a stake in international migration, with recruitment agencies, employers of migrant labour, or financial companies which facilitate the transfer of remittances playing a particularly important role. NGOs too are involved, with many of these having played a critical role in advocating for the rights of migrants as well as in providing direct assistance to migrants in need.

Box 1 outlines some of the interests to be considered in the migration management process while Box 2 highlights some non-traditional stakeholders.

<b>Box 1: Interests of Different Actors in the Migration Process<sup>6</sup></b>		
<b>Countries of Origin</b>	<b>Countries of Destination</b>	<b>Migrants</b>
<ul style="list-style-type: none"> <li>○ Protection of migrant workers and support services</li> <li>○ Promotion of foreign employment</li> <li>○ Retention of skilled human resources</li> <li>○ Promotion of legal migration</li> <li>○ Leveraging of the benefits of migration</li> <li>○ Foreign policy and trade relations</li> <li>○ “Brain gain” and transfer of knowledge by being able to attract migrants back</li> </ul>	<ul style="list-style-type: none"> <li>○ Filling labour gaps</li> <li>○ Preventing irregular migration</li> <li>○ Protection of jobs and status of the national workforce</li> <li>○ National security/public order/public health concerns</li> <li>○ Refugee/human rights/protection obligations</li> <li>○ Easy readmission</li> <li>○ Foreign policy and trade relations</li> <li>○ Social integration of migrants</li> <li>○ Concerns over erosion of national/cultural identity</li> </ul>	<ul style="list-style-type: none"> <li>○ Access to labour markets on acceptable terms</li> <li>○ Retain links with family and friends in country of origin</li> <li>○ Access to social security and legal protection in countries of origin and destination, as required</li> <li>○ Family reunification</li> <li>○ Protection from persecution in country of origin</li> <li>○ Improvement in personal/family/community situation</li> </ul>

<sup>6</sup> Adapted from Nilim Baruah and Ryszard Cholewinski, *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination* (Geneva and Vienna: OSCE, ILO, IOM, 2006), 35-40; and Erica Usher ed., *Essentials of Migration Management* (Geneva: IOM, 2004), 15-17.



<ul style="list-style-type: none"> <li>○ Successful reintegration of returning migrants</li> <li>○ Remittances</li> </ul>		
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As migration patterns become increasingly complex and dynamic, and the diversity of stakeholders, capacities, and interests continues to grow, effective migration management poses an ever greater challenge to policy makers and implementers. The way in which these interests are balanced has a direct impact on counter trafficking.

**Box 2: Other Stakeholders**

**Private Sector**

In attempting to meet consumer demands for lower prices, multinational companies outsource production to suppliers based in countries where labour and other costs of production are lower, and where labour laws may be less demanding. Although private companies are occasionally oblivious to the abuse and exploitation of migrant labour that occurs along their supply chains, if they would take the initiative to adopt and scrupulously enforce fair and non-exploitive labour standards, and require their suppliers to do the same, they would close an important protection gap.

Moreover, given that organised criminal groups involved in human trafficking appear to target certain economic sectors, such as agriculture, food processing, construction, and care and hospitality to name a few, private companies doing business in these sectors have an opportunity and a responsibility to prevent the problem, and to protect those migrants who suffer exploitation. In some cases, private companies have partnered with international organisations to distribute information materials to migrants considered vulnerable to exploitation; others have helped rehabilitate trafficked persons by providing skills development and job opportunities, or support to income-generating projects. In 2005 ILO estimated that there were a minimum of 12.3 million people in illicit forced labour around the world, many of whom are migrants who have moved across international borders for better opportunities than are available at home. Private companies have the responsibility, self-interest, and, often, the leverage, to work towards the elimination of trafficking for forced and exploited labour.

**Religious Communities**

In some countries, religious organisations are among the most sophisticated social networks, and have the capacity to mobilise communities and deliver physical, psychological, and spiritual support to vulnerable people. In addition, many such groups are motivated by theological principles which encourage *inter alia* fair and hospitable treatment of those in need, including foreigners. Although many faith-based NGOs have been heavily involved in efforts to prevent trafficking and protect victims for a number of years, there is considerable scope for the world's major religious organisations and institutions to play a more dominant role in counter-trafficking.

particularly in source countries in the developing world where their influence is often greatest, and in rural areas where their capacity for social organisation often exceeds that of the state. In working to combat the stigmatisation of persons who have been trafficked for sexual exploitation, in particular, or in countering xenophobia, for example, religious leaders have occasionally played a pivotal role in shaping the views of the communities they serve. If religious organisations were to decide to take on the challenge of human trafficking more comprehensively, at an institutional level, and leverage their religious authority against this crime, the impact could be dramatic.

### **Migrant Networks**

In many instances, migrant networks can be a helpful ally in the fight against trafficking, either by helping to engage the general population in prevention efforts, or as a support and identification network for victims of trafficking. Well-established migrant networks, in particular, can help their host societies understand situations of abuse and exploitation which affect them and, where they are close knit, they may be uniquely well placed to help liberate victims from abusive environments. A person who has been trafficked, for example, may feel more comfortable seeking and receiving assistance from members of his/her national community who understand his or her language and cultural values. In some cases, however, migrant networks can facilitate trafficking in persons between their country of origin and the host country in which they reside. By facilitating this movement of irregular migrants, migrant communities are also frustrating law enforcement efforts.

Private companies, religious organisations, and migrant networks or communities all have a potential to play an important, positive role in preventing trafficking in persons, protecting victims, and assisting with the investigation and prosecution of traffickers. To play this role, however, they must be engaged.<sup>7</sup>

## **2. Legal Constraints on State Action in Migration Management**

An essential part of the migration management concept is that states, as sovereign entities, have the inherent right to control their borders and decide who can enter their territory. States also exercise their sovereignty by ratifying international instruments (see Box 3) and assume international obligations by doing so. One general obligation that states have assumed by ratification of *inter alia* the *International Covenant on Civil and Political Rights* (ICCPR), the *International Convention for the Elimination of All Forms of Racial Discrimination*, and the *Convention on the Elimination of All Forms of Discrimination against Women*, is that of non-discrimination between citizens and non-citizens in upholding basic human rights. In the migration context, this creates a situation of “dual commitments”, in which a state must balance its sovereign right to control its border and territory while ensuring the basic rights

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<sup>7</sup> ILO, *A Global Alliance Against Forced Labour* (Geneva: ILO, 2005), 10.

of all people, including irregular migrants, found on its territory.<sup>8</sup> Moreover, Jorge Bustamante, Special Rapporteur on the human rights of migrants, indicates that while states have the authority to determine the admission, condition of stay and removal of non-nationals “this power ... has to be exercised in full respect for the fundamental human rights and freedoms of non-nationals.”<sup>9</sup>

In theory, states are obliged to prioritise the basic human rights of migrants in their migration management structures, but international law does provide for exceptions in some cases where national security is at issue. In practice, however, governments often interpret the national security exception very broadly, and may fail to realise their human rights obligations when responding to migration challenges. In addition, despite the national emergency exception that allows states to derogate from their obligation not to discriminate between national and non-national,<sup>10</sup> certain basic rights are considered non-derogable, even in situations of national emergency. Non-derogable rights include the right to life, for example, and the right not to be tortured.

**Box 3: Some Key International and Regional Legal Instruments Related to International Migration and Trafficking in Persons**

**International**

*1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights (ICCPR)*

The Universal Declaration of Human Rights states that every person has the right to freedom of movement within the borders of each state, that everyone has the right to leave any country, including his own and that everyone has the right to seek asylum. Moreover, articles 3, 4 and 5 of the Declaration make reference to the right to life, liberty and security of person; the right to be free from slavery or servitude; and the right to not be subjected to torture or cruel, inhuman or degrading treatment. Although the Declaration was not originally binding, its content has become customary international law and can therefore be considered binding on states. The ICCPR mentions that individuals lawfully residing in a state have the right to liberty of movement. The ICCPR also makes reference to an individual’s right to leave any country, including his own and that no one should be arbitrarily deprived of the right to enter his own country (Article 12). Not only is the ICCPR binding on states that ratify it but, if a state also ratifies the first Optional

<sup>8</sup> Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge: Cambridge University Press, 2004).

<sup>9</sup> Jorge Bustamante, *Report to the Human Rights Council on the Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*. UN document A/HRC/4/24, March 20, 2007.

<sup>10</sup> In the case of the ICCPR, derogation is permitted in “time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.”

Protocol to the ICCPR, individuals may also take complaints to the Human Rights Committee after all national remedies have been exhausted.

*1951 Geneva Convention Relating to the Status of Refugees*

This Convention and its 1967 Protocol define who is a refugee and sets forth the obligation to protect those who cannot avail themselves of the protection of their own state. One of the cornerstones of the Convention is Article 33 which places a duty on states to not return a person to a country where his or her life is in danger. This principle, also known as *non-refoulement*, has become part of customary international law, obliging all states, even those which are not party to the Convention, to comply. The Convention can also provide refugee protection to victims of trafficking, provided they satisfy all the elements set forth in the refugee definition enumerated in article 1A(2).

*2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (UN Trafficking Protocol)*

As a supplement to the Convention Against Transnational Organized Crime, this Protocol has been the framework for most counter-trafficking interventions since it was opened for signature in 2000. In force since December 25, 2003, the Protocol offers a clear, internationally-accepted, definition, and has generally facilitated a helpful convergence of national definitions. The purpose of the Protocol is to prevent and combat trafficking in persons while aiming to protect and assist the victim of such trafficking. Although it does offer suggestions for states to consider in protecting victims of trafficking, it is generally considered a criminal justice instrument because its mandatory provisions focus *inter alia* on criminalisation of trafficking in persons, improving cooperation between law enforcement actors, and strengthening border control.

*1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW)*

The ICRMW is the first comprehensive international treaty which focuses on the human rights of migrant workers in the country of destination. Unique to this Convention is the fact that it explicitly recognises the rights of irregular migrants. Although the ICRMW includes many of the same principles enshrined in the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR), it contextually frames these principles to apply to migrant workers and their families. Even though the convention entered into force in 1990, to this day, the ICRMW has only been ratified by thirty-nine states, none of which are considered major destination countries. The most-often cited reason for low ratification is that countries of immigration are concerned that ratification of this Convention would infringe on their sovereign right to decide who can enter their territories.

*International Labour Organization (ILO) Conventions*

There are a series of ILO Conventions and Declarations which relate to the rights of migrants. Among them is the Migration for Employment Convention of 1949 which in certain enumerated domains states that migrant workers should receive equal treatment with nationals. The Migrant Workers Convention of 1975 establishes the obligation of States to respect the fundamental human rights of all migrant workers as well as the equality of treatment principle in areas such as social security, wages and housing. Two ILO Conventions are particularly relevant to counter-

trafficking work: the Convention concerning Forced or Compulsory Labour of 1930 and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999.

### **Regional**

#### *2005 Council of Europe Convention on Action against Trafficking in Human Beings*

On a regional level, several instruments have an important role in shaping counter-trafficking policies. The Council of Europe Convention on Action against Trafficking in Human Beings, which came into force in 2008, for example, is a comprehensive treaty focusing mainly on the protection of victims of trafficking and the safeguarding of their rights. It also aims to prevent trafficking and to prosecute traffickers. In particular, Chapter II, Article 5 of the Convention promotes a multidisciplinary coordination approach by requiring that “each Party shall take measures to establish or strengthen national coordination between the various bodies responsible for preventing and combating trafficking in human beings.” Article 6 places an obligation on parties to adopt and reinforce measures for discouraging demand in regards to sexual exploitation, forced labour, slavery or practices similar to slavery. Articles 7 and 8, respectively modelled on article 11 and 12 of the UN Trafficking Protocol, cover a range of measures for the prevention and border detection of transnational trafficking in human beings, as well as measures of security and control of documents.

#### *2004 Arab Charter on Human Rights*

Few international human rights instruments explicitly refer to human trafficking and condemn it as a violation of human rights. Article 10(a) of the Arab Charter, however, states that slavery and trafficking in human beings are not only prohibited but also punishable by law while article 10(b) prohibits the exploitation of persons including that of children in armed conflict.

### **3. The “3 Ps”**

The Trafficking Protocol makes clear that states tend to approach the problem of trafficking primarily from a criminal justice perspective, rather than with a human rights approach. Not only is the Protocol a supplement to the Convention against Transnational Organized Crime, it also defines the problem in criminal terms in Article 3, and makes mandatory those sections which refer to its organised crime dimension. One alternative would have been to frame the problem in human rights language by defining trafficking from the perspective of the victim, and requiring that parties to the Protocol implement the protections outlined in article 6, rather than leaving these as optional. Whether reflecting a shared mood among states that has mitigated against creating yet another international protection regime, or as a consequence of the Protocol, states have largely adopted an approach to preventing trafficking in persons, protecting victims, and prosecuting perpetrators—commonly known as the “3 Ps”—that is interpreted through a criminal justice lens.

Since the Protocol entered into force in 2003, there has been little evidence to suggest that trafficking in persons is in decline as a criminal phenomenon. Indeed, some stakeholders argue that the problem is growing, affecting an increasing number of people, and earning an ever greater profit for its perpetrators.<sup>11</sup> Because research, either on the number of people trafficked, or on the profits earned from trafficking, is more speculation than fact, the true impact of the overall response is probably unquantifiable. There are nonetheless inherent flaws, rooted primarily in the criminal justice approach, in many of the interventions that have been devised that would indicate that little progress has been made to prevent trafficking, protect its victims, and prosecute its perpetrators. The solution lies in a broader appreciation of migration dynamics and the additional tools available through a migration management approach.

### **3.1 Prevention and “Root Causes”**

The prevention of trafficking in persons is one of the stated purposes of the Protocol, and is properly prioritised in most of the regional and national laws and action plans that have been influenced by it. From both the criminal justice and human rights perspectives, it would seem self-evident that the prevention of the crime should be preferred to more reactive responses, which involve, most narrowly, the commitment of state resources to the investigation and prosecution of the perpetrator(s), as well as to the care and compensation of the oft-traumatised victim. With the recurrent difficulty of gathering reliable data on the incidence of human trafficking at global, regional, national or local levels, and evaluations of prevention efforts few and far between, it is difficult to assess with any confidence to what extent, if at all, these efforts are succeeding. Several logical deficiencies inherent in the broad approach to prevention, when coupled with empirical observation, suggest that they have not noticeably reduced trafficking in persons, nor can any specific current practices be identified confidently as successful in preventing trafficking to the extent that they would be replicable on a large scale.

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<sup>11</sup> For example, the Council of Europe cites in its Explanatory Report to the Council of Europe Convention on Action Against Trafficking in Human Beings that “all indicators point to an increase in victim numbers.” See Council of Europe, “Introduction,” in *Explanatory Report on the Council of Europe Convention on Action Against Trafficking in Human Beings*, <http://conventions.coe.int/Treaty/EN/Reports/Html/197.htm> (accessed December 12, 2008).

## “Source Control”

The contemporary approach to prevention finds expression in article 9(4) of the Trafficking Protocol, which encourages multilateral cooperation to “alleviate factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.” Article 9(5) further suggests that states party “adopt ... measures ... that ... discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.” In short, these sub-articles define the approach essentially as one that targets both material poverty and poverty of opportunity, as well as demand; what are widely considered the “root causes” of trafficking.<sup>12</sup>

What then, the response? By accident or design, much of the anti-trafficking prevention work that has been done to date reflects the source control strategy devised to combat the drug trade,<sup>13</sup> but emphasising tactics calibrated for a trade in which human beings are the principle commodity. Article 9(2) of the Protocol describes these tactics: “measures such as research, information and mass media campaigns and social and economic initiatives.” Perhaps most prevalent have been the widespread information and mass media campaigns, which are predicated on the assumption that a certain demographic segment of the general population (young women, for example) lack the knowledge required to interrogate and deflect the finely-honed sales pitch of the trafficker. As a result, these campaigns target communities or population groups in source countries, in hopes of raising the awareness before the trafficker has made the offer.

But developing the appropriate messages for these campaigns has proven challenging. As Rutvica Andrijasevic observes, “what might appear as a straightforward strategy of empowerment becomes a quite controversial and even a badly-chosen practice.”<sup>14</sup> With some exceptions, these campaigns have often employed messages that could be termed “anti-migration”, as much as they could be termed “anti-trafficking”; seemingly aiming to convince aspirant female migrants of the certainty that sexual exploitation and abuse lie at the end of the migration road. Indeed, some have argued that the net effect of the

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<sup>12</sup> Sector Project Against Trafficking in Women, “Approaches to Prevention,” in *Challenging Trafficking in Persons: Theoretical Debate and Practical Approaches*, ed. Deutsche Gesellschaft für Technische Zusammenarbeit (Eschborn: GTZ, 2005), 76.

<sup>13</sup> Moisés Naim, *Illicit: How Smugglers, Traffickers and Copycats are Hijacking the Global Economy* (New York: Anchor, 2006).

<sup>14</sup> Rutvica Andrijasevic, “Beautiful Dead Bodies: Gender, Migration and Representation in Anti-Trafficking Campaigns,” *Feminist Review* 86, no.1 (2007): 41.

theory behind these sorts of campaigns has been to decrease viable migration options for women in particular by encouraging states to increase measures to control and deter the movement of young female migrants across international borders in the name of human trafficking prevention.<sup>15</sup> Although there appears to be an increase in the prevalence of more positive messages, often promoting “safe” or “informed” migration or providing aspirant migrants with a range of information on possible migration opportunities and procedures, most such campaigns are funded by governments of countries of destination, and remain wedded to the source control approach.

#### “Root Causes?”

Implicit in the notion of prevention is that its primary objective is to address the root cause(s) as the *sine qua non* of the problem. This makes the proper identification of those root causes of critical importance to the development of prevention strategies. Encouraging states party to cooperate to “alleviate factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity” has contributed to the popular and prevalent belief that poverty, whether material poverty or poverty of opportunity, constitute the principle root cause of trafficking in persons. But logic and empirical observation provide good reasons to question this.

First, while traffickers typically exploit the aspirations of their victims during recruitment, aspirations that are often the result of their relative poverty,<sup>16</sup> to attribute poverty as a root cause of trafficking risks conflating and confusing the root cause(s) of trafficking with broader motivations for migration. And why, then, single out poverty when migration is generally the consequence of pull factors, as well as push factors? If, for example, poverty is a root cause of trafficking, then why not wealth? Wealth is, after all, a key pull factor for most migration, just as ‘poverty’ is a key push factor. Neither emphasis is enlightening. Emphasising wealth would shift the onus for prevention to the developed countries of destination, as the emphasis on poverty shifts the onus to developing countries.

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<sup>15</sup> Mike Dottridge, ed., *Collateral Damage* (Bangkok: Global Alliance Against Trafficking in Women/Amarin, 2007), 13-14.

<sup>16</sup> According to this theory, an individual makes judgments about his or her welfare that are based not only on his or her absolute level of material possessions (such as income) but perhaps more importantly on the relative level of welfare in reference to others in the community. See Oded Stark and J. Edward Taylor, “Relative Deprivation and International Migration,” *Demography* 23, no.1 (1989): 2-3.



Second, identifying poverty as a root cause of trafficking provides little guidance on the specific problem of preventing trafficking in persons. If poverty is a root cause of trafficking, then prevention efforts and resources should rightly concentrate on the pre-trafficked person at home, where poverty “caused” the person to be recruited into the trafficking process. This would make prevention of human trafficking essentially a footnote to the broader, long-term, development agenda and perhaps mitigate against specific interventions attempting to prevent it.

There is no discounting the role that poverty, or even more accurately, disparity, plays in creating conditions for traffickers to exploit. But poverty is perhaps better regarded as a condition that reinforces the disparity which encourages the desire to migrate; thereby aiding the trafficker in selecting the victim and increasing the effectiveness of the recruitment tactics employed. There are, however, at least two features of trafficking in persons that may be more properly regarded as root causes, and which suggest helpful ways forward. The first is implied, but not explicitly identified, in article 3 of the Protocol: “trafficking in persons shall mean the recruitment ... by means of the threat or use of force ... for the purpose of exploitation.” With its purpose of exploitation, which is perpetrated most commonly for financial gain or another material benefit, it is logical to identify the trafficker’s motivating influence—profit—as a root cause. Indeed, it is difficult to imagine a scenario in which trafficking were to occur in the absence of the trafficker’s motivation for profit. Desire for profit, therefore, would seem a likely root cause of trafficking in persons.

A second feature which may be regarded appropriately as a root cause is identified in article 9(5) of the Protocol; namely the “demand that fosters all forms of exploitation.” Whether the end user demands low-cost tomatoes, for example, cut-rate running shoes, or cheap, exotic or unusual sex, a criminal network will supply the required labour or services. Again, it is difficult to imagine a scenario in which traffickers would perpetrate the crime of trafficking in the absence of demand. Taken together, the demand for unreasonably cheap products, labour or services and the profit motive of the organised criminal group seem more likely root cause(s) of trafficking in persons than either poverty or disparity.

The identification of the profit motive of criminal groups and the demand for unreasonably cheap products and services also provides a logical and helpful conclusion; essentially, that those who benefit from trafficking in persons—traffickers, and the consumers of trafficked labour, services, and the products

of trafficked labour or services—bear the responsibility for trafficking in persons.

There can be little doubt about the contribution to the vulnerability of an aspirant migrant engendered by conditions such as material poverty, poverty of opportunity, or political, economic and social disparities, and these should be addressed as part of long-term development strategies. But there is also little doubt that a disproportionate volume of time, effort, and material resources have been spent trying to address these “root causes”, as means to prevent trafficking in persons in the short-term, often at the expense of features more likely to lie at the heart of the trafficking problem. The source control approach appears to have misdirected prevention efforts, and have encouraged a distortion of anti-trafficking messages that have arguably done more harm than good.<sup>17</sup>

While there is no evidence that the strategy of source control has or will succeed, it is possible that the tactics of information and education and mass media may retain considerable value if appropriately directed at the true root causes of the problem in countries (or at points of) destination. To date, campaigns aiming to reduce the profits of traffickers by curtailing the demand of their clients have been few, and have been small scale. And yet if one were to look at other examples of information campaigns that have focused on consumers (e.g., anti-fur, anti-smoking, energy conservation, recycling, etc.) to suppress demand, many appear to have proved their worth, particularly when buttressed with supporting measures such as strict implementation of specific legislation and policies.<sup>18</sup> Indeed, studies increasingly show that consumers, and those in destination countries in particular, want their choices to match their human values, and are willing to make changes to their habits of consumption if presented with the right information that helps them do so. They are even willing to change their habits of consumption to better reflect their values if this requires paying more for a particular product or service.<sup>19</sup> Those who wish to engage in responsible consumerism become fertile ground for anti-trafficking messages, and if this significant percentage of consumers

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<sup>17</sup> Ruth Rosenberg, *Best Practices for Programming to Prevent Trafficking in Human Beings in Europe and Eurasia Report* (Maryland: Development Alternatives Inc. for USAID, 2004), 14; Mike Dottridge, *Action to Prevent Child Trafficking in South Eastern Europe: A Preliminary Assessment* (Geneva: UNICEF and Terre des Hommes, 2006), 51.

<sup>18</sup> In Greece, a campaign to dissuade people from donating money to child beggars was reported to have had some success. See Dottridge, *Action to Prevent Child Trafficking*, 45.

<sup>19</sup> See, for example, Michael Rock, “Public Disclosure of the Sweatshop Practices of American Multinational Garment/Shoe Makers/Retails: Impacts on their Stock Prices,” *Competition & Change* 71, no.1 (2003): 24.

could be mobilised to make behavioural changes to habits of consumption that provide traffickers with their profits, perhaps trafficking prevention efforts might noticeably begin to prevent trafficking.

#### “Contributing Factors”

While it is clear that human trafficking prevention efforts should focus on the primary root causes, which are generally more easily identified in countries of destination, migration management initiatives in countries of origin can also have a secondary impact on factors which exacerbate the vulnerabilities of certain population groups to targeting and recruitment by traffickers. Most obvious among these are migration information centres, which provide aspirant migrants with objective and reliable information about migration opportunities and immigration/emigration procedures, and can help to confirm the credibility of job offers abroad. The aim of migration information centres is to support aspirant migrants with an alternative source of migration information to that which may be provided by smugglers and traffickers, thereby helping them to make the best migration decisions possible. However, such centres also have their limitations, and are often less helpful than they could be because of rigid immigration regimes in many countries which do not correspond to the job-rich realities of their labour markets. For lower skilled migrants, in particular, migration information centres may confirm a near absence of migration opportunities. After being informed of the lack of regular migration options, many low-skilled migrants will then seek out migrant smugglers or other agents who intend to exploit them abroad. Such centres may also have the unintended effect of encouraging the skilled and highly skilled to migrate, thereby depriving countries of origin of their desperately-needed expertise.

Therefore, for migration information centres to be more effective, they must balance the needs and interests of countries of destination and origin, as well as the needs and interests of migrants.

### *3.2 Protection and the Importance of Identification*

Trafficking in persons is part of a much larger narrative, a narrative we read almost daily in the arrivals of people at Lampedusa, the Canary Islands, Beitbridge, the Rio Grande, or on the Yemeni coast; all of whom hope to make even a meagre living away from home. Despite the well-publicised risks of mishap along the way, and the deaths of thousands, the boats and

trucks keep coming. How many of these individuals are being smuggled? How many of them are being trafficked? These are questions we are often asked, but for which there is no easy answer.<sup>20</sup>

The UN Trafficking Protocol has three primary objectives, one of which is the protection and assistance of victims of trafficking. However, this instrument makes protection suggestions, rather than identifying protection requirements. Article 6, for example, indicates what states “should endeavour to provide” (physical safety) and “should consider” (appropriate housing; counselling; medical, psychological, and material assistance; employment, educational and training opportunities), “in appropriate cases” (privacy and confidentiality), although Article 14 ensures that none of the Protocol’s stipulated criminal justice requirements can be used to undermine the human rights obligations found in other international legal instruments.

Many of the Protocol’s protection-oriented recommendations are now established in a number of the world’s major destination countries, but fewer victims than expected are accessing them. Between fiscal years 2001 and 2007, for example, the United States issued 1,974 persons with T-visas, which allow the recipient to remain in the United States and eventually apply for residency, despite the availability of 1000 new T-visas per year.<sup>21</sup> Certainly, when one considers the enormous annual estimates of people trafficked, ranging from 600,000 to 4 million persons,<sup>22</sup> and the comparatively few victims that have been identified for protection purposes,<sup>23</sup> one begins to suspect the methodologies employed both in determining the estimates and in delivering protection.

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<sup>20</sup> IOM Deputy Director General Mme Ndioro Ndiaye, Statement on Protection at the UN Thematic Debate on Trafficking, June 3, 2008.

<sup>21</sup> US Department of Justice, *Attorney General’s Annual Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2007* (Washington D.C.: DOJ, 2007), [http://www.usdoj.gov/olp/human\\_trafficking.htm](http://www.usdoj.gov/olp/human_trafficking.htm) (accessed March 29, 2009).

<sup>22</sup> Francis T. Miko, *Trafficking in Persons: The US and International Response. CRS Report to Congress*, [www.usembassy.it/pdf/other/RL30545.pdf](http://www.usembassy.it/pdf/other/RL30545.pdf) (accessed March 20, 2009). The ILO quotes that 2.4 million people are being trafficked at any given time while 12.3 million people are in forced labour, bonded labour, forced child labour and sexual servitude. See ILO, *Action Against Trafficking in Human Beings* (Geneva: ILO, 2008), 1; ILO, *A Global Alliance Against Forced Labour*, 10.

<sup>23</sup> Between 1996/97 and 2009, IOM, for example, has identified and assisted approximately 20,000 victims of trafficking, more than any other single intergovernmental, governmental, or non-governmental institution.

**Box 4: Role of Border Guards and Diplomatic Corps in Victim Identification and Protection: The Case of Ukraine**

**Border Guards**

Ukraine is a country of origin, transit and destination for trafficking in men, women and children. Over the past several years, the State Border Guards Service (SBGS) has been increasingly involved in combating trafficking in persons. By terminating trafficking channels and detaining traffickers, the agency hopes to prevent further cases of trafficking. In terms of identification, the SBGS tries to identify, not only actual victims of trafficking, but also potential victims. According to the US Department of State 2007 *Trafficking in Persons Report*, in 2006 SBGS closed nine channels of trafficking, prevented forty-three persons from being trafficked, and detained twenty-nine suspects.

Collaboration with NGO partners is an important component of the agency's counter-trafficking efforts. The partnership between SBGS and the Faith, Hope, Love NGO in Odessa Oblast (province) resulted in the timely identification and referral of over 700 victims of trafficking in Ukraine and other CIS countries. At the border crossing with Poland and Belarus, SBGS has joined forces with the NGO Volyn Perspectives in establishing a working model for identification of trafficked persons. Between June 2007 and June 2008, 548 Ukrainian citizens who had been deported from their host countries were interviewed by Volyn Perspectives staff at border checkpoints. As a result of these interviews, ninety-six trafficked persons (twenty-eight men and sixty-eight women) were identified among the deported.

**Embassy/Consular Officials**

Consulates and embassies are also prime locations from which to initiate counter-trafficking efforts. Consulates in Kiev are provided with an anti-trafficking hotline number, information material on human trafficking, and on safe foreign travel. This material, which is available to all visa applicants, aims to prevent trafficking by informing people of certain dangers which can be associated with international travel. IOM recognises the important role consular staff can have in trafficking prevention; therefore, the Organization's offices in Kiev continually provide training to the diplomatic corps on how to identify victims during the visa application process. Diplomatic staff in Ukraine are also involved in victim referral. The embassy of Uzbekistan in Kiev, for example, referred citizens of their country who had been exploited in Ukraine to IOM offices.

Ukrainian consular and embassy officials abroad also play an active role in victim identification and protection. In Turkey and the UAE, consular officials met with Ukrainian citizens detained in local jails and migrant detention centres in order to determine whether any trafficked persons were being apprehended.

**Whom to Identify?**

The first big challenge for protection agencies arises when trying to distinguish trafficked persons from the larger pool of mixed migration flows, particularly while they are still in transit (see also the chapter of Benjamin S. Buckland in this book). Are the people washing ashore in Malta or Lampedusa victims of trafficking, smuggled migrants, or prospective labour migrants who are

travelling without documentation? The answer is of critical importance in countries of destination or transit in which to be positively identified as a victim of trafficking opens the door to a raft of protection opportunities, while failing to be identified is likely to result in detention and/or deportation. In many cases, the answer comes too late for the migrant who must survive an uncertain and hazardous journey and exploitation before being lucky enough to encounter an official who has the knowledge and authority to make a positive determination, and the good will to do so.

The second main protection challenge is implicit in the trafficking process; namely, that many victims fear their traffickers, often long after they have escaped their immediate control and, consequently, remain reluctant to seek protection through official channels for fear of retaliation. Although some governments have expressed concern that the creation of a reflection period would open the floodgates to fraudulent claims, no state that has created a reflection period has yet experienced this.<sup>24</sup> Unlike the asylum process available to refugees, which is thought to have seen considerable abuse, many victims of trafficking that are entitled to seek protection seem to prefer the security of anonymity, especially when an organised criminal group has been noticeably involved in the trafficking process. Additionally, there are multiple reasons why migrants may exercise caution when sharing their experiences. Some of the more common reasons include a trafficking experience which has been too traumatic to share,<sup>25</sup> cultural taboos, fear of being stigmatised,<sup>26</sup> fear of the consequences of being implicated as accessories to criminal activity, and

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<sup>24</sup> A “reflection period” in this context means a period of temporary residence which is granted to allow a victim of trafficking to recover from the trauma of his or her experience.

<sup>25</sup> The mental health effects of trafficking are well documented. A 2006 report on the health consequences of women and adolescents trafficked in Europe, for example, suggests that “70% of the women reported ten or more mental health symptoms associated with depression, anxiety and hostility within the first 14 days. After 28 days, 52% still suffered ten or more concurrent mental health symptoms, and not until after 90 or more days did this symptom level seem to subside.” Cathy Zimmerman and others, *Stolen Smiles: A Summary Report on the Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe* (London: The London School of Hygiene & Tropical Medicine, 2006), 12.

<sup>26</sup> In a 2007 study of why victims decline assistance, Anette Brunovskis and Rebecca Surtees found that “while many respondents felt that stigma was associated with having worked (albeit forcibly) in prostitution, stigma seems also to be linked with other ‘characteristics’, like failed migration and failure to return home with money” Anette Brunovskis and Rebecca Surtees, *Leaving the Past Behind? When Victims of Trafficking Decline Assistance* (Oslo: Fafo, Nexus Institute, 2007), 123.

fear of traffickers.<sup>27</sup> In some cases, trafficked persons may tailor their stories in order to receive assistance; in others, they may choose to say nothing at all.

The third main protection challenge has been the significant variance among protection organisations, including government agencies, in deciding who is a victim of trafficking. While many agencies offering protection acknowledge the Protocol definition, most of these have also dispensed with the elements of the Protocol's Article 4, requiring both transnationality and the involvement of an organised criminal group, either as a result of broader definitions available under national legislation, or as a matter of practice. Furthermore, there is a wide diversity of views among anti-trafficking practitioners, even among those working with the same organisation, in responding to questions critical to making a positive identification:

- Is movement an essential component of the trafficking process? If so, how far does someone need to have been moved? If not, how does one distinguish between a trafficked person and anyone who has been exploited?
- Is the test for exploitation an objective or subjective test? Is it relevant that this migrant has understood, agreed, and wants to work for five dollars a day picking tomatoes—because it is four dollars more than she would earn at home for the same work? Is it relevant to our determination that the minimum wage for this work in the country in which she's working is five dollars an hour? Is it exploitative to work for five dollars a day in one country, but not in another?
- What degree of difference must exist between the nature and conditions of the work that was promised and the nature and conditions of the work that was performed? Is it relevant, for example, that he was promised \$400 a month, and only earned \$300, or was promised a bed but sleeps on the floor? Where does one draw the line?

Although a number of international institutions, including IOM, ILO, and the European Commission, have been, and continue to be, involved in efforts to develop common standards of identification that would resolve some, or many, of these issues, the fact that most victims of trafficking that receive protection

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<sup>27</sup> For a more detailed discussion on how fear can be a factor in the reaction of victims during the identification process see Rebecca Surtees, *Listening to Victims: Experiences of Identification, Return and Assistance in South-Eastern Europe* (Vienna: ICMPD, 2007), 57-61.

are identified by a plethora of national-level, advocacy-oriented NGOs and civil society groups suggests that the implementation of a common standard of identification will remain a challenge for the foreseeable future.

A final challenge is the general lack of understanding of trafficking and its indicators among host communities in countries of destination. Given that much police work relies on the information, tips and complaints of local residents, identifying victims of trafficking becomes more challenging when the general public is unaware, when local police conflate trafficking with prostitution or migrant smuggling, or where xenophobic attitudes are prevalent and widespread, including where migrants are viewed first as perpetrators of crime, regardless of their actual involvement.

All of these factors contribute to the broad challenge of identifying victims of trafficking, which is the critical first step towards ensuring the protection of trafficked persons. However, it should not be forgotten that national protection regimes for victims of trafficking are often the only available window through which vulnerable and exploited migrants can benefit from protection measures. In the absence of a broader protection regime for all exploited migrants, and those considered particularly vulnerable to exploitation, many service providers will seek to use protections available to trafficked persons, and so trigger what is essentially a criminal justice response, to aid a much broader category of beneficiaries.

**Box 5**

**Mixed Migration Task Force Somalia**

Migration from the horn of Africa to the Gulf, and to Yemen in particular, has increased dramatically in recent years. While some migrants leave to seek better employment opportunities abroad, others flee chronic instability, and indeed persecution at home. These different push factors have led to “mixed migration flows” in which economic migrants and asylum-seekers make use of the same smugglers, the same means of transportation, and the same routes, to reach their final destination.

Service providers throughout this migration circuit have been faced with the difficult task of trying to provide assistance to groups of migrants with very diverse needs. Moreover, the fact that protection is usually rendered only when a person meets specific requirements, and can therefore be placed in certain administrative categories, has made migrants more vulnerable to human rights abuses.

The resulting protection gap led, in 2007, to the creation of the “Mixed Migration Task Force Somalia.” Under the auspices of the United Nations Inter Agency Standing Committee (IASC), the Task Force was created with the purpose of providing a rights-based strategy to the protection and humanitarian needs of migrants and asylum seekers transiting through Somalia.



Its co-chairs, IOM and UNHCR, together with the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the Office of the High Commissioner for Human Rights (OHCHR), the Danish Refugee Council, and the Norwegian Refugee Council, aim to provide a regional and cohesive strategy for a pro-active response.

**UN Inter-Agency Project on Human Trafficking (UNIAP): Forging interagency cooperation in combating trafficking in persons**

Counter-trafficking efforts are usually characterised by a multitude of agencies working alongside one another, often in an uncoordinated manner, to implement programs in line with their respective area of expertise. The prevailing notion is that there is so much to be done that a general "strength in numbers" approach is the most beneficial. However, not all agencies share the same perspectives on the issue, nor coordinate effectively when implementing similar activities leading to project overlap, lack of standardisation and, at worst, division of purpose.

Having recognised the negative effects loose coordination can have on counter-trafficking activities, agencies working in the Greater Mekong Sub-region (Cambodia, PR China, Lao PDR, Myanmar, Thailand and Vietnam) coalesced around the UN Inter-Agency Project on Human Trafficking (UNIAP) in 2000 to strengthen coordination efforts and build upon the respective strengths of well-established UN, IO and NGO anti-trafficking programmes in the region.

In its first phase the project worked to create new partnerships and launched several pilot programmes. In its second phase UNIAP facilitated negotiations between the six governments of the region leading to the creation in 2004 of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT). This initiative is underpinned by a sub-regional plan of action which provides a framework for coordination. Moreover, the plan of action is a benchmark document which guides anti-trafficking interventions in several key areas including: identification of victims and apprehension of perpetrators, legal frameworks and mutual legal assistance, and safe and timely repatriation. UNIAP, serving as secretariat, is guided by a project management board composed of the UNDP Resident Coordinator, ILO, IOM, UNICEF, UNODC and, on a rotational basis, members from other UN agencies, donor representatives, and a government representative.

UNIAP has positively contributed to promoting broad cooperation and coordination among the range of anti-trafficking stakeholders, but the project itself is not an implementing entity; rather it is a facilitator of coordination and consistency in approach. Challenges remain and true impact will only be achieved if donors and host governments similarly coordinate their inputs toward building the momentum that is necessary to have a sustained impact on the issue.

### How to Protect?

In addition to the challenges of identification, there are unresolved questions about how best to protect victims. One of the first protection-related questions typically asked by states is whether victims of trafficking, once identified, have particular obligations to assist with the investigation and prosecution of their traffickers, and whether offers of protection should be linked to such obligations. Contrary to state practice, the rights-based approach answers with

an unqualified “no.” It is often argued that a more effective tactic is to offer unconditional protection to victims of trafficking on the assumption that this will encourage more victims to come forward to receive protection and, upon doing so, that these may then wish to cooperate with law enforcement agencies, when a requirement to do so may have inhibited them from seeking protection in the first place.

A second question that has been asked by practitioners is whether all victims of trafficking require the same protection standards and direct assistance packages. Protection standards and direct assistance packages for victims of trafficking have, in large part, been developed with a particular profile in mind—a young woman, usually from Eastern Europe or Southeast Asia, who has been trafficked into sexual exploitation and prostitution. Indeed, the Protocol, with its express consideration of “especially women and children” has contributed to this focus. Increasingly, however, as organisations discover the diversity of purposes for which people are being trafficked, questions arise about the applicability of expensive components of the standard assistance package, such as safe houses, psychosocial counselling, etc. to all cases. Advocacy-oriented protection agencies often promote the principle that the highest standard of care should be available to all persons identified as victims, but states, which must bear the political and financial costs of such protection regimes, wonder whether a male victim trafficked into a situation in which his earnings are 20–50 per cent less than he was promised upon recruitment, really requires, for example, temporary residence through a reflection period. These questions are thrown into starker relief given that some protection actors overlook the Protocol’s Article 4 requirements and identify people who have been exploited more by the vagaries of the labour market than by the deliberate actions of organised criminal groups as victims of trafficking.

Questions such as these are then coupled with a general inconsistency of protection measures available to trafficked persons across borders. As has already been noted, the Protocol is a criminal justice tool, rather than a protection tool, and states that are party to it are not obligated to institute a standardised national protection framework for victims; they need only “consider” and “endeavour to provide” protection “in appropriate cases.”<sup>28</sup> This, of course, has created a patchwork of protection regimes throughout the world which can result in the availability of aromatherapy treatment for victims in some countries, while in others, victims are prosecuted for minor legal

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<sup>28</sup> Granted, had victim protection been a mandatory feature of the Protocol, it is likely that far fewer states would have agreed to become parties to it.

infractions directly related to the trafficking experience, such as illegal entry.<sup>29</sup> The greatest progress towards creating protection obligations for states, and then standardising them across borders, has been made in Europe. With the coming into force of the Council of Europe Convention in 2007, protection obligations are now standardising throughout the European Union, although even in Europe there remains considerable distance between the law and its implementation, particularly by national law enforcement agencies.

#### A Broader Protection Context

Given the difficulties inherent in the identification of victims of trafficking, some international actors, including IOM, are encouraging a needs-based approach to protection, particularly in the context of mixed migration flows. Rather than screening for indicators of trafficking as a first step, this approach calls for an assessment of the protection needs of vulnerable migrants in order to provide humanitarian assistance based on their trauma, hardship or condition, as opposed to their migration category. A migrant who washes ashore on a beach in Italy, for example, should be screened first for any immediate medical needs, and provided with food and water, warm clothing, and appropriate accommodation as necessary. Once his or her physical condition has been stabilised and secured, any psychosocial needs should be addressed. Should a victim of trafficking be positively identified through this process, then additional protection measures specifically designed to ensure the security of victims of trafficking facing credible threats from organised criminal groups would become available. In sum, rather than screening first to divide vulnerable migrants into legal categories before offering protection to those selected as bona fide victims of trafficking or refugees, the priority should be to respond unconditionally to the humanitarian needs of all vulnerable migrants, regardless of legal status. By creating a “needs first” protection framework for all vulnerable migrants, the safe space created may circumvent some of the existing identification hurdles, and encourage trafficked persons to share their experiences.

#### *3.3 Prosecution*

Alongside prevention of trafficking in persons, and the protection of its victims, prosecution stands as the 3<sup>rd</sup> P, and the only one that focuses directly

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<sup>29</sup> IOM Field Reports.

on the criminal responsible. However, it is a fact that attempts to investigate and prosecute traffickers have resulted in comparatively few successes (on the difficulties of prosecuting traffickers, see also the chapter by Allison Jernow in this book). Statistics collected by the US Department of State on the number of prosecutions of traffickers show that between 2003 and 2007 there were an average of 6,509 prosecutions, resulting in 3,361 convictions.<sup>30</sup> Even accounting for the likelihood that an additional number of traffickers have been convicted for other crimes related to the offence of trafficking, when set alongside the estimated annual numbers of victims trafficked—between 600,000 and 4 million—the disparity indicates an epic failure.

Admittedly, trafficking in persons is still a new crime in most countries, and while widespread ratification of the Protocol came quickly—the Protocol entered into force only three years after it was available for signature—it has taken longer for states to promulgate corresponding national legislation. Furthermore, some prosecutors have suggested that the trafficking offence places too great a burden of proof on the state, prompting some jurisdictions to relieve its prosecutors of the obligation to establish the means in article 3(a)—“by means of threat.” The task of prosecuting trafficking offences is further complicated by the difficulty of identifying victims, and the reality that few of those identified wish to support a prosecution, as well as the challenges of gathering evidence to prosecute traffickers in the absence of the victim's testimony, such as the unique risks posed to police agents who attempt to infiltrate human trafficking syndicates.<sup>31</sup> Added to this are the complexities (and expense) of prosecuting a crime for which the perpetrators and evidence are often scattered across countries, and the challenge of securing the cooperation of law enforcement officials in other jurisdictions, sometimes on the far side of the world.

One reason for this may be that the criminal justice approach to combating trafficking may be too narrow to properly address such a cross-cutting and dynamic problem. Although somewhat speculative at this early stage, one wonders at the impact on human trafficking if prosecutors, and a state's criminal justice machinery in general, focused not exclusively on the narrow crime of trafficking, but on broader migrants' rights issues, particularly in countries of transit or destination, where exploitation and abuse of migrants is

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<sup>30</sup> US Department of State, *Trafficking in Persons Report* (Washington D.C.: Office of the Under-Secretary for Democracy and Global Affairs and Bureau of Public Affairs, 2008), 37.

<sup>31</sup> See, for example, Amy O'Neill Richard, *International Trafficking in Women into the United States: A Contemporary Manifestation of Slavery and Organized Crime* (Washington D.C.: Centre for the Study of Intelligence, 2000), 32.

more likely to occur. Such an approach could include prosecutions related to discrimination and abuse of migrants, including those who do not enjoy a regularised legal status. A court in Greece, for example, has held that a local employer who had exploited the labour of an irregular migrant was liable to pay in restitution wages the migrant would have earned had he been legally employed.<sup>32</sup> This approach would require increased support to labour inspectors so that they may conduct regular inspections of industries in economic sectors in which migrants often experience exploitation and abuse, including agriculture, food processing, construction, textiles, and care and hospitality.

### *3.4 Are the 3Ps enough?*

Prevention, protection and prosecution, when interpreted through a criminal justice lens, have produced results far more modest than should be expected given the impact of trafficking on human lives, and the expenditure of resources in attempting to counter it. The problem needs to be viewed from a wider angle: one in which anti-trafficking prevention is aimed at consumer demand along with the criminal motivation for profit, rather than at the motivations of aspirant migrants, but where migration management tactics, such as migration information centres, can have a secondary, anti-trafficking, impact; where protection of exploited migrants, and those considered particularly vulnerable to abuse, is prioritised over the complex and often insoluble task of distinguishing “victims of trafficking” from those who find themselves in situations of exploitation which are substantially similar; and where state actors with broader migration-related portfolios, such as labour inspectors, are considered alongside core criminal justice actors as part of the prosecutorial response.

But even should this broader view prevail, the 3-Ps approach would remain inadequate without the addition of a 4<sup>th</sup> P: Partnerships, which is the cornerstone of the migration management approach.

## **4. Partnerships**

Implicit to the migration management concept is the idea of collective administration; that popular migration across international borders is addressed

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<sup>32</sup> Supreme Court of Greece, Decision 1788/2001.

bilaterally or multilaterally, while balancing the needs and interests of countries of origin and countries of destination, as well as matching the needs and interests of migrants with labour market demands.

However, the framework for such multilateral migration management at a global level is lacking. States that have agreed to limit their sovereign authority to ensure freer trade are reluctant to sign on to any global conventions that would limit their sovereign authority to determine who can enter their territory, and for how long those who are granted entry can remain. This process has been particularly noticeable in relation to the slow entry into force of the 1990 ICRMW, whose ratification is largely limited to countries of origin.

States are beginning to understand the need for multilateral and comprehensive processes to manage migration and deal with trafficking; and they are beginning to act on this need at a regional level. This common understanding allows us to describe this process as “bottom-up”, whereby a group of states sharing common concerns come together voluntarily to develop collective solutions.<sup>33</sup> Other forms of multilateral processes and frameworks, both formal and informal, are therefore underway in this field.

#### *4.1 Formal Processes*

Of the formal regional processes in the world, the European Union (EU) is perhaps the most developed and integrated, especially in relation to migration management. The fundamental principles outlined in the treaties, and the decisions taken by the Council of the EU, are held to override national laws, and its activities embrace three “pillars”: economic harmonisation, a common security and foreign policy, and justice and home affairs. In terms of migration management, the Schengen Agreements have seen the creation of an internal space of free movement, as well as a harmonisation of external border policies.

Under the third pillar of Justice and Home Affairs, the EU has engaged in cooperation between member states to counter trafficking. In 2002, the EU issued a Framework Decision obliging member states to ensure that there was a common definition of trafficking, stiff penalties for perpetrators, and a commitment to victim protection regardless of their immigration status.<sup>34</sup> More

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<sup>33</sup> Amanda Klekowski von Koppenfels, *The Role of Regional Consultative Processes in Managing International Migration* (Geneva: IOM, 2001), 2.

<sup>34</sup> It is important to note that divergent approaches to victim protection still exist in Europe. Spain, who signed the *Council of Europe Convention on Action against Trafficking* in July 2008, for example, passed a National Plan of Action against trafficking in persons in December 2008 that targets only

generally, under the pillar of cooperation in Justice and Home Affairs, the EU has created a number of institutions such as Europol, Eurojust and Frontex to facilitate cooperation between, and common understandings among, the law enforcement and other agencies of the member states on *inter alia* human trafficking.

Under the second pillar, the EU has also sought to use foreign policy tools to manage migration. Under the “comprehensive approach” outlined at the Tampere Summit in 1999, the EU stressed the need for cooperation on migration management, and recognised the importance not only of addressing cooperation and border control issues, but also the “political, human rights and development issues in countries and regions of origin and transit” that they believed forced people to migrate.<sup>35</sup> Through negotiations with other regional actors, such as the Africa, Caribbean and Pacific Group of States (ACP) and the North African and Eastern Mediterranean countries of the Barcelona Process, the EU has attempted to put these goals into practice. The Cotonou Agreement between the EU and ACP, for example, not only stressed respect for legal migrants’ rights but also aimed to promote development programmes that support “the economic and social development of the regions from which migrants originate”, using the EU’s position as the “largest trading entity in the world” and leveraging its significant aid budget to tackle perceived root causes.<sup>36</sup> These formal processes show how states can come together to create migration management structures that apply to a whole region and not just within their own territory.

Another regional organisation which has placed a considerable emphasis on trafficking is the Economic Community of West African States (ECOWAS). In 2001, ECOWAS issued a Declaration of Action Against Trafficking and a Plan of Action to ensure that this declaration was translated into reality. This Plan of

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women who have suffered from sexual exploitation. While Spain recognises other forms of exploitation in Article 138 *bis* of their Criminal and Penal Code, the National Plan of Action expands the protection scheme to women who have suffered from sexual exploitation by granting them a thirty day reflection period and social as well as judicial assistance. Government of Spain “Aprobado el Plan Integral de Lucha Contra la Trata de Seres Humanos con Fines de Explotación Sexual.” [http://www.la-moncloa.es/ConsejodeMinistros/Referencias/\\_2008/refc20081212.htm#PlanIntegral](http://www.la-moncloa.es/ConsejodeMinistros/Referencias/_2008/refc20081212.htm#PlanIntegral) (accessed March 5, 2009).

<sup>35</sup> Tampere European Council, “Presidency Conclusions. October 15 and 16, 1999”, [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressdata/en/ec/00200-r1.en9.htm](http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/00200-r1.en9.htm) (accessed March 11, 2009).

<sup>36</sup> European Commission Directorate-General for Development and Relations with African, Caribbean and Pacific States, *Partnership Agreement APC-EC (Cotonou Agreement)* (Belgium: European Communities, 2006); Thomas Gammeltoft-Hansen, “The Outsourcing of Migration Management: EU, Power, and the External Dimension of Asylum and Immigration Policy” (working paper, Copenhagen: Danish Institute for International Studies, 2006).

Action focused on the formulation and implementation of legislation, protective and preventive measures, cooperation, training and capacity-building, as well as creating a structure for monitoring and evaluation. Moreover, ECOWAS' commitment to the creation of a zone of free movement similar to the EU's suggests that the interregional approach to migration management could also be an effective model for the future,<sup>37</sup> and indeed the ECOWAS-ECCAS (Economic Community of Central African States) Joint Plan of Action Against Trafficking in Persons suggests that such processes are underway.

These formal processes have important limitations, however. Although the regimes they create are legally binding, they nonetheless present challenges. In the EU's case, particularly, they reflect an understanding of the prevention and fight against trafficking based on the formally-expressed concerns of countries of destination about trafficking from outside the region, brought together by their ability to demonstrate similar levels of social and economic development and institutional capacity and presenting a relatively united front against the outside world. The "comprehensive approach" that emerges from these discussions is in fact an approach aimed solely at countries of origin and transit, which does not address demand in the countries of destination.<sup>38</sup>

The interregional negotiations at which this united front is presented, moreover, begin to take on the characteristics of traditional bilateral negotiations: the relative power and different interests of the actors involved creates a highly politicised atmosphere, and actors seek to impose their worldviews, rather than having to build a consensus. The results are therefore not comprehensive, and the process fosters resentment and competition rather than cooperation.<sup>39</sup>

Finally, this united front can also be perceived as imposing unilateral conditions, ignoring the legitimate interests of states outside the region. This was a key element of the polemic surrounding the Return Directive adopted by the European Parliament in June 2008 and put into force in January of 2009. The directive, it was argued, would mainly affect countries and citizens from outside the EU, yet their interests had not been taken into account. Thus, while it is clear that formal processes play an important role in countering trafficking, there are some areas in which complementary forms of intergovernmental engagement could prove useful in developing positive cooperation between a

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<sup>37</sup> Aderanti Adepoju, *Migration in West Africa* (Geneva: GCIM, 2005), 8–15.

<sup>38</sup> Tom Obokata, "EU Council Framework Decision on Combating Trafficking in Human Beings: A Critical Appraisal," *Common Market Law Review* 40, no.4 (2003): 934.

<sup>39</sup> Gammeltoft-Hansen, "The Outsourcing of Migration Management," 11-12.



range of stakeholders with differing outlooks and interests for migration management and against trafficking.

#### 4.2 Informal Processes

Rather than solely relying on rigid frameworks and competitive negotiations, the role of loose and ongoing discussions involving governments, civil society and academia among others in the field of trafficking is of great importance in that it helps identify common perceptions and helps build on a concerted approach to fighting trafficking. Regional Consultative Processes (RCPs) provide an important means of facilitating these kinds of discussions.

RCPs can be understood as frameworks for regular and sustained discussion between governments and other stakeholders on migration issues. By bringing together government representatives from countries of origin, transit and destination, NGOs and academics in an environment conducive to discussion between equals rather than competitive negotiation, these processes facilitate understanding, trust, best-practice sharing and cooperation on mutually-identified areas of common interest between actors who may not otherwise meet on a regular basis.<sup>40</sup> This process of discussion among equals in a depoliticised, off-the-record environment allows actors to move beyond the roles that negotiations force them to take on; bound neither by interstate power relations nor official public positions, actors can more freely discuss the migration issues that they face and “suggest new departures from established policy.”<sup>41</sup> Indeed, where there are actors within the RCP willing to “put human rights on the agenda ... RCPs provide fora that lower the costs of sharing information, developing best practices, and increasing states’ capacity to promote and enforce migrants’ human rights.”<sup>42</sup>

The repeated nature of the discussions means that understandings develop and converge over time as the different actors in the process take account of the experiences and situations of the other, and come to trust the motives of other actors.<sup>43</sup> In relation to migration management and the development of anti-

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<sup>40</sup> Ibid., 4.

<sup>41</sup> Randall Hansen, “Interstate Cooperation: Europe and Central Asia,” in *Interstate Cooperation and Migration: Berne Initiative Studies*, ed. Gervais Appave and Frank Laczko (Geneva: IOM, 2004), 17.

<sup>42</sup> Lesley Wexler, “The Non-Legal Role of International Human Rights Law in Addressing Immigration,” *The University of Chicago Law Forum* 369 (2007): 381.

<sup>43</sup> Klekowski von Koppenfels, *The Role of Regional Consultative Processes*, 19; Joanne van Selm, “Immigration and Regional Security,” in *International Migration and Security: Opportunities and Challenges*, ed. Elspeth Guild and Joanne van Selm (London: Routledge, 2005), 20.

trafficking measures, this convergence of understandings is of critical importance, as these areas are understood differently depending on the context: the concept of “exploitation”, for example, is highly contested “in the absence of a global political consensus on minimum employment rights and cross-sector norms regulating employment relations”, while legal definitions of the activities that make up trafficking can vary from country to country within the same region.<sup>44</sup> This consensual process is also important as it gives governments a sense of ownership over the results: rather than having definitions imposed on them, governments can feel that the outcomes are the result of cooperation in which they have had an equal part.<sup>45</sup> Finally, it gives actors a chance to engage in networking and informal information-sharing.

Some of the strengths of RCPs can also be considered weaknesses. While the non-binding nature of RCPs allows for a more candid dialogue between countries of origin, transit and destination, their informal nature is also a limitation, as states do not have an obligation to incorporate measures into their national legislation. Moreover, while RCPs have the benefit of addressing an important issue in international migration, that of intra-regional migration, inter-regional migration does not play a predominant role in most processes.<sup>46</sup> It is also difficult to attribute RCPs with concrete achievements and results as these processes rarely have clear indicators of what constitutes success. Concomitantly, most RCPs do not engage in monitoring or evaluation.<sup>47</sup> Another weakness of RCPs is their exclusionary nature; as state-led processes, RCPs often prevent civil society from participating. Interventions by delegates during a workshop on Regional Consultative Processes revealed that “few RCPs admitted either NGOs or the private sector into their proceedings.”<sup>48</sup> Lastly, regional consultative processes can be drawn-out ventures which take years to materialise. The Budapest process, for example, did not shift into a more operation phase until nine years after their initial meeting in 1991.<sup>49</sup>

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<sup>44</sup> Bridget Anderson and Julia O’Connell Davidson, *Is Trafficking in Human Beings Demand-Driven? A Multi-Country Pilot Study* (Geneva : IOM, 2003), 8–9; International Human Rights Institute, *In Modern Bondage: Sex Trafficking in the Americas* (Chicago: International Human Rights Institute, DePaul College of Law, 2005), 50.

<sup>45</sup> Hansen, “Interstate Cooperation.”

<sup>46</sup> Klekowski von Koppenfels, *The Role of Regional Consultative Processes*, 52.

<sup>47</sup> *Ibid.*, 47.

<sup>48</sup> Global Commission on International Migration, *Summary Report of the GCIM-IOM Workshop on Regional Consultative Processes*, April 14-15, 2005, Geneva, [www.iom.ch/jahia/webdav/site/myjahiasite/shared/shared/mainsite/microsites/rcps/gcim/Summary\\_Workshop\\_Report.pdf](http://www.iom.ch/jahia/webdav/site/myjahiasite/shared/shared/mainsite/microsites/rcps/gcim/Summary_Workshop_Report.pdf) (accessed on March 6, 2009).

<sup>49</sup> Klekowski von Koppenfels, *The Role of Regional Consultative Processes*, 47.

Of the many RCPs currently underway, three of these display characteristics, outlined below, which can be identified as particularly relevant to the development of migration management policies to fight trafficking.

### The Bali Process

The Bali Process grew from the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime co-chaired in February 2002 by the Foreign Ministries of Australia and Indonesia. After a second meeting in 2003, the participants agreed to “continue a program of practical cooperation to combat people smuggling and trafficking in the region.”<sup>50</sup> It was out of this agreement that the regular series of meetings and workshops that constitute the Bali Process has grown. The Process brings together forty-two core countries from Asia and Oceania as well as involving the participation of European, African and North American countries and international organisations.

The Process incorporates a range of activities focusing on capacity-building and practical workshops to fight trafficking and people smuggling, with the actors choosing which aspects they wish to be involved with. Its activities have been practical in scope, developing model legislation in line with the UN Trafficking Protocol (although neglecting the victim protection aspect) and dealing with aspects such as document fraud and “identifying and targeting ... traffickers in the region.”<sup>51</sup> While the central anti-trafficking focus of the Process has been on technical cooperation, there has been a longstanding recognition that the conference should focus on “tackling the root causes ... including by increasing opportunities for legal migration between states”, something that was reiterated as a future direction of the Process in 2004. Over time, this concern has moved up the agenda, along with a focus on the demand side.<sup>52</sup> Meanwhile, workshops under the process have been run for participants on the best practices in relation to refugee law and irregular migration; others have also focused on sharing best practices in victim support in countries of destination and origin.

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<sup>50</sup> Bali Process, “About the Bali Process,” Bali Process.net, <http://www.baliprocess.net/index.asp?pageID=2145831401> (accessed December 2, 2008).

<sup>51</sup> Gareth Larsen, “The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime,” in *Interstate Cooperation and Migration: Berne Initiative Studies*, ed. Gervais Appave and Frank Laczko (Geneva : IOM, 2004), 45-6.

<sup>52</sup> *Ibid.*, 47.

Despite being voluntary, there is some evidence that this process is facilitating the exploration and development of important norms, moving beyond technical cooperation and law enforcement approaches to more contested areas of the fight against trafficking. Moreover, these norms are being voluntarily adopted in a concrete fashion. For example, a year after its introduction, eighteen countries had made use of a model legislation on trafficking.<sup>53</sup>

### The Puebla Process

The Regional Conference on Migration (RCM) was triggered by a shared concern among Central and North American countries over increased irregular migration. In 1996, countries of the region came together in the Mexican city of Puebla where they vowed to address the issue of migration management, particularly links between migration and development, human trafficking, the human rights of migrants and technical cooperation.

Member states (Belize, Canada, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the United States)<sup>54</sup> have different migration perspectives as RCM brings together origin, destination and transit countries. Member states meet once a year at a vice-ministerial level while holding other meetings and workshops together with NGOs throughout the year. Furthermore, NGOs, which belong to the Regional Network for Civil Organizations on Migration (RNCOM), are able to issue a parallel joint communiqué at every vice-ministerial meeting<sup>55</sup> and attend the workshops on trafficking in human beings and consular issues. Although civil society appears to be present in the process, members of the RNCOM often criticise the lack of comprehensive dialogue with the member states.<sup>56</sup>

One of RCM's main goals is to combat human trafficking within the region. As set out in the 2007 Action Plan, the forum's strategy focuses on three main aspects. Firstly, the RCM encourages member states to enact national legislation which addresses the issue of trafficking as a criminal offence. This forum's approach to trafficking is quite comprehensive, however, in that it not only focuses on the criminal aspect of the phenomenon but also considers aspects of prevention and victim protection within the framework of existing legislation. Secondly, the Puebla Process works on strengthening multilateral

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<sup>53</sup> Bali Process Ad Hoc Experts' Group II, 2003.

<sup>54</sup> Observer states include Argentina, Colombia, Ecuador, Jamaica and Peru.

<sup>55</sup> Regional Conference on Migration, [http://rcmvs.org/pagina\\_n2.htm](http://rcmvs.org/pagina_n2.htm) (accessed March 5, 2008).

<sup>56</sup> Personal communication of author with a member of the RNCOM.

cooperation in exchanging information and best practices to combat trafficking in persons; this in light of the complex and transnational nature of the phenomenon. Concrete activities in this rubric include workshops on best practices in investigation and prosecution of traffickers.<sup>57</sup> Lastly, the RCM, through various media outlets, publicises the results of efforts and programmes to prevent trafficking in persons.

RCM is perceived to be a highly effective multilateral organism in that it has contributed to the exploration of common policy options and better coordination among national agencies dealing with migration by using pragmatic and concrete steps.<sup>58</sup> This is particularly the case in terms of issues related to human trafficking whereby countries lack the necessary data on the occurrence of the phenomenon and where, until recently, member states lacked a legal framework in which to address the issue as a crime. However, as with any other informal process, the Regional Conference on Migration has its limitations. The April 2007 *Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victims of Trafficking*, for example, while cited as an effective tool in facilitating the process of return,<sup>59</sup> has also been criticised for not being an effective tool in effective reintegration of child victims of trafficking.

The achievements of the RCM point towards ways in which countries with divergent migration characteristics can come together in a regional forum in order to address mutual concerns and propose innovative ways in which to deal with common problems related to migration management.

### The Colombo Process

The Colombo Process grouped ten of the major countries of origin for labour migration from Asia in 2003. In contrast to the Bali Process, it has no specific mandate to deal with trafficking; however, two of its major thematic areas of concern focus on “Protection of and Provision of Services to Migrant Workers” and “Capacity Building, Data Collection and Inter-State Cooperation”, especially in relation to “Increasing cooperation with destination countries in

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<sup>57</sup> The sharing of best practices has led to approval of the Regional Guidelines for Special Protection in cases of Return of Child Victims of Trafficking. See Regional Conference on Migration, “XII Meeting of the Regional Conference on Migration: Declaration,” (New Orleans, April 26-27, 2007), [http://rcmvs.org/XII\\_RCM.htm](http://rcmvs.org/XII_RCM.htm) (accessed December 11, 2008).

<sup>58</sup> Klekowski von Koppenfels, *The Role of Regional Consultative Processes*, 37.

<sup>59</sup> Some IOM field staff, for example, mention how it is now easier to identify the ministry in charge of overseeing the return process in the country of origin.

the protection of migrant workers and access to labour markets; and enhancing cooperation among countries of origin.”<sup>60</sup> Key goals of this RCP therefore focus on preventing the exploitation of migrant workers, and so the outcomes are important in creating a migration management regime between countries of origin and destination that will effectively undermine and prevent trafficking.<sup>61</sup>

The recommendations that have emerged from the ministerial discussions have focused on a range of measures that provide information to migrants before their departure and during their time in the country of destination, to simplify the migration process, empower migrants, regulate employment agencies and ensure the proper enforcement of contracts. Although progress on the different recommendations has been uneven, nonetheless it is clear that these discussions have had important policy outcomes. Sri Lanka, for example, has created regional offices of its Bureau of Foreign Employment and employed 400 officers to enable prospective migrants to have access to information about safe migration without having to travel to Colombo, as well as making these services free of charge. Other countries such as Nepal, Vietnam, the Philippines and Sri Lanka are entering into Memoranda of Understanding with governments to ensure that their workers’ contracts are correctly enforced.

The Colombo Process’ recognition of the need for dialogue and partnership with governments of countries of destination gave rise to an important initiative that provides a strong example of the value of RCPs in bringing together countries with differing interests to talk candidly about controversial topics. The Abu Dhabi Dialogue brought together ministers from the countries of destination of the Gulf Cooperation Council (GCC) as well as from the Colombo Process countries to outline and discuss a collaborative approach on managing labour migration. The Declaration that came from these discussions marks a significant step forward for the protection of migrant workers in the GCC region as the countries of destination recognised the need for:

the provision to all workers of good living and working conditions, their protection including through promotion and implementation of transparent policies and practices including for recruitment and employment according to the national laws and regulations of countries of origin and destination [as well as] the joint responsibility of countries of origin and destination to enforce compliance by

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<sup>60</sup> Colombo Process, “Background,” Colombo Process, [http://www.colomboprocess.org/about\\_process.php#mem](http://www.colomboprocess.org/about_process.php#mem) (accessed November 2, 2008).

<sup>61</sup> This is especially important in a region where human trafficking is conceived of as relating only to prostitution.

recruitment agencies and other parties engaged in the recruitment process with the requirements of national laws and regulations pertaining to the employment of temporary contractual labour, thus providing further protection to workers.

The governments committed to building partnerships on different issues, notably focusing on “Preventing illegal recruitment practices and promoting welfare and protection measures for contractual workers, supportive of their well being and preventing their exploitation at origin and destination.”<sup>62</sup> As a concrete outcome of this discussion, the United Arab Emirates’ Ministry of Labour issued a report on *The Protection of the Rights of Workers in the United Arab Emirates*, which acknowledges the issues involved in migrant worker protection and emphasises the importance of legislation and enforcement to protect migrant workers.<sup>63</sup>

The strength of RCPs is also their weakness: their informal nature means that their activities lack the systematic follow-up mechanisms that more formal systems use to ensure that standards are equally-applied. However, they can certainly complement more formal mechanisms, providing a trust-building forum for debate on a basis of equality, information-sharing and networking on and raising awareness of trafficking issues in a bottom-up and non-adversarial manner. Where there has been an element of financial support, they have already proved to have some impact in building capacities to combat human trafficking. Their flexibility makes them ideal in developing broad networks of cooperation and partnership which, as acknowledged by the “4P” approach, is essential to any effective counter trafficking strategies.

## 5. Conclusions

Human trafficking cannot properly be addressed as a stand-alone issue. Any interventions must take into account the broader migration management framework. This includes the need for governments of countries of origin and destination to work together to establish more legal channels for migration, taking into account both labour supply and demand, as well as the rights and aspirations of individual migrants, and matching these through more systematic

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<sup>62</sup> Abu Dhabi Declaration, [http://www.hic-mena.org/documents/Abu%20Dhabi%20Declaration%20\(migrants\).doc](http://www.hic-mena.org/documents/Abu%20Dhabi%20Declaration%20(migrants).doc) (accessed March 10, 2009).

<sup>63</sup> UAE Ministry of Labour, *The Protection of the Rights of Workers in the United Arab Emirates: Annual Report 2007* (Abu Dhabi: Ministry of Labour, 2008), [http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/UPR\\_UAE\\_ANNEX2\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/UPR_UAE_ANNEX2_E.pdf) (accessed January 10, 2009).

planning. These channels should include provision for safe and dignified employment for migrant women who make up almost 50 per cent of all migrants.<sup>64</sup>

The sovereign right of a state to determine who is allowed into its territory does not absolve it from obligations to protect the rights of all migrants on its soil, including irregular migrants. The Trafficking Protocol must be seen for what it is, namely a criminal justice treaty. It must not be used to limit the protection and assistance afforded to those vulnerable migrants not identified as victims of trafficking.

Migration is an enormously complex phenomenon that requires multifaceted and multi-sectoral interventions to address its myriad dimensions. A full discussion on how to effectively counter human trafficking within a global migration management framework would require an exploration of the linkages between human trafficking and migration and the areas of trade and labour. In this short chapter we have perforce limited ourselves to focusing on the core trafficking issue of human rights protection and how this might be strengthened through migration management policy tools.

The following broad measures should be considered as important steps toward establishing a migration framework that more effectively protects the rights of all migrants while contributing to a reduction in human trafficking.

## **Recommendations**

### *Protection Based on Needs*

Recognising that the identification of trafficking victims remains problematic, initial protection for exploited or otherwise abused migrants should be based on their actual needs. Service providers should spend more time addressing the protection needs of vulnerable, abused, and exploited people, rather than applying labels or determining the category into which a particular migrant should be inserted. This approach should be accompanied by continued efforts to develop common standards for identification of trafficked persons, such as those being carried out by IOM, ILO, the European Commission, and others. Only once essential protection and humanitarian needs are addressed should it become important to distinguish victims of the crime of trafficking from those migrants who have suffered from, for example, the vagaries of the labour market.

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<sup>64</sup> IOM, *World Migration Report* (Geneva: IOM, 2008), 10.



### *The Importance of Labour Laws*

Recognising that human trafficking and exploitation largely occur in the informal sector, governments should ensure that informal and unregulated work activities are brought within the protection of labour laws so that all workers—national and foreign—enjoy the same labour rights. In this regards, more consideration should be given to the UN *Convention on the Protection of the Rights of all Migrant Workers and their Families* as a tool to protect migrants from human trafficking.

### *Prevention Campaigns Need to Work Positively*

Prevention measures in countries of origin should aim to work positively with migrants and people intending to migrate, to empower them so that they are able to do so in a safe and dignified way. Migrant Information Centres and other mechanisms that inform potential migrants about migration options and their rights in countries of destination, as well as allowing them to verify the legality of job offers, are important tools in this respect. Any public information campaigns designed to contribute to the prevention of human trafficking should be careful to avoid disseminating an anti-migration message.

### *More Research on Demand*

Major contributing factors to human trafficking include poverty, gender inequalities, and discrimination in countries of origin, but the root cause lies in the demand for cheap, flexible and unprotected labour in countries of destination, as well as the large and easy profits to be made from this illicit trade. More research on demand for all forms of trafficked and exploitative labour, including the role of states and the private sector, should be undertaken to fully understand the issues and to explore the responses needed.

### *Raise Awareness in Destination Countries*

Governments of destination countries, especially in a time of economic crisis, should actively engage in raising public awareness of the benefits migrants bring to society. Only with the support of their constituencies will governments be able to establish more legal migration channels. This should be accompanied by an increased effort towards combating xenophobic attitudes.

### *Increase Cooperation*

Governments should strengthen efforts to ensure cooperation between countries of origin, transit and destination on combating trafficking and protecting victims. RCPs have proved to be a useful mechanism through which to foster this cooperation especially where they establish working or expert groups on relevant issues. It is also important to acknowledge as equal the needs and interests of all states, whether they be primarily countries of origin, transit, or destination.

## CHAPTER 8

### Human Trafficking & Peacekeepers

Keith J. Allred

#### Introduction

The modern scourge of human trafficking is driven by a number of supply and demand pressures related to the global economy.<sup>1</sup> Both men and women are trafficked to provide agricultural and sweatshop labour; children are trafficked for various forms of child labour, including begging, brides and camel jockeys, and for child prostitution. There is a small market for human trafficking in order to procure organs for transplant.<sup>2</sup> And finally, what is considered by many to be the largest single reason for trafficking moves women to where there is a demand for commercialised sexual services.<sup>3</sup>

In light of increasing international efforts to combat human trafficking, it is ironic that international troops posted abroad on peacekeeping and other military missions should contribute to this demand for women trafficked for prostitution. There is a growing and substantial body of evidence that deployed peacekeepers have created or contributed to the demand for sexual services, and that substantial numbers of women have been trafficked to meet that demand. Forces intended as the solution to one international problem have aggravated another: human trafficking. Beyond the indirect support they provide by seeking sexual services and “patronising” women who may have been trafficked, there is evidence that a small number of peacekeepers have

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<sup>1</sup> The views expressed herein are the author's own views, and not the views of any component of the US government.

<sup>2</sup> For an example of one domestic organ-selling operation in which the “donors” are misled and then taken advantage of, see Yudhijit Bhattacharjee, “Caveat Donor,” *Atlantic Monthly* (December 2008), [www.theatlantic.com/doc/200812/Organ-transplant-india](http://www.theatlantic.com/doc/200812/Organ-transplant-india) (accessed May 15, 2009).

<sup>3</sup> The breadth of the global human trafficking market is described in a number of official reports, the most notable being the US State Department’s annual *Trafficking in Persons Report*. The 2008 edition is available at: <http://www.state.gov/documents/organization/105501.pdf> (accessed May 15, 2009). The UNODC offers A *Global Report on Trafficking in Persons*, available at: <http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html> (accessed April 15, 2009).

actually engaged more directly and substantially in the trade in trafficked women.

The correlation between peacekeepers and human trafficking brings a number of adverse consequences to the fore. The credibility and legitimacy of a peacekeeping mission will suffer when the public becomes aware that peacekeepers are involved in the trafficking of women. Peacekeeper involvement in human trafficking supports organised crime by purchasing its services and thereby funding its operations. When organised crime grows in power and influence in any troubled area, the peacekeeping mission of strengthening civil society is antagonised and countered by increased criminal activity. Sexually transmitted diseases may increase among peacekeepers, trafficked women, and the balance of the local population. Beyond this, the international community recoils at the thought that its peacekeepers are engaged in so perverse an activity as human trafficking.

This chapter will identify the group of actors referred to here as “peacekeepers”, and examine the variety of ways in which peacekeepers support human trafficking. It will consider and evaluate corrective actions being implemented by various states and international organisations; identify corrective measures that still require evaluation and implementation; and conclude with a list of recommendations for further reducing the correlation between peacekeepers and trafficking. While there have been some recent positive movements in addressing this problem, there are also many obstacles yet to be overcome. The chapter concludes with cautious optimism that the international community is moving in the right direction.

### **1. Who Are The Peacekeepers?**

Readers may be inclined to think of “peacekeepers” in a narrow and limited sense, as an international force of military personnel wearing the blue helmet of the United Nations (UN). This chapter treats the concept of peacekeepers more broadly. “Any UN intervention brings with it a host of non-governmental organisations (NGOs), private military contractors, and an entire array of internationals that exponentially increase the actual presence arising from the intervention well over the formal number of troops.”<sup>4</sup> A 2008 study of child sexual abuse allegedly committed by “peacekeepers” found that offenders ran

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<sup>4</sup> Charles Anthony Smith and Heather M. Smith, “Human Trafficking: The Unintended Effects of United Nations Intervention” (paper presented at the annual meeting of the American Political Science Association, Boston, Massachusetts, 2008), 7.

“the breadth of local and international NGOs, UN agencies, and other actors” involved in international humanitarian operations, including members of religious groups participating in the mission.<sup>5</sup> The study found perpetrators from twenty-three different humanitarian, peacekeeping and security organisations, even as it identified uniformed peacekeepers as the most likely perpetrators. “[S]taff at every level, from guards and drivers to senior managers . . . [were] identified as having been involved.” Most were men, but some were women.<sup>6</sup> The same can be said of any deployment of international troops or civilian personnel abroad, whether UN-sponsored or not. Their presence tends to bring an increased demand for sexual services, and adds to the demand for trafficked women and girls.

A 2008 study of child sexual abuse committed by peacekeepers found that offenders ran the breadth of local and international NGOs, UN agencies, and other actors involved in international humanitarian operations.

As of December of 2008, the UN reports the presence of 11,511 police, 77,571 military personnel, and 2,630 observers abroad conducting sixteen different peacekeeping missions.<sup>7</sup> The number of persons associated with NGOs, international organisations and religious groups who may be present in a peacekeeping operation must be added to these numbers. Thus, while uniformed military personnel comprise the great bulk of a peacekeeping force in terms of absolute numbers, “peacekeepers” are actually a diverse lot, from a diverse group of domestic and international organisations. By virtue of this great diversity, they are also subject to a host of different legal, jurisdictional and contractual regimes that make a single solution to the problem of peacekeeper sexual abuse elusive.

In addition to this diverse group of people who are associated with peacekeeping missions, many nations maintain military forces abroad on a variety of missions and operations not associated with the United Nations or

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<sup>5</sup> Corina Csáky, *No One to Turn to: The Under-Reporting of Child Sexual Exploitation and Abuse by Aid Workers and Peacekeepers* (London: Save the Children, 2008): 8–9.

<sup>6</sup> Ibid. Csáky’s study concluded that peacekeepers are the most likely offenders not only because they make up the largest contingent of emergency personnel, and because they are armed, provide much-needed security and therefore have a position of power over the populations they serve, but also because they “contain a significant number of personnel with discriminatory attitudes towards women.”

<sup>7</sup> United Nations Department of Peacekeeping Operations, “Monthly Summary of Contributors of Military and Civilian Police Personnel,” <http://www.un.org/Depts/dpko/dpko/contributors/Yearly06.pdf> (accessed January 15, 2009).

with peacekeeping. Navies deploy and make port visits. There are international forces deployed in Iraq, Afghanistan and the horn of Africa, among other places, for missions other than peacekeeping. These forces often include civilian officials and employees of contractors who assist in the mission. The United States alone maintains more than 200,000 military personnel permanently posted abroad in places like Japan, Korea, Italy, and Germany who are not involved in peacekeeping missions of any kind. Other NATO countries have about 31,400 troops assigned to the International Security Assistance Force (ISAF) in Afghanistan,<sup>8</sup> and some 15,000 deployed in Kosovo.<sup>9</sup> Even this partial list illustrates the breadth of the international presence in missions abroad, and the demand for sexual outlets these military and civilian personnel may create during their missions. The combined total approaches 350,000 personnel, mostly men, away from their homes, and almost always assigned to vulnerable and troubled areas of the world. Some of these military personnel contribute to the demand for sexual services that has tended to create a demand for trafficked women.<sup>10</sup>

Not only are peacekeepers a diverse group of soldiers and civilians from many different countries and organisations, the nature of their contribution to human trafficking is varied. Recent history has seen peacekeeper involvement in activities that range from the most benign to the most active. On the active end of this spectrum, peacekeepers have been identified buying and selling individual women for sexual services, transporting trafficked women in UN vehicles, and engaging in (or overlooking) document forgery to facilitate the movement of trafficked persons.<sup>11</sup> They have also engaged in more passive

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<sup>8</sup> North Atlantic Treaty Organization, *International Security Assistance Force and Afghan National Army Strength and Laydown* (NATO & ISAF, 2009), [http://www.nato.int/isaf/docu/epub/pdf/isaf\\_placemat\\_081201.pdf](http://www.nato.int/isaf/docu/epub/pdf/isaf_placemat_081201.pdf) (accessed May 15, 2009).

<sup>9</sup> North Atlantic Treaty Organization, "Information on Troops in Kosovo," [http://www.nato.int/kfor/structur/nations/placemap/kfor\\_placemat.pdf](http://www.nato.int/kfor/structur/nations/placemap/kfor_placemat.pdf) (accessed May 15, 2009). National commitment figures for 2008 may be found at <http://www.nato.int/issues/commitment/index.html> (accessed May 15, 2009).

<sup>10</sup> Of course, the demand for trafficked women is much larger than the peacekeepers' contribution.

<sup>11</sup> In Sarajevo, for example, Human Rights Investigator David Lamb reported allegations that a Pakistani monitor drove two trafficked women in a UN vehicle to a Sarajevo hotel for a sexual liaison. One American International Police Task Force officer allegedly bought a trafficked woman and kept her for several months until he was repatriated. A Criminal Investigation Division report identified several US contractors who were engaged in "white slavery", in that they bought women for their private ownership. See generally Peter Andreas, *Blue Helmets and Black Markets: The Business of Survival in the Siege of Sarajevo* (Ithaca and London: Cornell University Press, 2008), 129–130; "Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution," *Human Rights Watch* 14, no.9(D) (November 2002): 32–33; Sarah Mendelson, *Barracks and Brothels: Peacekeepers and Human Trafficking in the Balkans* (Washington DC: Center for Strategic and International Studies, 2005).

types of support for human trafficking, such as patronising, protecting and facilitating brothels that they know, or probably should know, “employ” trafficked women, and even failing to report or investigate suspicions that women are being kept against their will.<sup>12</sup> Finally, some of the peacekeepers who patronise these establishments may have no idea that they are supporting organised crime, or enjoying a tryst with someone who has been forced into prostitution and deprived of her freedom to do otherwise. Thus, there is a broad range of awareness among peacekeepers about the potential connection between their desire for sexual services and the possibility that women are being trafficked to satisfy those desires.

The problem of peacekeepers has recently moved closer to centre stage in the debate over the hazards of peacekeeping operations. The United Nations, NATO, the European and African Unions, as well as individual nations that contribute troops to peacekeeping operations (PKO), are coming to the realisation that the mere presence of their peacekeepers creates a demand for sexual services. There is a growing awareness that peacekeeping operations create this demand in part by introducing thousands of mostly male personnel, who are not amenable to trial or punishment under local domestic law, into countries where social order has been damaged and the rule of law itself has been weakened. The United Nations and the United States Army have learned especially painful lessons in this regard. NATO<sup>13</sup> and the European Union, aware of the issues by virtue of the increasing public debate, have also recently turned their attention to the issue.<sup>14</sup> The UN Security Council, the United States Congress, NATO headquarters and the Council of the European Union have all changed the rules under which their forces deploy in an effort to elevate standards of personal behaviour, to increase pre-deployment training and awareness, and to reduce their “footprint” in the demand for sexual services.

## 2. A Brief History of Peacekeepers and Trafficking

Long before the United Nations or any other multinational organisation began sending peacekeepers abroad, uniformed military personnel on foreign postings have been demanding sexual services from the local population. Roman General Quintilius Varus provoked an insurrection among the ancestors of

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<sup>12</sup> Mendelson, *Barracks and Brothels*, 19–38.

<sup>13</sup> NATO, “NATO Policy on Combating Trafficking in Human Beings, June 29, 2004,” <http://www.nato.int/docu/comm/2004/06-istanbul/docu-traffic.htm> (accessed May 15, 2009).

<sup>14</sup> European Union, “Generic Standards for ESDP Operations, May 23, 2005” Council of the European Union <http://register.consilium.europa.eu/pdf/en/05/st09/st09004.en05.pdf> (accessed May 15, 2009).

modern Germany in the early years of the last millennium by his philandering and rapacious appetite for their wives and daughters. Military historian Edward Shepherd Creasey describes Varus's attitude in these words:

Accustomed to govern the . . . natives of Syria . . . Varus thought that he might gratify his licentious and rapacious passions with equal impunity among the high-minded sons and pure-spirited daughters of Germany. When the general of any army sets the example of outrages of this description, he is soon imitated by his officers and surpassed by his still more brutal soldiery. The Romans now habitually indulged in those violations of the sanctity of the domestic shrine, and those insults upon honor and modesty, by which far less gallant spirits than those of our Teutonic ancestors have often been maddened into insurrection.”<sup>15</sup>

Within the past two centuries, American troops deployed on the border with Mexico during the Mexican-American War of 1846–47, Japanese soldiers during World War II, and multinational troops in Vietnam during that war all provide well-known examples of soldiers requiring sexual outlets while on foreign assignments.<sup>16</sup> Kathleen Moon has written critically of the involvement of American military personnel in arranging brothels for American soldiers' rest and recreation during the Korean War.<sup>17</sup> She argues that Korean women were routinely treated as chattel, and that the US Government organised the women into quasi-official brothels for the pleasure of American military personnel. During the Vietnam War, American medical officers inspected and certified prostitutes' sexual health in an arrangement that has been criticised as far too much official involvement in organised prostitution.

It is difficult to identify with accuracy when UN peacekeepers began contributing to human trafficking. The UN was organised in 1947, and sent its first peacekeepers abroad in 1948.<sup>18</sup> Reports of peacekeeper misconduct began

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<sup>15</sup> Edward Shepherd Creasey, *Fifteen Decisive Battles of the Western World* (New York: Barnes and Noble Publishing, 2004, Originally Published 1851), 126. Varus's abuse of the Germanic people induced a patriot named Arminius to lead a revolt against Rome in 9 A.D. that ultimately liberated them from Roman domination.

<sup>16</sup> Emily Nyen Chang, “Engagement Abroad: Enlisted Men, U.S. Military Policy and the Sex Industry,” *Notre Dame Journal of Law, Ethics and Public Policy* 15 (2001): 621–632.

<sup>17</sup> Katherine H.S. Moon, *Sex Among Allies: Military Prostitution in U.S.-Korea Relations* (New York: Columbia University Press, 1997); Susan Brownmiller, *Against our Will: Men, Women and Rape* (New York: Simon and Schuster, 1975), 93 et. seq.

<sup>18</sup> The first United Nations peacekeeping operation was UNTSO, established in 1948 to monitor the ceasefires and armistice agreements remaining after the 1948 Israeli war of Independence. The United Nations lists the duration of this mission as “1948 to present.” See: UN, “Peacekeeping Timeline 1948–2008,” DPKO, <http://www.un.org/Depts/dpko/timeline.pdf> (accessed January 14, 2009).



to appear in large numbers in the early 1990s. During the 1992 peacekeeping operation in Somalia, peacekeepers were identified as part of the demand for sexual services that led women to engage in prostitution.<sup>19</sup> During the 1992–1993 UN mission to Cambodia, the number of prostitutes rose from 6,000 to 25,000, including an increase in the number of child prostitutes.<sup>20</sup> During the early 1990s missions to Cambodia and Somalia, the first complaints of peacekeeper abuse of the local population, including murder, rape and other forms of sexual violence, were reported.<sup>21</sup> In 2000, US civilians and Jordanian, Pakistani and German troops from the mission to Bosnia and Herzegovina were investigated for human trafficking.<sup>22</sup> In 2003, Italian, Danish and Slovak peacekeepers were repatriated from Eritrea for having sex with minors.<sup>23</sup>

Incidents involving peacekeepers and sexual abuse of the native population have been reported in peacekeeping missions to Angola, Cambodia, East Timor, Liberia, Mozambique, Kosovo, Sierra Leone, and Somalia.<sup>24</sup> Cynthia Enloe writes that “Almost as soon as the peacekeeping mission to Cambodia began, there were reasons to be concerned”,<sup>25</sup> and asserts that UN soldiers and staff assigned to the UN Transitional Authority in Cambodia (UNTAC) quickly embarked upon the “routine sexual abuse of the local population.” UNTAC mission head Yasushi Akashi outraged many by saying “boys will be boys.”<sup>26</sup> The French contingent on that mission reportedly had its own “field brothel”, and the Bulgarian contingent reportedly had its own prostitution ring in the

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<sup>19</sup> Vanessa Kent, “Protecting Civilians from UN Peacekeepers and Humanitarian Workers: Sexual Exploitation and Abuse,” in *Unintended Consequences of Peacekeeping Operations*, ed. Chiyuki Aoi, Cedric de Coning and Ramesh Thakur (New York: United Nations University Press 2007), 45.

<sup>20</sup> Csáky, *No One to Turn to*, 10.

<sup>21</sup> Kent, “Protecting Civilians from UN Peacekeepers,” 46.

<sup>22</sup> Colum Lynch, “Misconduct, Corruption by UN Police Mar Bosnia Mission,” *Washington Post*, May 29, 2001.

<sup>23</sup> Csáky, *No One to Turn to*, 10.

<sup>24</sup> Chiyuki Aoi, Cedric de Coning, Ramesh Thakur, eds. *Unintended Consequences of Peacekeeping Operations* (New York: United Nations University Press, 2007), 32–33; Julia Stuart, “Dark Side of Peacekeeping: Kofi Annan is Calling for UN Troops to be sent to Liberia,” *The Independent* (London), July 10, 2003: 4–5; Daniel Pallin, “Sexual Slavery in Bosnia: The Negative Externality of the Marketplace,” *Swords and Plowshares* 13, no.1 (Spring 2003): 27–43, [http://www.american.edu/sis/students/sword/Back\\_Issues/3.pdf](http://www.american.edu/sis/students/sword/Back_Issues/3.pdf) (accessed December 28, 2008).

<sup>25</sup> Cynthia Enloe, *The Morning After: Sexual Politics at the End of the Cold War* (Berkeley: University of California Press, 1993), 33.

<sup>26</sup> Ibid. cited in Sandra Whitworth, *Men, Militarism and UN Peacekeepers: A Gendered Analysis* (Boulder and London: Lynne Rienner Publishers, 2004), 13; Aoi, de Coning, Thakur, eds. *Unintended Consequences*, 32.

north eastern part of the country.<sup>27</sup> Various estimates suggest a three- to fourfold increase in the number of prostitutes in the country when the peacekeepers arrived.<sup>28</sup>

Sarah Mendelson undertook a detailed examination of the correlation between peacekeepers and prostitutes in the Balkans during 2005. After several trips to the area and interviews with military personnel of several troop contributing countries (hereinafter TCC), she found that brothels appeared “overnight” as soon as the peacekeepers began to arrive.<sup>29</sup> Indeed, some reports indicate that a chain of brothels “had already been opened before the arrival of the first peacekeepers to the region.”<sup>30</sup> “[T]he sex slave trade in Bosnia largely exists because of the UN peacekeeping operation. Without the peacekeeping presence, there would have been little or no forced prostitution in Bosnia”, said David Lamb, a regional human rights officer in Bosnia during 2000–2001.<sup>31</sup> Graça Machel’s 2001 study, entitled *The Impact of War on Children*, reported that in half of the post-conflict country case studies from the 1990s, the arrival of peacekeepers was also associated with a rapid rise in child prostitution.<sup>32</sup>

“The sex slave trade in Bosnia largely exists because of the UN peacekeeping operation. Without the peacekeeping presence, there would have been little or no forced prostitution in Bosnia.”

Human rights investigator David Lamb

Some peacekeepers actively profited from the sex trade, buying and selling women for their own service, transporting trafficked women in UN vehicles, or

<sup>27</sup> Shikuko Koyama and Henri Myrtilinen, “A Gender Perspective,” in *Unintended Consequences of Peacekeeping Operations*, ed. Chiyuki Aoi, Cedric de Coning and Ramesh Thakur (New York: United Nations University Press), 32.

<sup>28</sup> *Ibid.*, 33.

<sup>29</sup> Mendelson, *Barracks and Brothels*.

<sup>30</sup> John Picarelli, *Trafficking Slavery and Peacekeeping: The Need for A Comprehensive Training Program, A Conference Report* (Turin: UNICRI and TraCCC, 2002), quoted in Marie Vlachová, “Trafficking in Humans: The Slavery of our Age,” *Connections: The Quarterly Journal* (Winter 2005): 8–9.

<sup>31</sup> US House of Representatives Committee on International Relations, *The U.N. and the Sex Trade in Bosnia: Isolated Case or Larger Problem in the U.N. System: Hearings Before the Subcommittee on International Operations and Human Rights*. 107<sup>th</sup> Congress., 2nd Session, April 24, 2002; Daniel Pallen, “Sexual Slavery in Bosnia: The Negative Externality of the Market for Peace” *Swords and Plowshares* XIII, no.1 (Spring 2003): 31.

<sup>32</sup> Graça Machel, *The Impact of War on Children: A Review of the Progress Since the 1996 United Nations Report on the Impact of Armed Conflict on Children* (New York: Palgrave, 2001).

otherwise becoming actively involved in the trade in trafficked women.<sup>33</sup> Other peacekeepers simply patronised the establishments, perhaps not realising that they were using the sexual services of women who had been brought there against their will.

Beyond this individual connection with trafficking, Mendelson also documented a high-level unwillingness to upset this established order.<sup>34</sup> Investigator David Lamb testified before the United States House of Representatives that high-level UN officials had made efforts to conceal peacekeeper offences associated with human trafficking.<sup>35</sup> In addition, UN peacekeepers took with them or destroyed hundreds of files pertaining to human trafficking when the UN mission in Bosnia changed hands in favour of the European Union.<sup>36</sup> This deliberate act prevented potentially embarrassing information about UN involvement in human trafficking from falling into EU hands, where it might have become public.

In the fall of 2004, the UN was publicly humiliated by newspaper accounts of sexual assaults by UN peacekeepers in the Democratic Republic of the Congo (DRC).<sup>37</sup> The accounts reported 150 allegations of sexual assault by peacekeepers, including sixty-eight cases of rape, paedophilia and prostitution.<sup>38</sup> Most of the allegations involved peacekeepers from Morocco, Nepal, Pakistan, South Africa, Tunisia and Uruguay. The UN Secretary-General asked Jordanian Prince Zeid Ra'ad Zeid Al-Hussein, an experienced and distinguished diplomat, to travel to the DRC and conduct an investigation. He found the allegations to be true. Numerous peacekeepers had taken advantage of Congolese women in a variety of circumstances. Some had raped

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<sup>33</sup> Testimony of David Lamb, US House of Representatives Committee on International Relations, Subcommittee on International Relations and Human Rights, *Hearing on The UN and the Sex Trade in Bosnia: Isolated Case or Larger Problem in the UN System?* 107<sup>th</sup> Congress, 2nd Session, April 24, 2002, 68. See also the testimony of Martina Vandenberg, at page 56. Colum Lynch, "Misconduct, Corruption by UN Police Mar Bosnia Mission," *Washington Post*, May 29, 2001 (reporting that one IPTF officer bought a Moldovan woman for \$2,900); Jennifer Murray, "Who will Police the Peace-Builders? The Failure to Establish Accountability for the Participation of United Nations Civilian Police in the Trafficking of Women in Post-conflict Bosnia and Herzegovina," *Columbia Human Rights Law Review* 34, no.475 (Spring 2003): 502–504 and sources cited therein.

<sup>34</sup> See: Mendelson, *Barracks and Brothels*, 19 et seq.

<sup>35</sup> Lamb, *Hearing on The UN and the Sex Trade in Bosnia*

<sup>36</sup> Mendelson, *Barracks and Brothels*, 63–64.

<sup>37</sup> These reports appeared in numerous papers around the world. See, e.g., Maggie Farley, "150 Cases Found in U.N. Sex Abuse Inquiry in Congo," *The Los Angeles Times*, November 23, 2004; Colum Lynch, "U.N. Sexual Abuse Alleged in Congo," *The Washington Post*, December 15, 2004.

<sup>38</sup> Kent, "Protecting Civilians from UN Peacekeepers," 47. Prince al-Hussein reports "16 allegations against civilians, 9 against civilian police, and 80 allegations against military personnel, for a total of 105 allegations."

the women, using UN vehicles to travel to the location of the rape. Some had raped women or children, and then given them some sort of food item to make the transaction appear to be a consensual, compensated one. On some occasions, desperate women who had lost their husbands or livelihoods crawled into the UN compounds through holes in the fence, and offered themselves in exchange for some food or money, and UN peacekeepers took advantage of the condition of these local women.<sup>39</sup>

The sum of these investigations gives depth and body to the assertion that UN peacekeepers have been creating or contributing to the demand for sexual services since at least the early 1990s. When the number of sex workers in a peacekeeping area rises dramatically just as the peacekeepers arrive, it is reasonable to assume that some of the women have been trafficked to meet their demands. In some of these operations, it is quite clear that this is the case. The reports of abuse in the DRC appear to have brought the long-standing problem to a head, at least for the UN. Prince al-Hussein documented “widespread and ongoing” problems with peacekeeper sexual abuse.<sup>40</sup> He reported a perception that “whistleblowers would not be protected”,<sup>41</sup> and described an “inexcusable” refusal of contingent commanders to cooperate with his investigation, much as Sarah Mendelson and David Lamb had documented in the Balkans.<sup>42</sup> These comments may have been toned-down allusions to material contained in an earlier draft of his report. According to published accounts of the earlier draft, the Prince found evidence of peacekeeper obstruction of UN investigations into the crimes, paying or offering to pay witnesses to change their testimony, threatening investigators and refusing to identify suspects.<sup>43</sup> Clearly, the presence of peacekeepers in a

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<sup>39</sup> United Nations, *Comprehensive Review of the Whole Question of Peacekeeping Operations in all their aspects*, UN document A/59/710 24 March 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/247/90/PDF/N0524790.pdf?OpenElement> (accessed April 23, 2009).

<sup>40</sup> Ibid.; Susan A. Notar, “Peacekeepers as Perpetrators: Sexual Exploitation and Abuse of Women and Children in the Democratic Republic of the Congo,” *American University Journal of Gender, Social Policy & the Law* 14, no.413 (2006).

<sup>41</sup> United Nations, *Comprehensive Review*, 8.

<sup>42</sup> See text accompanying notes 36 and 37 supra.

<sup>43</sup> See, e.g., Lynch, “Misconduct, Corruption by UN.” Referring to an earlier “confidential UN draft” version of Prince al-Hussein’s report, Lynch wrote, “[t]he report alleges that a Moroccan contingent stationed in Bunia threatened a U.N. informant investigating child prostitution. The Moroccan peacekeepers also ‘spread the word’ that a U.N. child-protection advocate looking into allegations of child prostitution and rape by U.N. peacekeepers ‘had better be careful when she went out at night,’ the report said. The report cites cases in which peacekeepers from Morocco, Pakistan and possibly Tunisia “were reported to have paid or attempted to pay witnesses to change their testimony” regarding alleged sexual abuse. It also charges that Moroccan military officials refused “to provide the names of Moroccan soldiers present at the location of an alleged rape.”

host nation represents not only a likely increase in demand for trafficked women, but a reasonable likelihood that peacekeepers will obstruct any investigation into their trafficking-related activities.<sup>44</sup>

### 3. The United States' Experience

Ironically, Prince al-Hussein's report was delivered almost simultaneously with a similar eruption in the United States. In May of 2002, a local Fox News television station began a series of investigative reports on the inexplicably large number of Korean massage parlours operating in the Cleveland, Ohio, area. The reporters followed a chain of clues until they found themselves in the red-light districts of Seoul, where they discovered a large number of American soldiers there as patrons, many of whom were aware that the women working there were Filipina, Russian, or Eastern European, and that they were not free to leave.<sup>45</sup> US Army Military Policemen (unaware that they were being taped by hidden cameras) told the reporters that the women had had their passports taken away, and that the women had to work until they could earn their passports back. When the report was finally aired, it included videotape of American military personnel in Korea, both patronising and appearing to protect brothels where they knew that many of the women had been trafficked from outside of Korea, and were being kept against their will.

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<sup>44</sup> Evidence of trafficking in Iraq and Afghanistan is beginning to surface, but connections to the military forces deployed there are not yet clear. With respect to Iraq, see Rania Abouzeid, "Iraq's Unspeakable Crime: Mothers Pimping Daughters," *Time*, March 7, 2009, <http://www.time.com/time/world/article/0,8599,1883696,00.html> (accessed March 8, 2009); with respect to Afghanistan, see IOM, *Afghanistan: Human Trafficking Survey Documents Abuse, Recommends Action* (Kabul: IOM, September 2008), [http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/afghanistan/iom\\_report\\_trafficking\\_afghanistan.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/afghanistan/iom_report_trafficking_afghanistan.pdf) (accessed March 9, 2009). American contractor Kellogg, Brown and Root (KBR) has been sued in the US District Court for human trafficking related to forced labour, rather than forced prostitution. Dana Hedgepeth, "KBR, Partner in Iraq Sued in Human Trafficking Case," *Washington Post*, August 28, 2008, A 13; KBR, "Human Trafficking Victims File Lawsuit Against U.S. Military Contractors in Iraq," Press Release, August 27, 2008, [http://www.cmht.com/cases\\_kbr.php](http://www.cmht.com/cases_kbr.php) (accessed June 2, 2009).

<sup>45</sup> For example, the reporter asked one soldier "So you keep these places safe?" and the soldier responded "Yeah, that's what we do. That's our job." Elsewhere on the tape, a soldier reported "All these bar owners buy girls at auction. These girls have to earn however much money it takes to get their passports back." Finally, a soldier explained "They [the women] are told to come here to make some money. And no they don't make money. They just make enough to buy their passports back. Because the people in Russia get them a visa, passport—the whole nine yards to work in Korea. They get off the plane and Korean nationals who work at the airport take the visa and passport away and put them in a line at the side. And they go to auction." Department of Defense Inspector General, *Assessment of DoD Efforts to Combat Trafficking in Persons, Phase I-Korea* (Arlington, VA: Department of Defense, 2003), 3, <http://www.dodig.osd.mil/fo/foia/H03L88433128PhaseI.PDF> (accessed April 17, 2009).

The reaction was immediate. Thirteen congressmen wrote to the Department of Defense Inspector General (DODIG) asking him to investigate the apparently inappropriate arrangement between the Army and the brothels. The Congressmen were concerned by the broadcast, which “depicted women (implied to be prostitutes) in the off-post establishment as victims of human trafficking and suggested that the military leadership in Korea, by providing ‘Courtesy Patrols’ to monitor Service member behaviour in off base bars, essentially condoned the illegal activities that occurred there.”<sup>46</sup> Beyond the appearance of merely condoning illegal activity, the Members of Congress also expressed concern about the appearance of a more direct and substantial involvement, i.e., “that American soldiers [in Korea] are knowingly procuring the services of trafficked persons and that some of these soldiers may even be ordered to protect and patrol the brothels.”<sup>47</sup>

Like the investigation of Prince al-Hussein, the DODIG’s response was swift. He conducted a “thorough, global and extensive”<sup>48</sup> investigation into Department of Defense efforts to combat human trafficking, addressing not only the allegations that had surfaced in Korea, but conducting a separate investigation into the situation in Bosnia-Herzegovina and Kosovo.<sup>49</sup> The Inspector General concluded that the relationship between the Army courtesy patrols and the brothels was “overly familiar”, but did not conclude that the US Army was directly involved in prostitution or in the trafficking of women.<sup>50</sup> Although the Army’s involvement in trafficking in Korea turned out to be much less direct than the sexual assaults by UN peacekeepers in the DRC, both organisations began moving in similar directions to combat the problem.

Following these embarrassing incidents, the US Department of Defense and the United Nations have each begun to address the correlation between the presence of their peacekeepers and the demand for sexual services that results in an increased demand for trafficked women. NATO and the European Union have likewise changed the rules under which their troops deploy, with a view

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<sup>46</sup> Ibid., 2.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid. These are the words of the DoD Inspector General. Sarah Mendelson was not impressed. She characterised the DODIG’s investigation as “superficial and pro forma.” Had investigators followed leads she believes they should have followed, they would have found evidence of contractor complicity in human trafficking, she asserts. See Mendelson, *Barracks and Brothels*, ix.

<sup>49</sup> Department of Defense Inspector General, *Assessment of DoD Efforts to Combat Trafficking in Persons, Phase II-Bosnia-Herzegovina* (Arlington, VA: Department of Defense, 2003), [http://www.dodig.osd.mil/fo/Foia/HT-Phase\\_II.pdf](http://www.dodig.osd.mil/fo/Foia/HT-Phase_II.pdf) (accessed January 15, 2009).

<sup>50</sup> Department of Defense Inspector General, *Assessment of DoD Efforts to Combat Trafficking in Persons, Phase I-Korea*, 10.

towards increasing the level of expectations for peacekeeper conduct while on mission, reducing sexual offences and the trafficking of women to provide sexual services. These efforts have taken a number of directions, but fall generally into efforts to increase pre-deployment education and training, raising the bar of personal conduct, and facilitating the discipline of offenders.

While there have been recommendations to provide a better mechanism for the financial compensation of victims, this issue remains troublesome. Some authors advocate that TCCs simply pay compensation to the victims of their armed forces' misconduct.<sup>51</sup> The OSCE examined the issue of compensation for trafficked and exploited persons under the criminal, civil and labour laws of several OSCE nations, with particular emphasis on the legal systems of Albania, France, Moldova, the Russian Federation, Ukraine, the United Kingdom and the United States. Each nation has its own mechanisms for financial compensation, but most require the active participation of the trafficked person in a legal proceeding. "Although there have been some successful claims against traffickers/exploiters, they have been limited to cases where the trafficker or exploiter has been prosecuted and convicted (in a criminal claim) or had been located and sued in a civil action."<sup>52</sup> In France, the UK, Romania and the US there is a possibility of compensation from a state fund, subject to certain conditions.<sup>53</sup> In sum, like many victims of crime, there is little available for victims of human trafficking or peacekeeper sexual abuse in the way of financial compensation.

### *3.1 Pre-Deployment Education and Training*

The demand for sexual services by peacekeepers is created to some extent by peacekeepers with differing levels of awareness of the problem, and of their responsibility for causing women to be trafficked. Relatively few peacekeepers are actively and consciously engaged in the business of trafficking, or sexually assault women in the mission areas. For these few, a criminal prosecution or other discipline would be appropriate. This issue will be discussed below.

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<sup>51</sup> For a discussion of this problem and one proposal to correct it, see Catherine E. Sweetser, "Providing Effective Remedies to Victims of Abuse by Peacekeeping Personnel," *New York University Law Review* 83, no.1643 (2008).

<sup>52</sup> OSCE Office for Democratic Institutions and Human Rights, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (Warsaw: OSCE ODIHR, 2008), [http://www.osce.org/publications/odihr/2008/05/31284\\_1145\\_en.pdf](http://www.osce.org/publications/odihr/2008/05/31284_1145_en.pdf) (accessed April 20, 2009).

<sup>53</sup> *Ibid.*

The lion's share of the demand for sexual services probably comes from uninformed peacekeepers who merely seek sexual satisfaction, and who see commercial sex providers as a reasonable outlet for that desire. These peacekeepers may have different levels of awareness of the larger issues of human trafficking and organised crime that make those women available. Or, perhaps they know something of the women's plight, but were not responsible for creating it and do not see that they are furthering it by being patrons. The US military personnel filmed in Korean brothels are representative of this group. For troops such as these, part of the answer is education about human trafficking, its connection with organised crime, and the adverse impact it has on a mission when peacekeepers patronise these establishments.

The US Army's reaction in Korea is a sterling example of such an educational campaign. As a result of the DODIG's report about the "unduly familiar" relationship between the US Army and human trafficking in Korea, General LaPorte required an intensive educational campaign to make visiting American forces aware of it. Every military person, family member, and contractor or employee who arrives in Korea for duty, including sailors arriving for a port visit, are exposed to an educational lecture about human trafficking and its connection with deployed forces. The presentation also describes areas that have been placed off-limits to American personnel because of their association with trafficking.<sup>54</sup> The educational effort is reinforced during the member's tour in Korea by advertisements regularly broadcast on Armed Forces Television stations that remind Americans in Korea that trafficking is a crime, that no American may be associated with or support it, and that there is a hotline number available for reporting of establishments or individuals who are suspected of involvement. The Commanding General appears in person to denounce trafficking and to affirm that there will be zero tolerance for it.<sup>55</sup>

Similar efforts are in place for peacekeepers deploying to UN Missions. Some of these training modules are online, and can be accessed in a number of languages via the internet. Sarah Mendelson, speaking to the US Congress in 2005, reminded us that there are ingrained attitudes about human trafficking that she characterises as indifference ("it is not part of our mission to address social ills such as human trafficking"), denial ("these women are willingly

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<sup>54</sup> Copies of the training presentation and the television advertisements are in the possession of the author.

<sup>55</sup> The text of Lieutenant General Campbell's television spot is "Listen up! Prostitution and human trafficking is a worldwide menace that diminishes basic human dignity. US Forces Korea has a zero tolerance policy when it comes to participating in such malicious activity. I want all military personnel, DoD civilians and contract personnel and their family members to make sure the word is loud and clear. Human trafficking is illegal, wrong and will not be tolerated!"



employed as prostitutes, and are not trafficking victims” or “our boys are not involved”), misperception (“human trafficking is the same as prostitution, and that is good for the morale of deployed troops”) and even acceptance (“that’s the way it is”), that are hard to divorce from the realities of human trafficking, and that “a few training modules” will not be enough to change those attitudes.<sup>56</sup>

Indeed, to be effective in changing behaviour, training must be reinforced if the desired behaviour is not achieved, and it must be accompanied by genuine organisational efforts to make the training “stick.” Many of the organisations that send peacekeepers abroad supplement their training with significantly more demanding expectations for peacekeeper conduct while deployed.

3.2 Raising the Bar of Personal Conduct

Codes of Conduct

Many of the nations now sending military personnel and other peacekeepers abroad have begun to raise the bar by insisting on higher standards of personal conduct while on mission.

<p><b>UNICEF Core Aspects of Codes of Conduct<sup>57</sup></b></p> <p>UNICEF’s Inter-Agency Standing Committee on Protection from Sexual Exploitation and Abuse in Humanitarian Crises considers the following to be core aspects of every Code of Conduct:</p> <ul style="list-style-type: none"> <li>○ Sexual exploitation and abuse by humanitarian workers constitute acts of gross misconduct and are therefore grounds for termination of employment;</li> <li>○ Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defence;</li> <li>○ Exchange of money, employment, goods, or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour is prohibited. This includes exchange of assistance that is due to beneficiaries.</li> <li>○ Sexual relationships between humanitarian workers and beneficiaries are strongly</li> </ul>
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<sup>56</sup> Testimony of Sarah Mendelson, House International Relations Committee, Sub-committee on Africa, Global Human Rights, and International Operations, *Combating Human Trafficking: Achieving Zero Tolerance*, March 9, 2005, <http://www.csis.org/media/csis/congress/ts050309mendelson.pdf> (accessed March 3, 2009). See also the introduction to Mendelson, *Barracks and Brothels*, where she expands on these arguments.

<sup>57</sup> UNICEF, *IASCTFR Report* (New York: UNICEF, 2002), <http://www.unicef.org/emerg/files/IASCTFReport.pdf> (Accessed April 23, 2009).

discouraged since they are based on inherently unequal power dynamics. Such relationships undermine the credibility and integrity of humanitarian aid work.

- Where a humanitarian worker develops concerns or suspicions regarding sexual abuse or exploitation by a fellow worker, whether in the same agency or not, s/he must report such concerns via established agency reporting mechanisms.
- Humanitarian workers agencies are obliged to create and maintain an environment which prevents sexual exploitation and abuse and promotes the implementation of their code of conduct. Managers at all levels have particular responsibilities to support and develop systems which maintain this environment.

These standards are often in the form of codes of conduct, and are introduced to prospective peacekeepers in pre-deployment training settings, where the peacekeepers are asked to subscribe to them. In 2005, the Council of the European Union published “Generic Standards of Behaviour for ESDP Operations”, in which the EU asserts its expectation that peacekeepers “should be aware that both prostitution and the pornographic industry have established links with organized crime and human trafficking ... Sexual exploitation and sexual abuse violate universally recognized legal norms and standards. They constitute acts of serious misconduct and are therefore grounds for disciplinary measures. Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited.”<sup>58</sup> The United Nations Code of Conduct for Blue Helmets also outlines the standards of expected personal behaviour in explicit terms that call for conduct that “[befits] the dignity of a disciplined, caring, considerate, mature, respected and trusted soldier ...”<sup>59</sup>

#### **UN Code Of Personal Conduct For Blue Helmets**

1. Dress, think, talk, act and behave in a manner befitting the dignity of a disciplined, caring, considerate, mature, respected and trusted soldier, displaying the highest integrity and impartiality. Have pride in your position as a peacekeeper and do not abuse or misuse your authority.
2. Respect the law of the land or the host country, their local culture, traditions, customs and practices.
3. Treat the inhabitants of the host country with respect, courtesy and consideration. You are there as a guest to help them and in so doing will be welcomed with admiration.

<sup>58</sup> Council of Europe, “Generic Standards for ESDP Operations,” 8.

<sup>59</sup> Department of Peacekeeping Operations, *Ten Rules Code of Personal Conduct for Blue Helmets* (New York: United Nations), [http://www.un.org/Depts/dpko/dpko/Conduct/ten\\_in.pdf](http://www.un.org/Depts/dpko/dpko/Conduct/ten_in.pdf) (accessed May 15, 2009).

Neither solicit nor accept any material, reward, honor or gift.

4. Do not indulge in immoral acts of sexual, physical, or psychological abuse or exploitation of the local population or United Nations staff, especially women and children.
5. Respect and regard for human rights of all. Support and aid the infirm, sick and weak. Do not act in revenge or with malice, in particularly when dealing with prisoners, detainees or people in your custody.
6. Properly care for and account for all United Nations money, vehicles, equipment and property assigned to you and do not trade or barter with them to seek personal benefits.
7. Show courtesy and pay appropriate compliments to all members of the mission, including other United Nations contingents, regardless of their creed, gender, rank or origin.
8. Show respect for and promote the environment, including the flora and fauna, of the host country.
9. Do not engage in excessive consumption of alcohol or traffic in drugs.
10. Exercise the utmost discretion in handling confidential information and matters of official business which can put lives into danger or soil the image of the United Nations.

The US Department of Defense supplemented the actions of General LaPorte by its own Code of Conduct, in the form of a “zero tolerance policy” applicable to all US personnel worldwide. The policy prohibits US troops and their contractors from being “complicit in any way in trafficking in persons.”<sup>60</sup> Former US Secretary of Defense Donald Rumsfeld instructed subordinate commanders “at all levels to ensure their units are trained to recognize indicators of this serious crime ... to work with host nation law enforcement to identify businesses and establishments that are involved in trafficking for sexual exploitation ... and take appropriate steps to put those establishments off-limits to DoD members—military, civilian and contract civilian. No leader in this Department should turn a blind eye to this issue.”<sup>61</sup>

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<sup>60</sup> Deputy Secretary of Defense Paul Wolfowitz, *Combating Trafficking in Persons in the Department of Defense*, Policy Memorandum, January 30, 2004; see also Donald Rumsfeld’s memo of September 16, 2004, available at <http://www.marshallcenter.org/site-graphic/lang-en/page-mc-policy-1/static/xdocs/opa/static/SD%20091604.pdf> (accessed January 14, 2009).

<sup>61</sup> Ibid. Copies of the Rumsfeld and Wolfowitz Policy Letters are also at Department of Defense Inspector General, *Evaluation of DoD Efforts to Combat Trafficking in Persons* (Arlington, VA: DoD, November 21, 2006), Appendix D, <http://www.dodig.mil/inspections/IE/Reports/TIP%20Final-E.pdf> (accessed April 17, 2009).

## Off-Limits Areas

Pre-deployment training and raising the bar by means of codes of conduct are good, but a strong command effort to reinforce those efforts is better. General LaPorte did this in Korea by adding to an already existing list of “off-limits areas”<sup>62</sup> any establishment that was suspected of being involved in human trafficking. Whereas military police had in the past patrolled these areas to ensure a safe environment for troop recreation, they now patrol them to ensure that no American military personnel are present to patronise them. By identifying human trafficking as an unacceptable human rights abuse and criminal behaviour, and by placing all their businesses off-limits to American personnel, General LaPorte effectively removed American personnel in Korea from the demand for trafficked women.<sup>63</sup> Subsequent monitoring has shown this to be an effective means of reducing human trafficking there. As a result of the US initiatives, prostitution is harder to find. Charles Johnson, the USFK Action Officer for the Prostitution and Human Trafficking (P&HT) Working Group, describes the changes in this way:

I have seen the results [of placing these establishments off-limits]. In 2000–2002, I was assigned to the 2d Infantry Division, at Camp Casey, Tongduchoen (TDC) Korea. TDC was notorious for the strip of bars outside the front gate of Camp Casey, and the bars in Toko-ri outside neighboring Camp Hovey. You could not go into a bar, or walk down the street at night without being propositioned. If walking alone, ajumas (old Korean ladies) would try to pull you into alleys to see some “pretty young girl.” This past February, I was in TDC conducting a P&HT check. I was not propositioned at all, the ajumas are gone. The bars now have Filipino “juicy” girls who will sit with a customer for a \$10–\$20 drink. The MPs and Courtesy Patrols now play “morality police” ensuring no inappropriate touching is going on. I will not tell you prostitution is not going on ... it is just much more under the table ... more difficult. Now service members must look for it, versus three years ago when it was pushed at them in the bars and on the streets.<sup>64</sup>

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<sup>62</sup> These included open bodies of water where personal safety was at issue, and drug stores where illicit drugs might be sold.

<sup>63</sup> General Leon J. LaPorte, Commander, United Nations Command, Commander, Republic of Korea-United States Combined Forces Command, and Commander, US Forces Korea, *Statement before the House Armed Services Committee and Commission on Security and Cooperation in Europe*, September 21, 2004, 1, [www.defenselink.mil/dodgc/olc/docs/test04-09-21LaPorte.pdf](http://www.defenselink.mil/dodgc/olc/docs/test04-09-21LaPorte.pdf). (accessed January 19, 2009).

<sup>64</sup> Charles M. Johnson, Action Officer, US Forces Korea PH&T Working Group, e-mail message to author, November 25, 2005.

Prince al-Hussein likewise recommended the establishment of off-limits areas, and several peacekeeping contingents have employed them before and after his report.

In 2003, the Special Representative of the Secretary General (SRSG) in Timor Leste issued an order barring UN staff from visiting places where prostitution takes place and imposed a curfew on military personnel. Individual contingents issued similar orders for their members. The Australian contingent limited the number of drinks its members could consume.<sup>65</sup> Of course, it is easier to control the activities of military personnel than the various groups of civilians who are present in the mission area, as they are not subject to military discipline and often do not live in barracks.<sup>66</sup> Even so, military personnel comprise the vast majority of peacekeepers on any mission, and are the most likely to engage in sexual offences against the local population.<sup>67</sup> Imposing and enforcing off-limits areas and curfews, even when they apply only to the military contingent, will of necessity reduce the patronage of establishments engaged in human trafficking and drive the prostitution business underground. This, like education and codes of conduct, diminishes demand for sexual services and effectively helps solve the problem of human trafficking for sexual service to peacekeepers. In addition, the SRSG can issue a circular barring UN civilian staff from visiting places where prostitution takes place. If these areas are already being patrolled by military personnel to ensure that no peacekeepers are there to patronise them, civilians will likewise be deterred from being there. Even spotty compliance with such an order by civilians associated with the mission will be enhanced by the military patrols. The combined effect of the education, codes of conduct, off-limits areas and enforcement programmes should go a long way towards reducing the demand for sexual services, the resultant human trafficking to provide those services, and should significantly diminish the revenues of organised crime.

### *3.3 Facilitating Discipline of Offenders*

In his Comprehensive Report, Prince al-Hussein noted the perception that crimes committed in peacekeeping areas will go unpunished and that this perception has contributed to a sense of impunity among peacekeepers.<sup>68</sup> The

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<sup>65</sup> Koyama and Myrntinen, "A Gender Perspective," 36.

<sup>66</sup> Ibid.

<sup>67</sup> See text accompanying note 5, *supra*.

<sup>68</sup> United Nations, *Comprehensive Review*, para. 13.

perception is largely true, and flows from a number of factors. Oftentimes, the domestic courts and police systems in the mission area are not operational or are inadequate to try foreigners. In addition, peacekeepers have various levels of immunity that protects them from prosecution by local authorities in any event. In addition, there is a long history of peacekeeper involvement in criminal offences with few, if any, successful prosecutions by any authority. By far the most common result of peacekeeper criminal misconduct in a mission area is for that peacekeeper to be repatriated to his home country. Various civilian members of the peacekeeping mission also have some type of official immunity that discourages prosecutions, and many contractors are able to leave a peacekeeping area without consequence when suspicion begins to focus on them.

TCCs that supply peacekeepers for UN assignment do so under a Memorandum of Agreement (MOA) with the UN. That MOA protects military personnel from local jurisdiction and ensures that they will only be subject to discipline by the nation to which they belong.<sup>69</sup> This limitation protects the military forces assigned to peacekeeping operations from trial in the domestic courts where they are assigned, and essentially gives them complete immunity from a prosecution in the host country.<sup>70</sup> UN employees and other civilians on mission fall into different categories and have different levels and types of protection from prosecution while on mission. While this chapter lacks space for a complete examination of the types of immunity, suffice it to say that all military and most civilian personnel attached to a peacekeeping operation have considerable protection from criminal prosecution by the local jurisdiction.<sup>71</sup>

Article 105 of the UN Charter confers upon UN officials “such privileges and immunities” as are necessary for the independent exercise of the UN’s functions.<sup>72</sup> The Charter is supplemented by the Convention on the Privileges

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<sup>69</sup> Kent, “Protecting Civilians from UN Peacekeepers,” 45–46.

<sup>70</sup> United Nations, Department of Peacekeeping Operations, *Model Status of Forces Agreement for Peacekeeping Operations*, UN Doc A-45/594 (October 9, 1990); Dieter Fleck, ed. *The Handbook of the Law of Visiting Forces* (New York and Oxford: Oxford University Press, 2001), Annex F, 603.

<sup>71</sup> For a more detailed analysis of immunity on peacekeeping missions, see Françoise J. Hampton and Al Kihara-Hunt, “Accountability of Personnel,” in *Unintended Consequences of Peacekeeping Operations*, ed. Chiyuki Aoi, Cedric de Coning and Ramesh Thakur (New York: United Nations University Press 2007), 196–215, and Keith J. Allred, “Peacekeepers and Prostitutes: How Deployed Forces Fuel the Demand for Trafficked Women and New Hope for Stopping It,” *Armed Forces and Society* 35 (2005): 5–23.

<sup>72</sup> Charter of the United Nations, Article 105 asserts that “(1) The Organization shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfilment of its purposes. (2) Representatives of the Members of the United Nations and officials of the Organization

and Immunities of the United Nations, which broadens the immunities from arrest and civil process to include a host of other UN employees and agents posted abroad.<sup>73</sup> While some of these civilian members of a peacekeeping operation have only “functional” immunity, which protects them from prosecution for acts performed in the course of their official duties, their actual protection is broader than one might expect. Protecting peacekeepers from the exercise of such jurisdiction positively impacts a Peace Support Operation and enables it to perform its work free of local interference.<sup>74</sup> Frederick Rawski argues that subjecting peacekeepers to local jurisdiction would have a “devastating impact on staff recruitment” and that local forces opposed to the presence of peacekeepers could seriously hamper the mission with vexatious and troublesome litigation.<sup>75</sup>

Immunity for UN personnel is in accordance with established international practice and is generally a good thing. It prevents national authorities from interfering inappropriately with the important international work of the UN in those countries. But the perception that UN personnel have immunity from any criminal consequence, even for a serious offence against a citizen of the country where they serve, may embolden peacekeepers and lead them to take liberties while on mission they would never dare to take at home. Bosnian authorities complained to Human Rights Watch investigators that they had no authority to pursue employees of private military and security companies, i.e., NATO contractors, given their immunity from arrest, detention and prosecution. One police officer complained that “When we find that a foreigner is involved, this is the biggest problem for us. We can’t do anything against them—they are above the law.”<sup>76</sup>

The immunity granted by these conventions is only functional; it applies only to members of the UN staff who are acting in their official capacities and performing official functions. The Security Council is authorised to waive the immunity of the Secretary General, who in turn is authorised to waive the immunity of a UN Staff member.<sup>77</sup> On rare occasions, the Secretary General has issued such waivers. A UN training manual for law enforcement personnel

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shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the organization.”

<sup>73</sup> Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 13 February 1946.

<sup>74</sup> Frederick Rawski, “To Waive or Not to Waive: Immunity and Accountability in U. N. Peacekeeping Operations,” *Connecticut Journal of International Law* 18 (2002): 116–17.

<sup>75</sup> Ibid. See also, Sweetser, “Providing Effective Remedies.”

<sup>76</sup> Andreas, *Blue Helmets and Black Markets*, 130.

<sup>77</sup> The process for waiving immunity is described in Rawski, “To Waive or Not to Waive,” 114.

notes that “The immunity of UN officials has been waived in relation to a number of staff members who have committed criminal offences, including sexual offences. In Kosovo, the immunity of a civilian police officer that was suspected of rape was waived in order to allow for an investigation and prosecution in the mission area.”<sup>78</sup> Thus, waiver of immunity is possible, but it applies only to UN staff personnel, and is used very rarely. The Department of Peacekeeping Operations well understands that routine waiver of immunity for peacekeepers would significantly complicate the recruitment of forces willing to serve. And what is more, the courts in the host nation may be unable to provide an adequate trial for an alleged offender, making the existence of immunity immaterial.

The goal of enhancing accountability for criminal conduct committed in a peacekeeping area, then, requires a willingness to waive immunity whenever the severity of the charged offence appears to require it, and when the host nation courts and police systems are capable for providing a fair trial. In many cases, these two criteria do not seem to coexist in any peacekeeping area, and the result is that there are simply very few prosecutions, even for serious criminal offences, by the host nation. That means that in most cases, an offender must be disciplined by and in his home country, far from the evidence, the witnesses, and the community in which the offence occurred.

Although the UN Peacekeeping MOA reserves for the sending state the exclusive right to punish its own soldiers, there are a number of ways how that can be done. Some countries have legal systems that permit them to hold military courts outside their national borders. Other TCCs require their soldiers, when accused of an offence committed abroad, be returned home to stand trial in that nation’s domestic courts. A portable military court trying an offence that allegedly occurred in a peacekeeping area will have better access to witnesses and evidence than one held back in the TCC.<sup>79</sup> In addition, victims and their

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<sup>78</sup> United Nations Interregional Crime and Justice Research Institute, *Trafficking in Human Beings and Peace-Support Operations; Pre-deployment/In-service Training Programme for International Law-enforcement Personnel* (Turin: UNICRI, 2006), 66–67.

<sup>79</sup> Data concerning the outcome of trials held after peacekeepers have returned home are generally hard to come by. The United Nations University Press, however, has published reports that “In Timor Leste, the Jordanian contingent gained a particularly notorious reputation for sexual assault. The first case of rape occurred before their arrival in Timor Leste, during a 45 minute stopover at Darwin Airport in Northern Australia. Further cases of rape and bestiality followed. According to a UN source interviewed by us, several members of the contingent were court-martialed and executed upon their return to Jordan . . . In 2000 several Australian peacekeepers . . . were accused of sexually harassing Timorese women. They were repatriated and dishonorably discharged. According to a UNTAET worker based in the area at the time, several of the engineers in the Japanese PKF contingent were accused of harassing adolescents at a local orphanage in the enclave of Oecussi, and were reportedly



countrymen can see the process, hear the evidence, give their evidence by testifying as witnesses, and hear the verdict of the court after a fair and open trial under the accused's own legal system. Noting that many TCCs do not have the ability to hold military trials abroad, Prince al-Hussein recommended that countries whose legal systems do not currently allow them to hold trials abroad modify those laws to permit it.<sup>80</sup> Because the majority of criminal offences reported in past peacekeeping missions have been committed by military personnel, ensuring their accountability will go a long way toward holding violators accountable.

There are other efforts in play to reduce the connection between deployed troops and prostitution. In 2007, the US President added a new offence to the Uniform Code of Military Justice that exposes US military personnel to criminal prosecution for "patronizing a prostitute."<sup>81</sup> The use of a prostitute will be criminal when it is both "wrongful" (usually defined to mean 'without legal justification or excuse') and "prejudicial to good order in discipline in the armed forces or of a nature to bring discredit on the armed forces."<sup>82</sup> Lithuania announced in 2004 that its troops cannot be prosecuted for patronising prostitutes, but that they will face an unspecified "moral or disciplinary assessment" for doing so.<sup>83</sup> Norwegian troops will be disciplined for patronising prostitutes at any time and place.<sup>84</sup> Other nations contributing peacekeepers may choose to discipline their troops in the way that is most consistent with their national laws and military codes. For some countries,

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confined to their barracks when not on duty following several incidents." Koyama and Myrntinen, "A Gender Perspective," 32–33.

<sup>80</sup> United Nations, *Comprehensive Review*.

<sup>81</sup> 18 USC §834. The elements of the offense are (1) the accused had sexual intercourse with another person not the accused's spouse; (2) that the accused compelled, induced, enticed or procured such person to engage in an act of sexual intercourse in exchange for money or other compensation; (3) that the act was wrongful, and (4) that under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces. Executive Order 13447 (Annex), September 28, 2007.

<sup>82</sup> 10 USC §934. "Discredit" means to injure the reputation of. This clause in Article 134 makes punishable conduct which has a tendency to bring the service into disrepute or which tends to lower it in public esteem." Manual for Courts-Martial, 2008 ed., para.60.c.(3), Article 134. As of this writing, the author is unaware of any reported prosecutions under this article.

<sup>83</sup> Lithuanian Defence Vice-Minister Jonas Gecas has indicated that Lithuanian troops using sex services of women involved in prostitution cannot be prosecuted but that they face "moral and disciplinary assessment." No author, "Lithuanian Army will not Tolerate Promotion of Sex Slavery by Troops-Defense Vice Minister," *Baltic News Service*, July 28, 2004.

<sup>84</sup> The Norwegian Armed Forces Code of Conduct prohibits the purchase of sexual services and relations that might otherwise weaken confidence in the impartiality of the force. Norwegian military personnel who violate the code are subject to punishment. Brita Schawlann, Senior Advisor, Norwegian Defence Ministry, e-mail message to author, January 13, 2006.

where prostitution is legal, there may be reluctance to discipline troops for doing abroad what they could legally do at home.<sup>85</sup>

The ability to prosecute criminal conduct in the peacekeeping area may also require better forensic evidence. In most peacekeeping missions, there is no capability to collect and examine body fluids or other samples, and this helps assailants avoid identification. Prince al-Hussein recommended that the UN begin sending forensic scientists and their equipment on peacekeeping missions to facilitate the collection and identification of body fluid samples in sexual assault cases.

Many prosecutions of alleged offences by peacekeepers must of necessity take place in the peacekeeper's home nation after his return from a PKO. In certain of these cases, Prince al-Hussein determined that the prosecution of alleged offenders was rendered impotent or seriously undermined because the evidence had not been collected in such a way as to make it admissible in the offender's national courts. The solution, he reasoned, was to bring legal advisors from each TCC to the PKO, to supervise the collection of evidence against an alleged offender from his home country and thereby to enhance the likelihood of a successful prosecution.

The matter of discipline, then, depends on factors such as the viability of the host nation courts and legal systems, the severity of the offence (human trafficking or sexual abuse are more likely to warrant prosecution than merely patronising a prostitute) and the Secretary General's willingness to waive immunity so an offender can be tried in the host nation; the ability of the TCC to hold on-site courts-martial for military personnel; the quality of the evidence collected and its compliance with TCC national law and modern evidence gathering techniques; and the TCC's laws that may or may not criminalise the peacekeeper's conduct.

For most peacekeepers, it is probably accurate to say that patronising a prostitute, even one that has been trafficked, is not a crime. Engaging in human trafficking or sexually abusing the host nation population certainly is. Violating an order placing an area off-limits may or may not be, depending on whether the order applied to the troops in question, and whether their national authorities desire to enforce it. At the end of the day, holding peacekeepers responsible for their conduct while on mission will continue to be a patchwork quilt of issues that will require a patchwork of solutions. For some offenders, repatriation may continue to be the only real discipline that is ever imposed, but

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<sup>85</sup> Prostitution is legal in some countries, such as Germany and the Netherlands.

the issue of peacekeepers and their sexual relations with the host nation citizens is increasingly visible, with increasing demands for accountability.

#### 4. Compensation in Lieu of a Conviction, Anyone?

In light of the lack of certainty that offenders will be punished for criminal misconduct, there is growing agitation for another compensation mechanism for victims of sexual assault or human rights abuses. Prince al-Hussein's Comprehensive Review recommended that a mechanism be developed for compensating local victims for sexual assault when the perpetrator cannot be identified.<sup>86</sup> Even when the perpetrator *can* be identified, there may be a need for a compensation system where a "consensual" encounter that has left the local woman pregnant with a peacekeeper's baby. Prince al-Hussein reasoned that in order to retain its international reputation, the UN should provide a mechanism for compensating these women for the costs of raising a child alone. This reminds us of the United Nations Special Rapporteur on Violence Against Women's argument that the UN may "lose its moral force if it fails to respond when those within the United Nations system violate human rights."<sup>87</sup>

At present, there is no mechanism for compensating victims of peacekeeper misconduct.<sup>88</sup> The UN sometimes pays claims for damage to persons and property, and did so in the DRC in 1965.<sup>89</sup> There are claims review boards assigned to each peacekeeping mission, and these boards hear and consider claims against the UN itself or against a TCC, but the statute of limitations is six months, and there is a \$50,000 cap on damages.<sup>90</sup> They have been criticised

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<sup>86</sup> United Nations, *Comprehensive Review*, 22.

<sup>87</sup> United Nations Special Rapporteur on Violence Against Women, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, UN Doc. E/CN.4/2000/68, February 29, 2000, 59.

<sup>88</sup> Sweetser, "Providing Effective Remedies."

<sup>89</sup> "In a series of global settlements with the victims' states of nationality, the UN settled claims for excesses commit by ONUC troops against persons and property in Congo." Chanaka Wickremasinghe and Guglielmo Verdirame, "Responsibility and Liability for Violations of Human Rights in the Course of UN Field Operations," in *Torture as Tort: Comparative Perspectives on the Development of Transnational Human Rights Litigation*, ed. Craig Scott (Oxford: Hart Publishing, 2001), 474, citing J.A. Salmon, "Les accords Spaak-U Thant du 20 fevrier 1965," *Annuaire française de droit international* 11, no.468 (1965).

<sup>90</sup> Daphna Shraga, "UN Peacekeeping Operations: Applicability of International Humanitarian Law and Responsibility for Operations-Related Damage," *American Journal of International Law* 94 (2000): 406; 409. Section 329 of the Privileges and Immunities Convention imposes on the United Nations some obligation to provide compensation. *Convention on the Privileges and Immunities of the United Nations*, February 13, 1946, 21 U.S.T.S. 1418, art. VIII §329.

as too slow and unwieldy.<sup>91</sup> The United Nations tends to see claims against individual peacekeepers who commit civil wrongs, or who engage in criminal conduct against a local national, as something that should be answered by the TCC. Thus, like the effort to hold individual peacekeepers accountable in criminal or disciplinary hearings, current efforts to obtain compensation from the United Nations are a patchwork of often unsatisfactory provisions that may or may not result in satisfaction of a claim that has been filed. A streamlined mechanism for hearing and adjudicating claims of sexual or other abuse against local nationals in peacekeeping areas would go a long way towards correcting some of the misbehaviour of peacekeepers in post-conflict areas of the world. The claims adjudication process could be established through a modification of the MOA under which peacekeepers serve, and of the terms of reference of the claims review boards that are currently in existence.<sup>92</sup>

## 5. Conclusion

The very nature of a peacekeeping operation, given its patchwork of military and civilian constituents drawn from a host of governmental and non-governmental organisations from around the globe, usually precludes a single, simple solution. The involvement of peacekeepers in human trafficking involves the personal conduct of peacekeepers, may affect their careers and livelihoods and may threaten potential embarrassment to the TCCs whose personnel are involved. As a result, each of those states has a strong interest in protecting their national reputations and the rights of their personnel. Where the proposed solution requires additional funding, the challenges of finding those funds further complicate the solution.

There is some hope that pre-deployment educational efforts will do much to educate peacekeepers about the problem of trafficking, and the likelihood that the women they may consider patronising in sexual encounters while on mission are actually victims of human trafficking. The increased standards of expected behaviour represented by newly developed codes of conduct, reinforced by clear off-limits areas that are patrolled by military police, should go a long way towards limiting the demand for trafficked women that peacekeeping forces currently provide. The American experience in Korea has demonstrated that a sustained commitment to this single initiative can significantly reduce the demand for trafficked women by driving it

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<sup>91</sup> Ibid., 88 and note 114.

<sup>92</sup> Sweetser, "Providing Effective Remedies."

underground and putting perpetrators at greater risk of punishment for patronising suspicious establishments.

All of these efforts are appropriate and should be instituted vigorously. Adding female peacekeepers to every contingent as quickly as they can be recruited and trained will help temper the conduct of their male colleagues, further steering them away from demand for trafficked women. Whether the SRS in any mission is a woman or not, the SRS should make it clear to his or her military and civilian assistants that they will be expected to faithfully and vigorously enforce the Codes of Conduct and off-limits areas established for mission personnel.

With relative ease, but some expense, the UN can also provide legal advisors and forensic investigators to enhance each mission's ability to respond to and investigate complaints of misconduct. Making commanders responsible for the treatment of women in peacekeeping areas will translate into downward pressure on troops in the field. Countries that continue to provide ill-disciplined troops who engage in misconduct or obstruct investigations may need to be told that their contributions are no longer wanted. It is unlikely that UN or TCC authorities will be able to eliminate every instance in which their troops or citizens create demand or support for trafficked women in a peacekeeping operation. But there is much that is being done, and much that can yet be done, to reduce peacekeeper involvement in trafficking situations.

## **Recommendations**

### *Pre-deployment Training on Trafficking and Organised Crime*

Pre-deployment training should continue to stress the problems of human trafficking, its connection with organised crime, and the adverse impact upon the mission when organised crime can sell illegal goods in a mission area. Peacekeepers should understand that patronising prostitutes very likely fuels organised crime and that this diminishes their ability to complete their missions.

### *Codes of Conduct that Prohibit Sexual Abuse*

Codes of conduct that prohibit sexual abuse of the local population should clearly be construed to include patronising prostitutes if there is any suspicion that they may have been trafficked. This connection must be a clear part of pre-deployment training.

### *Pre-deployment Training on Off-Limits Areas*

Pre-deployment training should continue to make it clear that off-limits areas have been established to prevent peacekeeper involvement with criminal elements in the mission area; that they are for real and that they will be patrolled. Failure to observe off-limits areas will result in administrative or punitive sanctions applied by the TCC, or repatriation ordered by the SRSG.

### *Creation of Off-Limits Areas*

The SRSG and military commander in each peacekeeping mission should identify areas suspected of involvement in or support for human trafficking, and place them off-limits for all mission personnel, military and civilian, including contractors. Military, UN and civilian members of peacekeeping missions arriving in a mission area should be required to attend an in-processing lecture that clearly informs them of the state of human trafficking in the area, clearly identifies off-limits areas, and reminds them of the likelihood of punitive or administrative sanctions should they enter the off-limits areas.

### *Personal Commitment of Civilian and Military Commanders*

The personal commitment of civilian and military commanders is invaluable as a means of reinforcing peacekeeper understanding regarding human trafficking. Military Commanders of peacekeeping missions should personally ensure that their troops understand that human trafficking is unacceptable, and that any involvement in it, including patronising prostitutes in the mission area or entering off-limits areas, will be punished. Civilian leaders should do the same with peacekeepers who report to them.

### *Patrols of Off-Limits Areas*

Vigorous patrols of off-limits areas should become a standing part of every peacekeeping operation to reduce to the absolute minimum peacekeeper patronage of organised criminal establishments. These patrols will further deter peacekeeper presence in areas where trafficked women are thought to be held, and will be able to identify and report violators, even if there is no power to apprehend them.

### *Immediate Repatriation for Rule Violators*

Immediate repatriation for violating the off-limits areas should be authorised to further deter violations. Repatriation is clearly a minimal punishment compared

to a criminal charge, but it may pose a significant threat of lost income, and will be a significant deterrent for peacekeepers in violation of these proscriptions. The SRSG and military commanders will have discretion to waive repatriation where warranted, but peacekeepers should understand at the outset that their jobs are on the line if they break the rules.

#### *Evaluation of Commanders*

The SRSG and military commanders of peacekeeping missions should be evaluated on the extent of their personal efforts to control their troops and address organised criminal issues such as trafficking in weapons, drugs and persons. This will generate downward pressure on subordinate commanders to ensure peacekeeper understanding of and compliance with mission codes of conduct and off-limits areas.

#### *Modified MOAs*

The UN Department of Peacekeeping Operations should modify its MOA with TCCs to require each TCC to have a mechanism for dealing with claims for peacekeeper abuse of the local population. The mechanism should have an abbreviated hearing or fact finding process, a limit on the amount of compensation available, a time limit on the filing of claims, and a standard of evidence that will protect peacekeepers and TCCs from merit-less claims. The author suggests a cap of 5,000 dollars for claims made within six months of the alleged misconduct, and proven by clear and substantial evidence. Such a system, while imperfect, would be sufficient to bring real relief to many victims of peacekeeper abuse, and would generate real pressure on TCCs to control their personnel.

#### *On-site Courts Martial*

TCCs that are not currently empowered to hold on-site courts-martial should be actively encouraged to modify their domestic legislation to permit them. This includes not only the legal authority to hold extra-territorial trials, but the investigative capacity and assets (judges, prosecutors, defence counsel, investigators, interpreters) that may be necessary to conduct the trials.

#### *Emphasis on Education and Prevention*

The emphasis with respect to peacekeepers should be on education and prevention of their creating demand for trafficked women. A small number of

peacekeepers commit criminal offences or become actively involved in trafficking, and there should be provision for holding them accountable. But the majority of peacekeepers contribute to trafficking in a more subtle way, by creating demand for, and patronising, women who have been trafficked for sexual services. When this demand is suppressed with education, command involvement, off-limits areas and the enforcement of Codes of Conduct, there will be far fewer women trafficked to peacekeeping areas, and far less money placed in the coffers of organised criminals there.



## CHAPTER 9

### Human Trafficking, Prosecutors & Judges

Allison Jernow

#### Introduction

The “Three Ps” approach to human trafficking assigns a straightforward role to criminal justice agencies.<sup>1</sup> Police, prosecutors and judges are responsible for investigating offenders, charging them with trafficking offences, trying them in courts of law, and convicting and sentencing them. In many countries, observers have questioned the effectiveness with which criminal justice actors have performed these functions. After all, the number of estimated human trafficking cases is very high and the number of prosecutions is relatively low. More fundamentally, critics have charged that states’ overwhelming emphasis on human trafficking as a “law and order problem” or a “border control problem” has resulted in flawed policies and the over-prioritisation of the criminal justice response. In this view, locating the United Nations (UN) Trafficking Protocol in the framework of the UN Convention on Transnational Organized Crime is a kind of original sin. It establishes a false dichotomy between “trafficking victims” and “smuggled migrants”, conceptualises trafficking only as a problem of transnational organised crime, and provides almost no mandatory victim protections. Some, perhaps many, feel that the criminal justice approach to trafficking marginalises, or is incompatible with, a human rights based approach to trafficking victims.<sup>2</sup>

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<sup>1</sup> The Three Ps are commonly described as prevention, prosecution, and protection. UNODC refers to the Three Ps as the “guiding framework” in combating trafficking. See, e.g., UN Commission on Crime Prevention and Criminal Justice, *Report on the Vienna Forum to Fight Human Trafficking*, Document no.CTOC/COP/2008/CRP.1, 2 July 2008.

<sup>2</sup> This author uses the term “victim” to refer to a person who has sustained harm as the result of an act or omission that is criminal in nature. Doing so is in keeping with the broad definitions of the term “victim” in international instruments and is not intended to restrict the view of the “victim” to his or her role in any criminal proceeding. More specific terms such as “witness” or “injured party” are used where appropriate. The author nevertheless recognises that the term “victim” can be construed as emphasizing an individual’s passivity.

To redress this imbalance, some civil society groups have called for an end to the use of the trafficking victim as a “tool” of criminal justice and for an approach that focuses on the victim’s needs as the central concern. Recommendations include implementing victim assistance and protection measures that are not contingent on cooperation with law enforcement and using various investigative techniques to obtain evidence that will reduce or eliminate the need for direct victim testimony. Some have suggested that reconceptualising the trafficked individual as one whose human rights have been violated, rather than as simply a crime victim, will ensure that he or she has rights independent of the criminal justice process. These criticisms have some validity. Any state response to trafficking that relies only on criminal justice is insufficient.

This chapter posits, however, that the criminal justice response is necessary. Furthermore, it is a fundamental part of a human rights approach to trafficking. This is true both at the level of the concrete, specific justice system response to the individual who has been harmed, and at the level of the overall functioning of the criminal justice system. Criminal justice actors—defined here to include law enforcement agencies, prosecutors’ offices, and courts—can and should be the key players in protecting victims’ rights and ensuring access to benefits and services. At the same time, criminal law is intended to serve the greater public. There are societal interests in seeing offenders apprehended and punished and deterring further crimes. An exclusively victim-oriented perspective would risk undermining the values that the criminal justice system is supposed to represent and protect. The goals of the criminal justice system and the individual victim are sometimes in conflict, but removing the victim from the criminal justice equation or abandoning the focus on prosecution are not solutions.

There are other judicial and quasi-judicial mechanisms for victims to access justice. Non-governmental organisations and legal aid lawyers in some countries have been active in filing civil law suits against traffickers or in bringing cases before international human rights tribunals.<sup>3</sup> In others, labour courts and employment tribunals have played a significant role in obtaining awards of unpaid wages or compensation for violations of workers’ rights. Although important, these mechanisms are not a focus of this chapter because

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<sup>3</sup> See, for example, *Bureerong v. Uvawas*, 959 F. Supp. 1231 (C.D. Cal. 1997) (denying defendants’ motion to dismiss in civil case brought by Thai workers against sweatshop owners in Los Angeles); *Siliadin v. France*, Application No. 73316/01 European Court of Human Rights, Judgment dated 26 July 2005 (finding that France had violated positive obligations to protect applicant from forced labour and servitude in case brought by nongovernmental organisation on behalf of domestic worker from Togo).

they are not coercive. The individual victim chooses to file a civil law complaint or to bring a case before an employment tribunal. Criminal justice is unique in that it exercises coercive power over not just the defendant, whom it seeks to apprehend and punish, but also the victim.

This chapter is both descriptive and prescriptive. After a brief review of the relevant UN, European Union (EU), and Council of Europe (CoE) instruments in the field of human trafficking and victim protection, parts two and three present common features in prosecuting trafficking defendants and protecting victims. Part four confronts the tension between these two functions. Part five offers concluding thoughts and recommendations. The geographical focus is based on the Organisation for Security and Cooperation in Europe (OSCE) region, whose fifty-six participating states span Europe, Central Asia, and North America.

In addition to “trafficking” as a global phenomenon that is endlessly debated and denounced, there is “trafficking”—the crime that happens to a particular individual and that requires a specific response. This chapter concerns the latter. Whatever else “trafficking” might be, trafficking is also a real and tangible violation of an individual’s rights. Responding to that individual violation by investigating and prosecuting the offender is the role of criminal justice. For a variety of reasons, we must acknowledge not just the role of criminal justice in combating trafficking but also the role of the victim in criminal justice.

## **1. International and Regional Instruments**

The trafficking conventions of the UN, EU and CoE all impose an obligation to criminalise. They vary in terms of their orientation towards the victims of trafficking, and are largely silent on the actual procedures that should be used to investigate and prosecute traffickers. All three instruments require that penalties reflect the serious nature of the crime, but only the *EU Council Framework Decision on Combating Trafficking in Human Beings*, adopted in July 2002, states that the maximum penalty for aggravated forms of trafficking should be not less than eight years’ imprisonment.

As has been noted extensively in the trafficking literature, the main instruments reflect state preoccupations with secure borders, illegal migration, and organised crime. The strongest protections for victims are found in the *Council of Europe Convention on Action against Trafficking in Human Beings*, which is intended to supplement the limited or non-existent protection scheme of the *UN*

*Trafficking Protocol*. The European Convention on Trafficking also specifies that it applies to all forms of trafficking “whether national or transnational, whether or not connected with organized crime.”<sup>4</sup> Under the European Convention on Trafficking, potential victims shall not be removed from a country until the identification process is completed; parties shall adopt measures to assist and protect victims; such assistance is not conditional on a victim’s willingness to act as a witness; parties shall offer “recovery” periods of at least thirty days to individuals when there are reasonable grounds to believe the person is a victim; parties shall also offer renewable residence permits based either on a victim’s personal situation or the requirements of an investigation or criminal proceeding. The CoE also established a monitoring mechanism, known as GRETA, composed of independent technical experts.

Trafficking instruments should not be read independently of general crime victim instruments, some of which are legally binding and all of which demonstrate an international political commitment to safeguarding some rights for crime victims. Recent crime victim instruments such as the *EU Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings* reflect the widespread acceptance of the *UN Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted by the General Assembly in 1985, as well as recommendations of the Committee of Ministers of the CoE.<sup>5</sup> Access to justice and fair treatment, restitution from the offender, assistance, and some mechanism to apply for state-based compensation are now recognised as rights held by crime victims, although implementation of these rights is lagging in many countries.

In addition, there are two legally binding instruments on compensation to crime victims. The *European Convention on Compensation of Victims of Violent Crime* provides that, when compensation is not fully available from other sources, the state “shall contribute to compensate those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence” and to “the dependants of persons who have died as a result of such crime.” Furthermore, compensation is to be awarded “even if the offender cannot be prosecuted or punished.” The Convention on Compensation entered into force in 1988 and has been ratified by twenty-two

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<sup>4</sup> European Convention on Action against Trafficking in Human Beings, Article 2, opened for signature 16 May 2005, entered into force 1 February 2008 (hereafter “European Convention on Trafficking”).

<sup>5</sup> See especially Recommendation No. R (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure; Recommendation No. R (2000) 11 on Action against Trafficking in Human Beings for the Purpose of Sexual Exploitation; and Recommendation No. R (2006) 8 on Assistance to Crime Victims.

states. Within the EU, Member States are bound by the *EU Council Directive of 29 April 2004 relating to compensation to crime victims*. The EU Council Directive requires states to “ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes.”

What general crime victim instruments lack, however, is any reference to the specific needs of trafficking victims, such as secure and stable residence in a destination country or protection against prosecution. In 2002 the UN High Commissioner for Human Rights issued *Recommended Principles and Guidelines on Human Rights and Human Trafficking*.<sup>6</sup> The Recommended Principles provide that trafficked persons shall not be detained, charged or prosecuted for illegal entry into destination and transit countries, or for involvement in unlawful activities to the extent that such involvement is a direct consequence of being trafficked. States shall provide protection and physical and psychological care to trafficked persons and such protection and care shall not be conditioned upon the willingness of the person to cooperate with law enforcement. During legal proceedings, states shall offer temporary residence permits to victims and witness. Similar protections are offered to trafficking victims by the *OSCE Action Plan to Combat Trafficking in Human Beings*, adopted by the Permanent Council in 2003. These protections are referred to but are generally weaker under the European Convention on Trafficking. Thus Article 26 of the European Convention only requires parties to “provide for the possibility” of non-criminalisation of victims for their involvement in unlawful activities “to the extent that they have been compelled to do so.”

## 2. Prosecuting Offenders

### 2.1 Overview: How Many and What Kind of Cases?

Playing the numbers game is difficult. Trafficking, like most crime, is a clandestine activity. The International Labour Organization (ILO) estimates that worldwide there are 2.45 million people in forced labour—defined to include both economic and sexual exploitation—as a result of human trafficking.<sup>7</sup> In the developing world, most of these cases tend to be cases of economic exploitation. In transition and industrialised countries, however,

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<sup>6</sup> Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2002/68/Add.1 (20 May 2002).

<sup>7</sup> International Labour Organization, *A Global Alliance against Forced Labour* (Geneva: ILO, 2005), 10.

sexual exploitation appears to be the most common form of forced labour and the main route into it is trafficking. According to the ILO, there are 470,000 victims of trafficking in industrialised and transition countries.<sup>8</sup> Whatever the reality of the overall estimate, it is clear that prosecution numbers are a tiny fraction. A report on Eurojust, based on data from a questionnaire as well as the United States (US) Trafficking in Persons Report, suggested that there were approximately 4,600 trafficking investigations and almost 900 convictions in EU Member States in 2003.<sup>9</sup>

There is very little empirical research on what happens in trafficking investigations and prosecutions. To date, analyses of legal and policy frameworks have dominated the research agenda. Nevertheless, the data that is available from recent reports on prosecutions in some developed and transition countries within Europe, as well as reports from the US, present a picture of actual practice by prosecutors and courts.

Almost all the cases involve sex trafficking. There are at least three reasons for this. First, the historical origin of the term “trafficking” is firmly rooted in the movement of (white) women across borders for “immoral purposes.” Recall, for example, the International Agreement for the Suppression of White Slave Traffic (1904) and the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others (1949). The UN Trafficking Protocol represents a paradigm shift in that it defines “exploitation” to include forced labour, slavery, and servitude, concepts that were traditionally protected by human rights and labour rights instruments. Yet even the Trafficking Protocol, in its very name, signals that “women and children” are of special concern. Certainly media and even government portrayals of trafficking victims have tended toward the sensationalistic and titillating. “Sex slaves” is the term preferred both by newspapers and policy makers.<sup>10</sup> This stereotype of a woman or girl “chained to a bed in a brothel”<sup>11</sup> obstructs any view of exploited workers as trafficking victims. Recognising the extreme vulnerability of many migrant

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<sup>8</sup> Ibid., 14, Table 1.2.

<sup>9</sup> Boudewijn de Jonge, *Eurojust and Human Trafficking: The State of Affairs* (Amsterdam: University of Amsterdam 2005), 19; 20. The author notes that definitions varied from country to country and that some countries included smuggling investigations and convictions in their figures.

<sup>10</sup> For an excellent discussion of trafficking discourse in the US, see Wendy Chapkis, “Trafficking, Migration and the Law: Protecting Innocents, Punishing Migrants,” *Gender and Society* 17 (Dec. 2003): 929.

<sup>11</sup> Dina Francesca Haynes, “(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act,” *Georgetown Immigration Law Journal* 21 (Spring 2007): 337.

workers, both regular and irregular, would require an acknowledgement of the inadequacy of both labour laws and migration policies.

Second, in many countries there is no specific legislation on labour trafficking. This is true despite the fact that the ILO Forced Labour Convention, requiring criminalisation of forced labour, is one of the oldest and most widely ratified of ILO conventions. Violations of workers' rights are seen as matters for civil rather than criminal enforcement. Some labour inspectorates have the power to refer employers for criminal sanctions but many do not. Moreover, labour inspectorates are famously under-resourced and, in some countries, certain sectors such as agriculture and domestic work are exempt from the application of labour standards. Work in the informal sector or work performed without an official employment contract may also be beyond the reach of labour laws and disregarded by inspectors.

Third, even in those countries with laws criminalising labour trafficking, the legislation is recent and the concept is poorly understood. In Germany, for example, there were 454 investigations into sex trafficking in 2007. That same year, there were just ninety-two investigations into trafficking for economic exploitation.<sup>12</sup> In the Netherlands, the National Rapporteur reports that five of the first seven cases brought under the new labour trafficking statute, enacted in 2005, resulted in acquittals.<sup>13</sup> One counter-example is the US, where Civil War-era laws prohibiting involuntary servitude have been used to prosecute labour cases, primarily in the sectors of agriculture, domestic work, begging, and sweatshops. But even there, sex prosecutions far outnumber labour ones. Between 2001 and 2007, the federal government prosecuted forty-six cases of labour trafficking and 110 cases of sex trafficking.<sup>14</sup> Worldwide, the US Trafficking in Persons Report records 3,427 convictions for trafficking generally, of which only 326 are for labour cases.<sup>15</sup>

There is tremendous heterogeneity in the actual charging decisions. Many potential trafficking cases are ultimately charged under another provision of

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<sup>12</sup> Bundeskriminalamt, *Human Trafficking in Germany: 2007 National Situation Report* (Wiesbaden: Bundeskriminalamt, 2007), 5 & 11.

<sup>13</sup> Heleen de Jonge van Ellemeet, Bureau of the Dutch National Rapporteur on Trafficking in Human Beings, email message to author, November 3, 2008.

<sup>14</sup> *Attorney General's Annual Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2007* (Washington DC: Department of Justice, May 2008), 27–28.

<sup>15</sup> US Department of State, *Trafficking in Persons Report* (Washington, DC: Department of State, 2008) (hereafter *TIP Report*). Although the accuracy of this data is questionable, given the large number of countries that either do not record such figures or do not disaggregate sex and labour trafficking cases, the TIP Report is one of the few sources of trafficking statistics.

law. Provisions related to smuggling, pimping and procuring are the most common. This reflects also the dominant view of “trafficking” as an offence closely related to both prostitution and irregular migration, rather than one linked to the exploitation of a person’s labour or services. In other words, a potential trafficking case gets broken down into lesser prostitution and immigration offences, rather than violations of labour law. Thus, in a study of trafficking cases in Germany, the author found that trafficking charges were dropped more frequently than other charges, such as pimping, promotion of prostitution, and migrant smuggling, and, as a result, suspects in trafficking investigations were more frequently convicted of those other charges.<sup>16</sup> According to the Swedish National Criminal Police, in 2005 there were seven defendants convicted of trafficking, but twenty-five of procuring and related offences.<sup>17</sup> In Italy, only 7 per cent of trafficking investigations resulted in charges under Article 600 (placing or holding a person in conditions of slavery or servitude). Of the remainder, the majority were for migration and prostitution offences.<sup>18</sup> In Poland, researchers report that the trafficking provision is almost never used and instead most cases are brought under a provision penalising enticement into prostitution abroad.<sup>19</sup>

There is also variety within any given country. Conny Rijken’s research in the Netherlands found that in some districts, “only cases in which there is an element of force are prosecuted, either as a consequence of actual policy or due to lack of capacity to prosecute other cases.”<sup>20</sup> In Macedonia, there were striking differences among trial courts. While the Tetovo court heard the largest number of cases charged as trafficking, in Gostivar the most common offence was “mediation in prostitution.”<sup>21</sup>

Charging decisions are related to a number of legal and evidentiary considerations, including how well police and prosecutors understand the substantive law, attitudes towards victims, and the time-consuming nature of a

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<sup>16</sup> Annette Louise Herz, *Trafficking in Human Beings: An Empirical Study on Criminal Prosecution in Germany* (Freiburg: Max Planck Institute for Foreign and International Criminal Law 2006), 10–11.

<sup>17</sup> Swedish National Criminal Police, *Trafficking in Human Beings for Sexual Purposes: Situation Report no.8* (Stockholm: Rikskriminalpolisen, 2006), 19.

<sup>18</sup> Ernesto U. Savona and others, *Trafficking in Persons and Smuggling of Migrants into Italy* (Trento: Transcrime Joint Research Center, 2003), 127.

<sup>19</sup> Elaine Pearson, *Human Traffic, Human Rights: Redefining Victim Protection* (London: Anti-Slavery International, 2002), 212.

<sup>20</sup> Conny Rijken, *Trafficking in Persons: Prosecution from a European Perspective* (The Hague: T.M.C. Asser Press, 2003), 210.

<sup>21</sup> Coalition All for Fair Trials, *Combating Trafficking in Human Beings through the Practice of the Domestic Courts* (Skopje: All for Fair Trials, November 2005), 12.



full-fledged trafficking investigation. For example, a review of indictments filed in Turkish courts showed that prosecutors sometimes used the terms “trafficking in people” and “smuggling of people” interchangeably, although they are distinct in the criminal code.<sup>22</sup> In a report on Kosovo, the OSCE alleges that, due to widespread failure to understand the legal elements of trafficking, as defined in Article 139 of the Provisional Criminal Code, potential trafficking cases were not adequately investigated.<sup>23</sup> In the Netherlands, the National Rapporteur writes that performance targets concerning how many cases should be referred to the public prosecutor result “in a preference for quick-hit cases instead of taking on longer-lasting (complete) THB cases.”<sup>24</sup>

## 2.2 Role of Organised Crime

The number of defendants in any one investigation tends to be relatively low, especially considering theories about the prevalence of organised crime in human trafficking. Boudewijn de Jonge’s 2005 study of Eurojust found that reports by national members mentioned “few genuine highly complex networks”, leading her to ask whether trafficking was not a “Eurojust-typical” crime.<sup>25</sup> Annette Herz’s research in Germany also found little evidence of organised crime, defined as a stable, mafia-like criminal organisation. Instead, offenders were mostly family members, shared the same ethnic group, or were acquaintances.<sup>26</sup> Similar findings have also been reported in Macedonia, Sweden and the Czech Republic.<sup>27</sup> A study specifically of women trafficked into Germany from Romania, conducted in 2004, presents a more varied picture. Offenders in 76 per cent of the cases fell under the category of organised crime, based on the structured group definition of organised crime used in the Transnational Organized Crime Convention. Most groups, however,

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<sup>22</sup> Galma Jahic, *Human Trafficking: Victims’ Rights Protection in Turkey* (OSCE-ODIHR workshop paper, May 2009), 67.

<sup>23</sup> OSCE Legal System Monitoring Section, *A Legal Analysis of Trafficking in Persons Cases in Kosovo* (Vienna: OSCE, October 2007), 11–13.

<sup>24</sup> Bureau of the Dutch National Rapporteur, *Trafficking in Human Beings: Fifth Report of the Dutch National Rapporteur* (Amsterdam: Bureau of the Dutch National Rapporteur, 2007), 95–96.

<sup>25</sup> de Jonge, *Eurojust and Human Trafficking*, 24.

<sup>26</sup> Herz, *Trafficking in Human Beings*, 24.

<sup>27</sup> Coalition All for Fair Trials, *Criminal Justice Responses to Organized Crime* (Skopje: All for Fair Trials, February 2007), 28–29; Ivana Travnickova et al., *Trafficking in Women: The Czech Perspective* (Prague: UNODC/UNICRI and Institute for Criminology and Social Prevention, April 2004), 69; Swedish National Criminal Police, *Trafficking in Human Beings for Sexual Purposes*, 19.

were very small and were usually made up of a recruiter, transporter and exploiter. Interviews in Germany and Romania confirmed that “the criminal groups involved in trafficking in persons vary in size and complexity and that usually very small groups can be found engaging in trafficking activities alongside very large and highly complex networks.”<sup>28</sup>

The lack of evidence of large criminal groups may stem from the failure to pursue investigative leads in foreign countries. According to Conny Rijken, prosecutors in the Netherlands often could not charge defendants with participation in a criminal organisation because they chose not to send requests for information to other states.<sup>29</sup> It is also possible, as a number of researchers have suggested, that most trafficking involves “disorganised” crime.<sup>30</sup> The absence of organised crime structures, however, does not mean that offenders cannot be charged with crimes of conspiracy. Some countries also enhance penalties if the offence involved a certain number of participants, regardless of whether an actual organised crime structure was involved.

Reports emphasising the role of organised crime in trafficking tend to concentrate on sex trafficking. One may reasonably assume that organised crime is less likely to be a feature of trafficking that occurs in other economic sectors, although organised criminal groups may be involved in irregular migration routes. As police and prosecutors become more familiar with the concept of labour trafficking (or trafficking for forced labour) and investigate “legitimate” economic sectors for evidence of criminality, there may be a decreased emphasis on finding evidence of organised crime. In other words, offenders may be people who operate bona fide businesses in illegitimate ways, or whose illegal actions only extend to some workers. Convicted offenders in labour trafficking cases in the US, for example, have included licensed farm labour contractors and large factory owners.<sup>31</sup> In Belgium, labour trafficking defendants have included restaurant and shop owners and construction site supervisors.

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<sup>28</sup> UNICRI, *Trafficking in Women from Romania into Germany: Comprehensive Report* (Turin: UNICRI, March 2005), 69.

<sup>29</sup> Rijken, *Prosecution from a European Perspective*, 237.

<sup>30</sup> David A. Feingold, “Human Trafficking,” *Foreign Policy* (September 2005): 28; David E. Guinn, “Defining the Problem of Trafficking: the Interplay of US Law, Donor and NGO Engagement and the Local Context in Latin America”, (paper presented at Criminal Trafficking and Slavery: The Dark Side of Migration Workshop, University of Illinois, February 2006); Jo Goodey, “Migration, Crime and Victimhood: Responses to Sex Trafficking in the EU,” *Punishment & Society* 5 (2003): 415–431.

<sup>31</sup> See, for example, *United States v. Ronald Robert Evans*, 2006 WL 221629 (M.D. Fla. 2006), and *United States v. Maria Garcia*, 2003 WL 22956917 (W.D. New York 2003) (farm labour contractors), and *United States v. Kil Soo Lee*, 472 F.3d 638 (9th Cir. 2006) (garment factory owner).

### 2.3 Identification of Cases

Although it is widely assumed that victims of trafficking do not report to the police, some studies show that the number of victim-initiated investigations is not insignificant. For example, in the Czech Republic an analysis revealed that police reports by victims triggered the investigation in eight out of fifteen cases.<sup>32</sup> In Germany, three different studies documented that victims filed police reports in about one-third of the cases.<sup>33</sup> In Bosnia & Herzegovina, a majority of domestic trafficking victims and more than 20 per cent of foreign trafficking victims were self-referred, often through the use of hotlines.<sup>34</sup> Researchers in Italy report that the *notitia criminis*—the notice of crime that begins the preliminary investigation—comes from the reports and spontaneous statements of victims “in areas where exploitation is most intense.”<sup>35</sup> In some cases, family members of victims or third parties approached the police. In the US and Italy, labour trafficking investigations were commonly based on tips from nongovernmental organisations, labour inspectors, and trade unions.

More typically, however, police began investigations on the basis of information encountered during routine crime control operations. The use of stop and search operations in red light districts was considered of primary importance in Germany. In the most active prosecutors’ offices in Italy, police conducted close surveillance in certain areas “in order to identify members of criminal organisations suspected of trafficking and smuggling.” In Brescia, for example, police adopted systematic monitoring procedures that included checks on nightclubs and on streets used by prostitutes.<sup>36</sup>

Police control measures such as these might be effective in identifying victims of sex trafficking, yet one consequence observed in South Eastern Europe is a change in the modus operandi of traffickers. In response to raids on bars and nightclubs, prostitution shifted to private apartments and hotels, where women were more isolated and susceptible to abuse.<sup>37</sup> A similar response appears to

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<sup>32</sup> Travnickova, *Trafficking in Women*, 75.

<sup>33</sup> Herz, *Trafficking in Human Beings*, 7; Bundeskriminalamt, *Human Trafficking in Germany: National Situation Report* (Wiesbaden: BKA, 2007), 6; UNICRI, *Trafficking in Women from Romania into Germany*, 75.

<sup>34</sup> ICMPD, *Listening to Victims: Experiences of Identification, Return and Assistance in South-Eastern Europe* (Vienna: ICMPD, 2007): 51 and note 20.

<sup>35</sup> Savona, *Trafficking and Smuggling in Italy*, 207.

<sup>36</sup> *Ibid.*, 206–207.

<sup>37</sup> Barbara Limanowska, *Trafficking in Human Beings in South Eastern Europe: 2003 Update on Situation and Responses to Trafficking in Human Beings in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Moldova, Serbia and Montenegro, including the UN Administered Province of Kosovo, and Romania*, (Sarajevo: UNDP, November 2003), 193; Nicole

have occurred in Netherlands following the licensing of sex businesses. Operators opened unlicensed businesses or located prostitution in new venues such as tea houses or massage parlours to avoid administrative checks.<sup>38</sup> Moreover, routine police controls and surveillance will be far less effective if the suspected scene of exploitation is a construction site, meat packing plant or garment factory floor. As the Experts Group on Trafficking noted, in order to investigate labour trafficking, agencies “responsible for the control of working conditions and financial investigations related to black labour ... have to be made more sensitive and to be mobilised for the fight against trafficking.”<sup>39</sup> In this regard, ILO has published manuals aimed at encouraging other sectors, including labour inspectors, government agencies monitoring employment recruiters, and trade unions, to become involved in identifying forced labour and human trafficking.<sup>40</sup>

**Box 1: United States: Human Trafficking Taskforces**

In more than forty cities across the United States, government agencies have organised taskforces that combine police and prosecutor units with other government agencies and nongovernmental organisations. In El Paso, Texas, for example, the human trafficking taskforce includes representatives of law enforcement offices, the US Department of Labor, the US Attorney’s Office, and local community-based groups that work with migrants, sexual assault victims, and family violence victims. The idea is to both spread awareness of human trafficking to help identify victims and to work with local organisations to provide victim support and services.

*2.4 Investigative Techniques*

Whether an investigation is reactive or proactive influences the type of investigative measures used. When victims are in immediate danger or if children are involved, the correct response is to focus on rescuing the victims rather than on building a strong evidentiary foundation for a later prosecution. In some sectors, investigations will almost always be reactive. Thus

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Lindstrom, “Transnational Responses to Human Trafficking: The Politics of Anti-Trafficking in the Balkans” in *Human Trafficking, Human Security, and the Balkans*, ed. H. Richard Friman and Simon Reich (Pittsburgh: University of Pittsburgh Press, 2007), 77.

<sup>38</sup> Bureau of the Dutch National Rapporteur, *Fifth Report of the Dutch National Rapporteur*, 75–76.

<sup>39</sup> EC, *Report of the Experts Group on Trafficking in Human Beings* (Brussels: European Commission, December 2004), 124.

<sup>40</sup> See, e.g., ILO, *Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers* (Geneva: ILO, 2006); ILO, *In Search of Decent Work—Migrant Workers’ Rights: A Manual for Trade Unionists* (Geneva: ILO, 2008); ILO, *Forced Labour and Human Trafficking: Handbook for Labour Inspectors* (Geneva: ILO 2008).

investigations into the exploitation of domestic workers, because of the intensely private sphere where the crime occurs, are almost always triggered by victim escapes.

Investigators rely on a wide range of techniques: witness interviews, surveillance, telephone interceptions (wiretaps), video cameras, obtaining cooperation from witnesses and lower-level co-conspirators, and searching premises and seizing evidence. The statement by the Belgian National Rapporteur is typical: “[T]echniques such as observation and phone-tapping are invariably key resources on which to base an investigation and gather evidence.”<sup>41</sup> There is, obviously, a sequence to investigative steps. Telephones cannot be tapped unless numbers are known. Locations cannot be searched without addresses and, in some countries, sufficient probable cause to obtain a warrant. Prosecutors and law enforcement agents stress the importance of coordinating the stages of an investigation. It is important to keep in mind that not all investigative techniques are available in all states. Some states lack the technological capacity for wire-tapping mobile phones, for example. In some, electronic surveillance requires a court order, making it a more time-consuming and potentially difficult process. Similarly, the requirement for a court order prior to the search of a residence or business varies from state to state.

Sometimes investigations are characterised as “intelligence-led” or “integrated.” Intelligence work usually refers to tactics such as electronic eavesdropping and asset tracing. (See Fred Schreier’s chapter for more on intelligence and human trafficking). Integrated investigations refer to investigations that target the whole criminal chain—from low-level recruiter to exploiter. Pleas for more intelligence work are often made as part of an effort to reduce dependency on victim testimony.<sup>42</sup> Thus, the OSCE Action Plan to Combat Trafficking in Human Beings encourages participating states to explore “alternative investigative strategies to preclude the need for victims to be required to testify in court.”<sup>43</sup>

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<sup>41</sup> Centre for Equal Opportunities and Opposition to Racism, *Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights* (Brussels: Centre for Equal Opportunities and Opposition to Racism, November 2005), 98.

<sup>42</sup> De Jonge, *Eurojust and Human Trafficking*, 29; EC, *Report of the Experts Group on Trafficking*, 123; Goodey, “Migration, Crime and Victimhood,” 423–426; Fiona David, “Law Enforcement Responses to Trafficking in Persons: Challenges and Emerging Good Practice,” *Trends and Issues in Crime & Criminal Justice*, no.347 (December 2007): 1–6; Mike Dottridge, “Introduction,” in *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, ed. Global Alliance Against Traffic in Women (Bangkok: GAATW, 2007), 15.

<sup>43</sup> OSCE Permanent Council Decision No. 557, 24 July 2003, PC.Dec/557. See also OSCE Ministerial Council Decision No. 14/06, adopted 5 December 2006, encouraging participating states to develop and

In practice, however, even intelligence-led investigations begin with the statements of victims and witnesses. Old-fashioned intelligence (human intelligence) provides the information—telephone numbers, addresses, names and aliases, routes—that is the essential starting point for any other kind of investigation. For example, prosecutors in Genoa, while acknowledging the importance of telephone and other electronic interceptions, also emphasised that these methods “on their own do not yield an accurate reconstruction of criminal dynamics, at least not in cases where exploitation prevails over the smuggling of migrants; the method must be used in conjunction with other sources of investigative information.”<sup>44</sup> In Belgium, researchers reported that victims were “able to offer relevant information about the networks, links with other underground systems, the routes used by traffickers and trends in the use of violence and corruption. In some cases, this type of information [was] the start of the process for breaking up a network.”<sup>45</sup>

**Box 2: The Netherlands: The Programmatic Approach and the Sneep Case**

Police and prosecutors in the Netherlands have adopted a “programmatic approach” to trafficking. This involves analysing not just the criminal offence but the way that the offenders function in society at each stage of the criminal process. The programmatic approach seeks to involve administrative prevention with criminal law enforcement by identifying “barriers” that must be overcome by traffickers. For each barrier, the model specifies the relevant enforcement bodies. In the Sneep case, for example, investigators studied border controls, housing, identity documents, and financial flows in an investigation of two Turkish-German brothers and their co-conspirators. Within the housing sector, municipal authorities, housing corporations, housing inspectors and private parties did background checks, verified identity documents, and reported patterns of behaviour. In July 2008, six defendants were convicted of participating in a large and violent trafficking network that had forced as many as 100 women into prostitution. Seventeen victims testified at trial, although some tried to withdraw their earlier statements. According to one observer, the court ignored victim attempts to recant because there were signs of intimidation. Sentences ranged from 8 months to 7 ½ years. In addition, three defendants were ordered to pay €50,000 in compensation to several of the victims.<sup>46</sup>

Criminal justice actors in all countries studied emphasise the importance of victim participation in the criminal justice process, especially during the

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use “advanced investigative methodology, in particular to allow cases of trafficking to be identified and prosecuted without relying only on victim testimony.”

<sup>44</sup> Savona, *Trafficking and Smuggling in Italy*, 210.

<sup>45</sup> Centre for Equal Opportunities and Opposition to Racism, *Belgian Policy on Trafficking*, 113.

<sup>46</sup> Bureau of the Dutch National Rapporteur, *Fifth Report of the Dutch National Rapporteur*, 96–97; No author, “Six Get Heavy Sentences in Dutch Human Trafficking Trial”, USA Today, 11 July 2008; La Strada International Newsletter, 11 July 2008.

investigation but also during the hearing of the case. In those countries with fewer resources to devote to other investigative techniques, direct victim testimony may be the only evidence against the offender. In the Czech Republic, witness testimony was described as “absolutely essential means of proof.”<sup>47</sup> In Germany, the availability of victim testimony was directly linked to the rate of successful convictions on trafficking charges.<sup>48</sup> In the US, victims are the key witnesses in every trafficking trial.

In one typical trafficking prosecution in the US, involving Mexican migrants who had escaped under cover of darkness from an abusive farm labour contractor, investigators executed a search warrant on the residence-office of the target.<sup>49</sup> Investigators also issued subpoenas for all of her bank records and cell phone records. The search produced numerous items of evidence corroborating various aspects of the victims’ stories. For example, the victims had recounted how they were transported from the Mexican border in an overcrowded van and how the driver had made various stops for gasoline and to purchase fast food. The investigators found receipts from gas stations, fast food restaurants, and toll plazas that were used to reconstruct a timeline showing that the van had travelled across ten states (a distance of more than 4,000 kilometres) in less than two days. The search warrant also uncovered lists of workers and debts owed, false time sheets, and forged identity cards. The bank records showed that money was wired to contacts in Mexico on a regular basis. However, none of the documentary evidence could demonstrate that the victims were repeatedly threatened with physical violence, warned not to leave the farm, denied food, and not paid for their work. Thus the paper trail alone supported charging the farm labour contractor with migrant smuggling. But the words of the victims, some of them as young as fifteen, showed that this was actually a case of severe exploitation and justified charges of labour trafficking.

The ability to cooperate with low-level offenders depends to some extent on individual state practices with regard to plea bargaining. Under Article 26 of the Transnational Organized Crime Convention, states party “shall consider providing for the possibility, in appropriate cases, of mitigating the punishment of an accused person who provides substantial cooperation” in the investigation

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<sup>47</sup> Travnickova, *Trafficking in Women*, 93.

<sup>48</sup> Herz, *Trafficking in Human Beings*, 17–18.

<sup>49</sup> *United States v. Maria Garcia*, 2003 WL 22956917 (W.D.N.Y. 2003) (denying defendants’ motions to dismiss forced labour counts); see also U.S. Department of Justice, “Six Indicted in Conspiracy for Trafficking and Holding Migrant Workers in Conditions of Forced Labor in Western New York,” (Press Release, June 18, 2002), available at [www.usdoj.gov/opa/pr/2002/June/02\\_crt\\_360.htm](http://www.usdoj.gov/opa/pr/2002/June/02_crt_360.htm). For this description of the case, the author also relies on her personal knowledge.

or prosecution of a covered offence. In Italy, Article 11 of Law 228/2003, which permits lighter sentences for state's witnesses, was enacted to promote such cooperation.<sup>50</sup> Prosecutors in Perugia, for example, report that their most serious cases relied on statements of co-conspirators. Such individuals were able to provide detailed inside information on the structure and method of the enterprise.<sup>51</sup> In the US, where plea bargaining is common, some successful trafficking prosecutions have been built on the testimony of cooperating witnesses. For example, in *US v. Ronald Evans Sr.*, a case against a farm labour contractor in Florida who "paid" his workers in crack cocaine, alcohol, and cigarettes, five co-defendants, including the lead defendant's son, pled guilty before trial. Two of them received reduced sentences for substantial cooperation with the government.<sup>52</sup>

### 2.5 Following the Money

In both developed and transition countries, relatively little use has been made of procedures for either a complete financial investigation, including tracing of assets and pre-judgment seizure, or international cooperation, such as mutual legal assistance requests or recent European mechanisms and institutions.

Financial investigations serve both evidentiary and pragmatic purposes. First, they allow investigators to develop a more detailed picture of an operation and may lead to evidence supporting additional defendants or additional charges, such as money laundering or financial fraud. Financial information can also serve to corroborate a victim's or witness's statement, thus enhancing credibility. Second, financial investigations can lead to the discovery of assets that are not only evidence of a victim's claim for compensation but also may be used to satisfy such a claim. The Transnational Organized Crime Convention clearly envisions a close connection between the use of financial tools and prevention and prosecution efforts. It requires states both to criminalise money laundering and to adopt measures to enable confiscation of proceeds and as well as property used in the commission of criminal offences. States are also to adopt measures to enable "the identification, tracing, freezing or seizure" of proceeds "for the purpose of eventual confiscation."

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<sup>50</sup> Savona, *Trafficking and Smuggling in Italy*, 91.

<sup>51</sup> *Ibid.*, 211.

<sup>52</sup> *Florida Labour Camp Owner Sentenced on Federal Charges* (USAO Middle District Florida Press Release January 26, 2007); Matt Galnor, "Labor Camp Supervisor Admits Drug Conspiracy," *The Florida Times-Union*, July 13, 2006.



Many states have specialised financial investigators—Regional Asset Recovery Teams in the UK, the Criminal Assets Confiscation Bureau in the Dutch Public Prosecution Service—and have the necessary legislation in place. In practice, however, financial investigations are infrequent and freezing of assets is extremely rare. This means that an offender’s assets are never identified, traced and held. If they are not identified, they cannot be seized for payment of a compensation order or fine.

The Dutch National Rapporteur found that although there were some routine efforts to gather financial information—such as interviewing suspects and witnesses about income and proceeds and paying attention to financial information when conducting a search—it was much less common to request transaction information from banks or to collect financial information from abroad.<sup>53</sup> Of sixty cases studied, information was requested from abroad in only seven. “In many more investigations, however, indications of cash flows going abroad, or assets held abroad, were found.”<sup>54</sup> One recent positive step was the publication of a Manual on Financial Investigations in Human Trafficking Cases in 2005. The manual, issued by the Dutch Human Trafficking Expert Group, includes questions to ask trafficking victims to assist in calculating financial profits.<sup>55</sup>

It also appears that very little use is made of pre-judgment procedures to freeze assets. In Germany in 2007, measures to seize assets were taken in only 3 per cent of the cases.<sup>56</sup> In Macedonia, assets were seized in advance in only one case out of thirty-eight observed.<sup>57</sup> The rate in the Netherlands was slightly higher. Out of sixty cases, prejudgment seizures were used in twelve and money attachments in five.<sup>58</sup> Ion Vizdoga, Director of the Centre for the Prevention of Trafficking in Women in Moldova, reported that court compensation orders were almost never executed due to the inability to seize the assets of convicted defendants.<sup>59</sup>

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<sup>53</sup> Bureau of the Dutch National Rapporteur, *Fifth Report of the Dutch National Rapporteur*, 116–117.

<sup>54</sup> *Ibid.*, 117.

<sup>55</sup> *Ibid.*, 114.

<sup>56</sup> Bundeskriminalamt, *Human Trafficking in Germany: 2007 Situation Report*, 6.

<sup>57</sup> All for Fair Trials, *Criminal Justice Responses to Organized Crime*, 47.

<sup>58</sup> Bureau of the Dutch National Rapporteur, *Fifth Report of the Dutch National Rapporteur*, 125.

<sup>59</sup> Ion Vizdoga, “Criminal Justice and the Trafficking Victim” (remarks made at the ODIHR Human Dimension Seminar Side Event, Warsaw, May 2006).

**Box 3: United Kingdom: Use of Pre-Trial Restraining Orders**

The Crown Prosecution Service successfully applied for pre-trial restraining orders on seven bank accounts, five vehicles, and the defendant's £250,000 house in the investigation of a gangmaster who was charged with violations of immigration law and money laundering. Prosecutors alleged that Victor Solomka supplied Russian and Eastern European workers, most of whom were irregular migrants, to a variety of companies in northern Scotland. He paid them below-standard wages and pocketed the difference. He was convicted in February 2005 and sentenced to seven years in prison.<sup>60</sup>

*2.6 International Cooperation*

Even outside the area of financial investigations, international cooperation efforts are limited. Herz's analysis of trafficking cases in Germany showed that only 21 per cent of the investigations made use of the Interpol information system and just 6 per cent issued requests for mutual legal assistance.<sup>61</sup> The process proved fruitful, however, because those cases that used international cooperation were more likely to lead to a conviction for trafficking. In Moldova, an analysis of trafficking trials from 2002 to 2005 showed that international cooperation was used in just 15 per cent of the cases, although all the cases concerned trafficking across borders.<sup>62</sup> According to the Transcrime Centre in Italy, two large prosecutors' offices reported, respectively, the use of just two and three letters rogatory requests in the previous five years. The procedure was seen as complicated, time-consuming, and in some cases an "empty formality." Informal cooperation was the preferred route.<sup>63</sup> In Turkey, very few courts attempted to contact victims who had returned to their countries of origin. In one case where such an attempt was made, the Ministry of Justice "was requested to translate the whole case file (including the indictment, relevant articles of Turkish Criminal Code, and victim's statement provided to police) and transfer it to the relevant courts in the victim's home country ... no reply was ever received."<sup>64</sup>

<sup>60</sup> "CPS to Confiscate Gangmaster's Illegal Assets after Guilty Verdict", Crown Prosecution Service Press Release, February 3, 2005; Jason Bennetto, "Gangmaster who Arrived Penniless Guilty of a £5m Racket", *The Independent*, February 4, 2005.

<sup>61</sup> Herz, *Trafficking in Human Beings*, 14.

<sup>62</sup> Vizdoga, "Criminal Justice and the Trafficking Victim."

<sup>63</sup> Savona, *Trafficking and Smuggling in Italy*, 237. Rogatory letters are formal written requests from one jurisdiction to another for assistance in the administration of justice. They typically involve requests for examination of witnesses but might involve other aspects of a criminal investigation as well.

<sup>64</sup> Jahic, *Human Trafficking*.

Many members of Eurojust report very limited international cooperation. “Most prosecutions only concern the part of the criminal chain which happened to be present in the jurisdiction of the prosecuting authority.”<sup>65</sup> This strong national focus hinders international investigations. The most common form of international cooperation—a request for mutual legal assistance (MLA)—is usually done for a limited purpose rather than to build a genuinely international case. De Jonge attributes this to several reasons, including a “negative structure of incentives in relation to international cooperation.” International cooperation takes time and resources, which are always scarce, and efforts expended abroad are not reflected in the numerical targets.

Countries cited specific obstacles to obtaining international cooperation, including frustratingly bureaucratic procedures, lengthy delays, language and organisational barriers, and problems posed by different legal systems. Czech judges called international cooperation “awkward, scarcely flexible, and too slow.”<sup>66</sup> Several countries also mentioned concerns about the reliability of their foreign counterparts.<sup>67</sup> Based on her research in the Netherlands, Rijken writes that “practitioners consider the need for mutual legal assistance to be an obstacle in a criminal case and [it] is avoided as much as possible, even if this is at the cost of the indictment of one or more related offences.”<sup>68</sup> Similarly, in the Transcrime study, “almost all the prosecutors interviewed stressed the inadequacy of the ‘traditional’ provisions for judicial collaboration ... such as letters rogatory” to request legal assistance.<sup>69</sup> In Ukraine, the Office of the Prosecutor General noted that investigators often failed to comply with complicated procedures concerning requests for legal assistance.<sup>70</sup>

**Box 4: Cooperation between Italy and Poland: Terra Promessa**

In July 2006, Italian Carabinieri and Polish police initiated an investigation into the trafficking of Polish workers in farms in Puglia. This resulted in a raid on five labour camps, resulting in the release of 120 victims and the arrest of more than twenty-five suspects. Coordination of the joint

<sup>65</sup> De Jonge, *Eurojust & Human Trafficking*, 28.

<sup>66</sup> Travnickova, *Trafficking in Women*, 92.

<sup>67</sup> Herz, *Trafficking in Human Beings*, 14; Savona, *Trafficking and Smuggling in Italy*, 235.

<sup>68</sup> Rijken, *Prosecution from a European Perspective*, 239.

<sup>69</sup> Savona, *Trafficking and Smuggling in Italy*, 233.

<sup>70</sup> ABA ROLI, *Training Module on Strengthening Capacities of Law Enforcement Officials to Apply Mechanisms of Mutual Legal Assistance in Investigation and Prosecution of Human Trafficking Criminal Matters* (Kyiv: ABA ROLI, January 2008).

police action was undertaken by Europol, while exchange of evidence and the issuing of European Arrest Warrants were coordinated by Eurojust.<sup>71</sup> Notably they did not establish a Joint Investigation Team, a procedure envisaged by the Convention on Transnational Organized Crime, but rather used a “Mirror Investigation” procedure. Poland explained that such a method was useful “when the establishment of a Joint Investigation Team could be difficult or would take too much time.”<sup>72</sup>

### 2.7 Trafficking as Transnational Crime

Some experts have questioned the emphasis on the transnational aspects of trafficking.<sup>73</sup> The Experts Group on Trafficking in Human Beings warns that “[i]nterpretations of the Trafficking Protocol that concentrate on the process of bringing a person into exploitation, rather than the final forced exploitation that they face, are in their nature flawed and limited ... States should criminalise any exploitation of human beings under forced labour, slavery or slavery like conditions.”<sup>74</sup> Even the Report of the Secretariat of the Conference of the Parties to the Transnational Organized Crime Convention states that “concentrating solely or heavily on ... the movement and transportation element may prove in many cases to be a partial approach.”<sup>75</sup>

This critique, when aimed at rhetoric on combating trafficking, seems quite justifiable. The heart of the offence is or should be the actual exploitation. Policymakers, however, repeatedly frame anti-trafficking measures in terms of border security and preventing illegal migration.

Yet the transnational angle appears quite different in countries of origin. An inability or unwillingness to pursue the main exploiters, rather than the low-level recruiters within the reach of domestic law enforcement, means that those responsible for the greatest injury to the victim go unpunished. When that happens, the nature of justice is questionable. Assets go unseized and victims receive little in the way of redress or compensation. Thus, the transnational aspect of a case may be critical in a country of origin. Under the European

<sup>71</sup> The Ministry of Interior and Administration, *Combating and Preventing Trafficking in Human Beings in Poland* (Warsaw: The Ministry of Interior and Administration, 2008), 8; “Europol and Eurojust support Italian and Polish Operation Against Human Traffickers” (Press Release, The Hague, July 18, 2006).

<sup>72</sup> Annex II (Member States) to the Multidisciplinary Group on Organised Crime report to the Council of the European Union, 25 April 2007, at 18.

<sup>73</sup> Jo Goodey, “Migration, Crime and Victimhood”; Jacqueline Berman, “(Un)Popular Strangers and Crises (Un)Bounded: Discourses of Sex-Trafficking, the European Political Community and the Panicked State of the Modern State,” *European Journal of International Relations* 9 (2003): 37.

<sup>74</sup> EC, *Report of the Experts Group on Trafficking*, 53.

<sup>75</sup> Analytical Report of the Secretariat, CTOC/COP/2005/3/Rev.1, para. 34.

Convention on Trafficking, states should be able to exercise jurisdiction in cases in which the victim is a national, regardless of the nationality of the offender, but asserting jurisdiction is different from actually being able to produce the offender in court. In several cases American prosecutors have successfully returned offenders who fled their jurisdiction. In 2005, two men charged with forcing deaf-mute Mexican immigrants to beg were finally sent to New York after a seven-year legal battle against extradition.<sup>76</sup> They were each sentenced to 105 months imprisonment. In another case, Theresa Mubang, a woman who had been convicted of involuntary servitude, escaped to her native Cameroon prior to being sentenced by an American court.<sup>77</sup> Because the US had no extradition treaty with Cameroon, her return was obtained through the use of voluntary cooperation channels. Cameroonian members of Interpol, working together with US investigators from a variety of law enforcement agencies, located Mubang in her home town of Bamenda. She was arrested there and immediately flown back to the United States to begin serving an eighteen-year prison sentence.<sup>78</sup>

Finally, the transnational nature of most trafficking offences highlights the particular vulnerabilities of both regular and irregular migrant workers.<sup>79</sup> As documented elsewhere in this book, a migrant who arrives in a country of destination burdened by large fees to smugglers will be more susceptible to workplace exploitation. A regular migrant whose work permit ties him or her to a particular employer may be unable to leave an abusive situation for fear of losing residency rights. Migrants who are dependent on employers for most of life's essentials—housing, food, transportation, access to jobs, communication—are often effectively trapped. Ignoring the transnational element could mean losing sight of the role played by migration and the way that migration policies can create or exacerbate systemic vulnerabilities.

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<sup>76</sup> Helen Peterson, "20 Indicted in Deaf Mexican Slavery," *New York Daily News*, August 21, 1997; "Pair Extradited to US in Exploitation of Deaf," *Los Angeles Times*, June 1, 2005.

<sup>77</sup> Ruben Castaneda, "Woman Convicted of Enslaving Girl Flees: Authorities Seek Silver Spring Resident Sentenced to 17 ½ Years," *Washington Post*, March 3, 2005.

<sup>78</sup> US DoJ, "Case Updates," *Anti-Trafficking News Bulletin* (Washington, DC: US Department of Justice, August 2005), 5.

<sup>79</sup> Trafficking can, of course, also be an entirely domestic offence. The United States has prosecuted a number of agricultural trafficking cases in which the victims were US citizens, typically either homeless or mentally disabled men. In Brazil, enslavement of Brazilian men as unpaid laborers on plantations in the Amazon region is common. The extreme remoteness of such plantations and the use of violence by supervisors prevent workers from escaping. The structural characteristics of irregular migration means that such migrants are usually more vulnerable to exploitation than a worker who is either a national or who has legal residency.

## 2.8 Conviction and Sentencing

In some countries, there is a relatively high rate of dismissal for trafficking charges by courts. Thus, in Germany between 2003 and 2004, courts dropped almost half of all trafficking charges.<sup>80</sup> In Ukraine, one judge reported that out of every ninety cases, at least ten are sent back to the prosecutor's office because of inadmissible or insufficient evidence.<sup>81</sup> Similarly in Poland, during a five-year period there were 191 completed preliminary investigations. Of these, thirty-nine investigations were suspended, usually due to lack of evidence.<sup>82</sup> Researchers in Albania reported that in 2002, 176 trafficking cases were dismissed due to insufficient evidence or procedural errors.<sup>83</sup> In Turkey, a review of 120 human trafficking cases filed at courts in Istanbul, Ankara, Trabzon and Antalya found that only two defendants were convicted, and they were convicted of mediation in prostitution rather than trafficking.<sup>84</sup>

Trafficking is a serious violation of human rights. The EU Framework Decision requires an eight-year minimum sentence in cases of aggravated trafficking and the European Convention on Trafficking requires parties to adopt sanctions that are "effective, proportionate and dissuasive." Nevertheless, actual sentences of imprisonment are low. In the Czech Republic, observers of the judicial process suggested that judges imposed extremely mild sentences in order to avoid having convictions appealed.<sup>85</sup> In Sweden, sentences for seven defendants convicted of trafficking ranged from three to five years. In Poland, almost all the sentences for 151 convictions were less than five years and one-third of the convictions resulted in a suspended sentence.<sup>86</sup> In Ukraine, more than half of the defendants convicted in 2006 received probation rather than prison sentences. In Germany, victims' lawyers and counselling centres complained that even in severe trafficking cases involving rape, penalties were light. Moreover, if the sentence of imprisonment is less than two years, it can be served as probation. If the offender is a foreign national, he or she generally

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<sup>80</sup> Herz, *Trafficking in Human Beings*, 11.

<sup>81</sup> Interview by author, Kyiv, June 2008.

<sup>82</sup> Pearson, *Human Traffic, Human Rights*, 212.

<sup>83</sup> Sarah Stephens and Mariska van der Linden, *Trafficking of Migrant Workers from Albania: Issues of Labour and Sexual Exploitation* (Geneva: ILO, 2005), 37.

<sup>84</sup> Jahic, *Human Trafficking*, 66. Note that Turkish courts have a high rate of acquittal generally, apparently because prosecutors are more likely to be audited when they fail to indict than when they indict a case on weak evidence.

<sup>85</sup> Travnickova, *Trafficking in Women*, 89.

<sup>86</sup> Pearson, *Human Traffic, Human Rights*, 212.

only serves half the prison term before release and deportation.<sup>87</sup> NGOs have criticised consistently low sentences, fearing they convey the message that trafficking is not taken seriously by law enforcement. In the Netherlands, the average custodial sentence for the most serious trafficking charge was twenty-seven months.<sup>88</sup> The Dutch Rapporteur has wondered whether courts were “sufficiently conscious of the nature and gravity of the offence.”<sup>89</sup>

Recently some countries have showed slight improvements. In Macedonia, the average sentence in 2002 was below the legal minimum. Between 2005 and 2006, the average sentence reached the statutory minimum of four years.<sup>90</sup> In the Netherlands, the average sentence imposed in 2006 was twenty-seven months, up slightly from the previous average of twenty-five months.<sup>91</sup> In 2006, Ukraine was placed on the Tier 2 Watch List by the US Government TIP Report.<sup>92</sup> In June 2007, the Prosecutor General ordered prosecutors to take a more aggressive stance on sentencing and to appeal cases in which the court ordered probation. As a result “during the second half of 2007, the share of convicted trafficking offenders receiving jail time rose to 44 per cent, up from thirty-six per cent during the first half of the year.”<sup>93</sup> The US Government removed the country from its watch list.

Prison sentences cannot, of course, be viewed in isolation. Typical periods of incarceration vary greatly among countries, even within the EU. Furthermore, sentencing patterns are likely to look different depending on whether the case is prosecuted in a country of origin or a country of destination. In countries of origin, the defendant is usually the recruiter, whose knowledge and culpability may be relatively low. Or, conversely, evidence showing a greater degree of involvement and hence criminal responsibility may be lacking if international cooperation measures are not pursued.

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<sup>87</sup> UNICRI, *Trafficking in Women from Romania into Germany*, 106.

<sup>88</sup> Bureau of the Dutch National Rapporteur, *Sixth Report of the Dutch National Rapporteur* (The Hague: Bureau of the National Rapporteur, July 2008), 36.

<sup>89</sup> Bureau of the Dutch National Rapporteur, *Fifth Report of the Dutch National Rapporteur*, 147.

<sup>90</sup> Coalition All for Fair Trials, *Combating Trafficking in Human Beings*, 73–74; Coalition All for Fair Trials, *Criminal Justice Responses to Organized Crime* (Skopje: All for Fair Trials, February 2007), 48–49.

<sup>91</sup> Bureau of the Dutch National Rapporteur, *Sixth Report of the Dutch National Rapporteur*, 36.

<sup>92</sup> State Department, *TIP Report* (Washington, DC: US Department of State 2007).

<sup>93</sup> State Department, *TIP Report* (Washington, D.C: US Department of State 2008).

### **3. Protecting Victims**

#### *3.1 The Overview: Failing to Protect*

Despite frequent government claims to adopt a “victim-centred approach”, the mistreatment of trafficking victims has been well documented. This is especially true in destination countries, where fears of uncontrolled illegal migration appear to trump even criminal justice priorities and lead to the expulsion or administrative removal of both potential trafficking victims and those who are officially recognised as victims. Although trafficking cases do get prosecuted in countries of origin, the removal of the victim from the scene of actual exploitation invariably means that it is both impossible for victims to access justice in those countries and much more difficult for law enforcement to achieve its goals—namely the successful conviction and incarceration of the most culpable offenders. Cases that are prosecuted without victim participation are weaker cases, which may account for the relatively high percentage of convictions on non-trafficking charges.

Where a case goes forward in the absence of a victim, perhaps using lesser charges or relying on a prior written statement of the victim, a host of related victim rights that are enshrined in international instruments are disregarded. Victims not only lose support services. They also lose their rights to be heard during the proceedings, to be informed of the progress of the criminal case and the release or incarceration status of the offender, and to file claims for compensation. In those countries that permit victims of certain crimes to have the status of injured or damaged parties in the criminal case, the absence of a victim means that he or she cannot present evidence, question offenders, or receive free legal assistance. Article 27(2) of the European Convention on Trafficking is intended in part to address this by providing a means for authorities to refer a complaint by a victim to authorities in the country where the offence occurred, but there is no evidence that this provision has been used effectively or at all.

In countries of origin, victim services and witness protection programs are either non-existent or dependent largely on grants from international organisations and donor countries. In other words, there is no government commitment to providing victim services. For example, in Moldova, the Centre for the Prevention of Trafficking in Women, which provides free legal representation to victims in criminal and civil cases, is funded by the Danish and American governments and a Swedish NGO called the World Childhood Foundation. La Strada-Ukraine receives its funding from a variety of Western European governments, the European Commission, OSCE/ODIHR, and Anti-



Slavery International. Often there is widespread distrust of law enforcement as well as fear of stigmatisation as a victim of trafficking. Victims who have returned, voluntarily or otherwise, to their countries of origin do not fear expulsion but they have still have no guarantees that they will be able to access justice—defined as obtaining redress for the wrongs done to them.

### 3.2 Arrested and Expelled

Under the European Convention on Trafficking, if there are “reasonable grounds to believe” that a person is a trafficking victim, that person shall not be removed from the territory until the identification process is complete. Furthermore, the importance of victim testimony in trafficking cases is emphasised repeatedly by police and prosecutors. Nevertheless, in many countries, potential victims are summarily arrested, detained, and expelled. For example, in Germany, deportation measures were commenced against 55 per cent of the victims in the files studied.<sup>94</sup> Migrant trafficked persons in Poland are usually deported within 48 hours.<sup>95</sup> Even in the Netherlands, which offers trafficking victims temporary residency through the B-9 procedure, miscommunication and poor identification practices means that trafficking victims sometimes end up being held in detention facilities for illegal aliens.<sup>96</sup>

In the UK, despite high-level publicity given to raids on sex trafficking rings, it is common to deport all suspected victims as illegal migrants. This happens both because front-line police officers are unfamiliar with trafficking and frequently refer potential victims to immigration authorities and because of government fears about uncontrolled migration. Even when government ministers describe sex trafficking as a “modern-day form of slavery” and state that police raids have “rescued” such victims, there is no guarantee against deportation. The British Home Secretary defended such practice, saying that doing otherwise “would be likely to act ... as a pull factor.”<sup>97</sup> Non-governmental organisations have rejected this argument, as did the Parliamentary Joint Committee on Human Rights.<sup>98</sup> Because there is no legal

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<sup>94</sup> Herz, *Trafficking in Germany: An Empirical Study*, 18.

<sup>95</sup> Pearson, *Human Traffic, Human Rights*, 214.

<sup>96</sup> Bureau of the Dutch National Rapporteur, *Fifth Report of the Dutch National Rapporteur*, 72.

<sup>97</sup> Alan Travis, “Sex Trafficking Victims Rescued by Police May Face Exportation,” *The Guardian*, October 4, 2007; see also Audrey Gillan & Julie Bindel, “Home Office Defers Expulsion of Women Held in Brothel Raid,” *The Guardian*, October 5, 2005.

<sup>98</sup> Parliamentary Joint Committee on Human Rights, “Human Trafficking” (Parliamentary Joint Committee on Human Rights, October 2006), 65.

mechanism in the UK for a temporary stay for victims of trafficking, their only option is to apply for asylum or subsidiary protection on human rights grounds. These claims are frequently denied.<sup>99</sup>

In addition, despite both binding and non-binding international commitments, trafficking victims in many destination countries face prosecution for violating immigration or prostitution laws. Such practices contravene both the OHCHR Recommended Principles and Guidelines and Article 26 of the European Convention on Trafficking.

Between 2003 and 2007, POPPY Project, an organisation funded by the UK Office for Criminal Justice Reform that provides accommodation and support to victims of sex trafficking, assisted fifty-five women who had been detained under either the Immigration Act or by custodial powers. In many cases they were detained despite government authorities possessing evidence indicating that the women were trafficking victims.<sup>100</sup> In Kosovo, the OSCE has documented cases of police charging women for prostitution or illegal stay, even when they also deemed those same women to be victims of trafficking. In one case, the women were found guilty of prostitution and sentenced to twenty days imprisonment on the same day that they were also heard as injured parties/witnesses in an investigation against the offenders for trafficking.<sup>101</sup> In Moldova, the law protects trafficking victims from criminal liability for offences committed in connection with being trafficked only if he or she cooperates with law enforcement.<sup>102</sup> In Albania and the Russian Federation, women who withdraw their statements against offenders or refuse to give statements at all have been charged with providing false testimony.<sup>103</sup> Even the possibility of being prosecuted has a chilling effect on victims' willingness to give statements that might reveal their own involvement in illegal activities.

Sometimes law enforcement authorities simply seem to have their wires crossed, as a result of conflicting priorities. After a highly publicised raid of a meatpacking plant in Iowa revealed hundreds of irregular migrants from Guatemala, many of whom were minors, federal prosecutors charged nearly

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<sup>99</sup> Sarah Richards, *Hope Betrayed: An Analysis of Women Victims of Trafficking and their Claims for Asylum* (London: POPPY Project, February 2006), 3 and 9.

<sup>100</sup> Sarah Stephen-Smith, *Detained: Prisoners with No Crime* (London: POPPY Project, 2008), 5.

<sup>101</sup> OSCE, *A Legal Analysis of Trafficking in Persons Cases in Kosovo*, 20–21.

<sup>102</sup> Angelika Kartusch & Katy Thompson, *Trafficking in Persons, Witness Protection and the Legislative Framework of the Republic of Moldova: An Assessment* (Vienna: OSCE, December 2003), 34.

<sup>103</sup> Stephens & van der Linden, *Trafficking of Migrant Workers from Albania*, 37; Elena Turukanova, *Identification, Assistance and Protection of Victims of Trafficking in the Russian Federation* (Warsaw: ODIHR, February 2008).

300 of them with document fraud for the use of fake social security and residency cards. Most of the workers pled guilty immediately and were sentenced to five months in prison. The minors were scheduled for deportation. Just a few months later, state prosecutors charged the same meatpacking plant managers with thousands of violations of child labour laws for employing workers under the age of eighteen in dangerous conditions.<sup>104</sup> An editorial in the *New York Times* deplored the situation as follows: “By treating illegal low-wage workers as a de facto criminal class, the government is trying to inflate the menace they pose to a level that justifies its rabid efforts to capture and punish them.”<sup>105</sup>

Individuals who are “rescued” in raids and who do not immediately identify themselves as unwilling participants are likely to face expulsion. Thus in the UK, a raid on a brothel in Birmingham, described by police as an anti-trafficking operation, resulted in the release of nineteen women from Eastern Europe.<sup>106</sup> Immediately following the raid, however, many of the women were denied access to lawyers and were held in detention. Six were eventually deported. The Home Office explained, “At no point did any of the women indicate that they were trafficked into the UK, nor did they indicate any undue distress or reluctance to return to their home country.”<sup>107</sup>

In the US, a nine-month investigation of a sex trafficking ring culminated in simultaneous raids of a number of brothels in the San Francisco area and the release of more than 100 Korean nationals. Most of the twenty-nine people charged pled guilty to violating immigration laws and some of the plea agreements read like descriptions of debt bondage. For example, one defendant admitted in her plea hearing that she obtained women through “brokers” and paid the brokers for transportation debts of \$10,000 to \$15,000. She then held the women’s passports until they had paid off their debts through prostitution at her massage parlour.<sup>108</sup> Two individuals were charged with sex trafficking, which domestic law defines as using “force, fraud or coercion to cause”

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<sup>104</sup> Julia Preston, “Meatpacker Faces Charges of Violating Child Laws,” *The New York Times*, 9 September 2008.

<sup>105</sup> “The Jungle Again,” *The New York Times*, August 1, 2008.

<sup>106</sup> Joan Smith, “The Ugly Truth about ‘Cuddles,’” *The Independent*, October 2, 2005; Michael Horsnell, “19 ‘Sex Slaves’ Rescued in Raid on Massage Parlour,” *Times Online*, October 1, 2005.

<sup>107</sup> Audrey Gillan & Julie Bindel, “Home Office Defers Expulsion of Women Held in Brothel Raid,” *The Guardian*, October 5, 2005; Steve Johnson, “Brothel Boss Jailed after Police Raid,” *Birmingham Mail*, August 31, 2006.

<sup>108</sup> US DoJ, “Two San Francisco Brothel Owners Plead Guilty” (US Department of Justice Press Release July 7, 2006).

another person to engage in a commercial sex act.<sup>109</sup> However, almost all of the women rescued in the raid were interviewed by federal law enforcement agents and prosecutors and determined *not* to be trafficking victims.<sup>110</sup> They were placed in immigration detention and eventually deported. Lawyers for the women stated that if their “clients identif[ie]d themselves as voluntary or consenting participants in their migration or employment at any point, authorities deem[ed] them ineligible.”<sup>111</sup>

Both the UK and US stories illustrate what happens when an individual does not match the law enforcement picture of a passive victim who is under the full control of the traffickers at all times. Confusion persists about who is an illegal migrant, who is a willing prostitute, and who is a victim of trafficking. In practice, the boxes drawn around these categories are not only unhelpful, they fail to recognise the complexity of individual situations.<sup>112</sup>

### *3.3 Prevented from Participation in Legal Proceedings*

The right to be heard during proceedings is required under the UN Trafficking Protocol, the European Convention on Trafficking, and the Council Framework Decision on the Standing of Victims in Criminal Proceedings. In addition, the European Convention provides for legal assistance and free legal aid and the Council Framework Decision provides for legal advice “free of charge where warranted” and free legal aid when victims have the status of parties in the criminal case. These rights are rarely upheld.

In destination countries, if trafficking victims are not identified as such and are expelled, they will not be able to exercise their right to be heard. In some destination countries, lawyers representing accused traffickers exploit the practice of repatriating victims by repeatedly delaying court proceedings. Thus in Turkey, victims might stay in a shelter for as long as four or five months while awaiting repatriation by IOM. When trials are postponed at the request of

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<sup>109</sup> Homeland Security, “29 Charged in Connection with Alien Harboring Conspiracy; 2 Individuals Charged in Connection with Sex Trafficking” (US Department of Homeland Security Press Release, July 1, 2005).

<sup>110</sup> Two of the women were deemed victims of trafficking but when one decided not to cooperate with law enforcement, she was held in detention as a “material witness” for the case. Grace Chang & Kathleen Kim, “Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s),” *Stanford Journal of Civil Rights & Civil Liberties* 3 (2007): 333; Jayashri Srikantiah, “Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law,” *Boston University Law Review* 87 (February 2007): 166.

<sup>111</sup> Chang & Kim, *Reconceptualizing Approaches to Human Trafficking*, 333.

<sup>112</sup> See “Smuggling & Trafficking: Crossover & Overlap” in this book.

the defence, the victim is often not available to testify. If the defence counsel does not have the opportunity to cross-examine a victim about her written statement, the statement cannot be admitted as evidence.<sup>113</sup> This practice has a direct impact on conviction rates. An OSCE study found no convictions on trafficking offences since the trafficking law was enacted in 2002.<sup>114</sup>

When trafficking cases are prosecuted in countries of origin, victims confront a range of other barriers to their participation. Criminal procedure codes may lack victim provisions and legal aid systems are likely to be less developed. Victims are commonly not informed of their rights and do not receive adequate witness protection. They lack legal aid and have no confidence in the courts. Observers in courtrooms in a number of countries report that victims are not advised of their rights and are subjected to improper or insensitive questioning by judges. In Moldova, ILO researchers reported that, “[t]he lack of a solid witness protection programme, in addition to distrust of the legal system and fear of repercussions by the trafficker[s] means that very few victims agree to testify against their perpetrators.”<sup>115</sup>

**Box 5: South-eastern European Cooperative Initiative (SECI) Centre: Facilitating Witness Testimony at Trial**

This regional law enforcement organisation with twelve member nations, based in Bucharest, has been instrumental in locating trafficking victims who have been returned to their countries of origin and providing physical protection and transportation for witnesses at court hearings. For example, the majority of victims testifying in trafficking cases in Macedonia had their appearance arranged by the SECI Centre. One witness testified via video conferencing system from Moldova for a court in Macedonia.<sup>116</sup>

### 3.4 No Compensation from Any Source

Compensation is a central part of access to justice. Laws providing for compensation from the offender (sometimes termed “restitution”) are required under the UN Trafficking Protocol, the European Convention on Trafficking, and the EU Council Framework Decision on the Standing of Victims. If compensation from the offender is not available, state-funded compensation is

<sup>113</sup> Jahic, *Human Trafficking*, 69.

<sup>114</sup> *Ibid.*, 66.

<sup>115</sup> Eduard Mihailov et. al, *Forced Labour Outcomes of Migration from Moldova: Rapid Assessment* (Geneva: ILO, 2005), 51.

<sup>116</sup> Coalition All for Fair Trials, *Criminal Justice Responses to Organized Crime*, note 82; SECI Center, *Activity Report* (Bucharest: SECI Center, 2005), 13.

mandatory under the European Convention on the Compensation of Victims of Violent Crimes. In addition, the EU Council Directive relating to Compensation to Crime Victims provides that all member states shall establish a scheme of compensation for victims of violent intentional crimes.

Although many states provide for the theoretical possibility of obtaining offender-based compensation, usually through a civil lawsuit or as a claim attached to the criminal prosecution, in practice crime victims rarely receive compensation from the offender.<sup>117</sup> The reasons are varied. The offender may have fled the jurisdiction, may not be charged with an offence or might be charged with an offence for which there is no damaged party provision, may not be convicted, or may be insolvent. Very few victims file claims for compensation—either within the criminal case or as an attached civil case—and only victims who have legal representation are successful in such claims. Reasons include low levels of awareness, the lack of free legal aid, and fear of revenge or retaliation by the defendants. In trafficking cases in Albania between 2002 and 2006, there was only one criminal case that awarded compensation and no claims for civil compensation (which, unlike criminal compensation, includes moral damages) were filed. As in a number of other countries, the police, prosecutors and courts in Albania are not obligated to inform crime victims of their rights, including the legal right to claim compensation. According to the Tirana-based Centre for Legal and Civic Initiatives, lack of knowledge, time and expense are only some of the factors influencing the failure to file a claim. There is also a “general lack of culture in claiming” damages.<sup>118</sup> Similar findings were reported in the Russian Federation, where NGO advocates were aware of no compensation claims by sex trafficking victims.<sup>119</sup>

### 3.5 Spain: Easing Procedures for Claiming Compensation

Under the Code of Criminal Procedure, a civil claim for compensation is automatically included in the criminal case unless the victim has explicitly renounced the right or opted to file a separate suit in civil court. Prosecutors are

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<sup>117</sup> See, generally, Katy Thompson & Allison Jernow, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (Warsaw: OSCE-ODIHR, May 2008).

<sup>118</sup> Centre for Legal and Civic Initiatives (CLCI), *The Development and Implementation of Albanian Legislation: A Tool in the Prevention and Fight Against Trafficking in Human Beings*, 30 (unpublished manuscript on file with author).

<sup>119</sup> *Ibid.*, 94; Elena Turukanova & Fedor Sinitsyn, *Identification, Assistance, and Protection of Victims of Trafficking in the Russian Federation* (Warsaw: OSCE-ODIHR, February 2008).

under a legal obligation to request compensation for any injured party. The result is that the civil claimant does not need a lawyer in order to claim compensation from the offender.

There are further difficulties related to the failure of a court to order a compensation award or the inability of most private parties to trace and seize assets. In the Netherlands, criminal courts made no decision at all on compensation in 59 per cent of cases in 2006.<sup>120</sup> Even in the US, which has mandatory criminal compensation for all victims of violent crime, rates of actual payment appear to be low. This is due partly to the inability of authorities to trace and seize assets and partly to the fact that many convicted defendants no longer have substantial assets.<sup>121</sup>

**Box 6: Sweden: State Agency Responsible for Enforcing Victim’s Civil Compensation**

When a victim is awarded civil compensation, the court forwards the decision directly to the national debt collection agency. The agency then sends the victim a letter asking permission to enforce the claim on the victim’s behalf. This service is free of charge.

*3.6 Promising Practices*

The ability of trafficking victims to access justice, participate in a meaningful way in legal proceedings, be protected from retaliation, and file claims for compensation is significantly influenced by two developments. First, in both destination and origin countries the importance of an active civil society and a well-developed culture of victim rights cannot be overstated. The meaningful exercise of rights granted under international law depends very much on the assistance of NGOs and legal aid. Second, in a few countries there are programmes granting trafficking victims reflection periods and short- or long-term residency permits. Where such programmes exist, they are invariably linked to the provision of benefits and services, either through government service providers or government-supported NGOs. Thus secure residency plus professional counselling and assistance translates into access to justice.

<sup>120</sup> Bureau of the Dutch National Rapporteur, *Sixth Report of the Dutch National Rapporteur*, 16 and Table 2.9

<sup>121</sup> US Government Accountability Office, *Criminal Debt: Court-Ordered Restitution Amounts Far Exceed Likely Collections for the Crime Victims in Selected Financial Fraud Cases* (Washington DC: US GAO, January 2005); US Government Accountability Office, *Actions Still Needed to Address Deficiencies in Justice’s Collection Processes* (Washington DC: US GAO, March 2004); Stephanie Smith, “Women Smuggled into US, Forced into Prostitution, Try to Recoup \$1 M,” *Palm Beach Daily Business Review*, April 8, 1999.

When victims receive support and counselling from NGOs, they are much more likely to cooperate with law enforcement and to be effective witnesses. In Germany, a much higher percentage of victims who received assistance from a counselling centre agreed to testify and were granted a temporary residence permit than those who received no assistance.<sup>122</sup> Treatment possibilities such as attending vocational training or language courses or getting a job had a “psychologically healing effect on the victims and very often persuade[d] them to stay in Germany for the duration of the trial. When this happened, the court trials were often successful and resulted in the sentencing of traffickers.”<sup>123</sup> Similarly, in Italy, prosecutors reported that NGOs played a significant role in stabilising and protecting victims and persuading them to collaborate with law enforcement.<sup>124</sup>

Compensation is increasingly on the agenda of advocacy organisations. Victims who are assisted by NGOs are also more likely to file claims for compensation—whether as damaged or injured party claims within the criminal case or as civil claims or before state compensation boards—and to have those claims be successful. In the United States, legal aid and NGO attorneys have been active in filing civil lawsuits for trafficking victims. In the UK, the POPPY Project has taken the lead in bringing “test cases” before the state-funded compensation board. In countries of origin, some NGOs provide legal representation to women who are witnesses or damaged parties in criminal cases. For example, in Moldova, the Centre for Prevention of Trafficking in Women represented more than 400 women in court over a three-year period. 85 per cent of them received help in filing claims against the offenders. Most claims related to “moral damages” and the average amount claimed was 50,000 Lei (about €3,600).<sup>125</sup>

**Box 7: United Kingdom: Awards from the Criminal Injuries Compensation Authority (CICA)<sup>126</sup>**

CICA is a state-funded compensation program that grants financial awards to crime victims for both physical and psychological injuries. In June 2007 CICA made its first awards to trafficking victims. The recipients were two young Romanian women who had been sexually exploited for a number of years. They had been witnesses in a criminal case against the offenders. One woman

<sup>122</sup> *Trafficking in Human Beings in Germany: 2004 Situation Report*, 18.

<sup>123</sup> UNICRI, *Trafficking in Women from Romania into Germany*, 49.

<sup>124</sup> Savona, *Trafficking and Smuggling in Italy*, 241–42.

<sup>125</sup> *Center for the Prevention of Trafficking in Women Activity Report 2003-2006* (Chisinau: Association of Women in Legal Careers, 2006), 18–19.

<sup>126</sup> Mark Townsend, “‘Sex Slaves’ Win Cash in Landmark Legal Deal,” *The Observer*, 16 December 2007.



was awarded £66,000. The other was awarded £36,500. The awards were intended to compensate both for sexual abuse and for loss of earnings/opportunity during the period when they were held by the traffickers. Since then, additional victims of sex trafficking have received awards from CICA under a new and more liberal interpretation of its guidelines. The women all received assistance from POPPY Project and pro bono representation from the law firm Lovells. POPPY Project and Lovells gathered documentation showing that the women had suffered on-going injuries and also successfully argued that the women had not been complicit in their exploitation.

**Box 8: Netherlands: Applying the Labour Law Model to Sex Club Owners**

The Social Information and Investigation Service (SIOD) of the Ministry of Social Affairs is responsible for investigating violations of social benefit laws. In one case the police and SIOD jointly investigated several sex clubs that recruited women from Eastern European countries. The sex club owners registered the victims with the Aliens Police and arranged an application for independent entrepreneur status. The women were told that they could work legally in the Netherlands. Refuting the defendants' argument that the women were self-employed, SIOD gathered evidence proving that the club owners were actual employers and that they had failed to fulfil statutory obligations to their workers. They were prosecuted for employment fraud and SIOD also filed a confiscation claim for €1,500,000 in illegally obtained profits.<sup>127</sup>

**Box 9: United States: Professional Victim-Witness Coordinators**

Every federal prosecutorial unit has a victim-witness coordinator whose role is to coordinate the delivery of information and services to victims and witnesses. Victim-witness coordinators work closely with law enforcement investigators and prosecutors. Through victim-witness coordinators, victims receive information about the progress of cases and the availability of services, such as counselling and compensation. In emergencies, victim-witness coordinators arrange transportation, housing, and protection through witness security programs. In addition, victim-witness coordinators train prosecutors and law enforcement on the requirements of the Crime Victim Rights Act of 2004 and the Attorney General Guidelines for Victim Witness Assistance, both of which contain mandatory provisions concerning the implementation of victims' rights.

The European Convention on Trafficking and the EU Council Directive on Residence Permits for Third-Country Nationals both mandate reflection periods and residence permits in certain circumstances. In addition, the Recommended Principles and Guidelines urges states to consider “[p]roviding legislative protection for trafficked persons who voluntarily agree to cooperate with law enforcement authorities, including protection of their right to remain lawfully within the country of destination for the duration of any legal proceedings.” The European Convention was to some extent based on pre-existing practices

<sup>127</sup> Bureau of the Dutch National Rapporteur, *Fifth Report of the Dutch National Rapporteur*, 119–120.

in three countries—the Netherlands, Belgium and Italy—with respect to victims of trafficking who are irregular migrants. In the US, there is no formal reflection period but there are provisions for both a short-term stay and a long-term residency which can be converted into permanent status. The four countries all have a developed NGO network and a culture of support for crime victims rights generally. All four countries also have high numbers of successful prosecutions of trafficking cases.

In 1988 the Netherlands became the first country to adopt temporary residency rights for trafficking victims. The B-9 regulation (Chapter B-9 of the Aliens Act Implementation Guidelines) provides for a three-month reflection period. If the victim decides to press charges, the complaint is treated as an application for a temporary residence permit and the Immigration and Naturalisation Service (IND) must make a decision within twenty-four hours as to whether to grant the permit. Although this should mean that the granting of the residence permit is independent of the prosecutor’s decision to initiate an investigation, in practice the two are linked. Anti-Slavery International reports that the IND or the police “often consider the issue of the temporary permit to stay dependent on the decision of the prosecutor to initiate proceedings.”<sup>128</sup> If the case leads to a conviction, the victim is granted a permanent residence permit on the grounds that returning to the country of origin would be dangerous for the victim. If the case does not lead to a conviction but more than three years have passed, then the victim may be entitled to a permanent residence permit on humanitarian grounds.<sup>129</sup>

In Belgium, the law provides for a reflection period of 45 days. If victims make a declaration or lodge a complaint, they are issued a provisional residence permit by the Immigration Service that is valid for three months and extendable for another three. They may also receive a work permit. The Immigration Service must then confirm with the Public Prosecutor’s Office or the Labour Auditor that there is a pending legal procedure, that the person concerned is willing to cooperate and can be considered a victim of trafficking, and that the person has severed all connections with the suspected offenders. Then the victim is issued a “certificate of registration” that provides for 6 months temporary residence and can be renewed for the duration of the legal proceeding. If a conviction results, the victim will receive an open-ended residence permit. In certain other situations where the victim has cooperated but no conviction was obtained, such as when the offender has died or left the

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<sup>128</sup> Pearson, *Human Traffic, Human Rights*, 67.

<sup>129</sup> Bureau of the Dutch National Rapporteur, *Fifth Report of the Dutch National Rapporteur*, 15–16.

country, the victim may also receive an open-ended residence permit.<sup>130</sup> During the reflection period, provisional residence, and temporary residence periods, the victim must accept the mandatory assistance of one of three specialised centres—Payoke, Pag-Asa or Surya. These centres provide psychological counselling, medical assistance, legal assistance and, if necessary, secure accommodations.

In Italy, there is no specific provision for a reflection period but Article 18 of the Immigration Consolidation Act, adopted 25 July 1998, provides for a special residence permit.<sup>131</sup> This is a six-month permit that may be renewed for one year or longer. It is conditioned upon the permit-holder participating in a program of social assistance and integration, which is usually run by an NGO. There are two routes to obtaining the Article 18 permit: the judicial path and the social path. In the judicial path, the victim files a complaint against the offender and cooperates in the police investigation. In the social path, the victim is not required to file a complaint. Instead, a public social services organisation or an NGO brings the request to the attention of the Questura (district police headquarters) on the victim's behalf. Eventually, the individual can apply for permanent residency.

Although the social path does not require a formal complaint, the victim “is expected to give extensive information to the police” through the social services organisation and may also be called upon to testify in any criminal proceeding.<sup>132</sup> However, it relieves the victim of pressing charges and it does not make the granting of a permit contingent upon the victim having relevant information about the offenders or the realistic possibility of the offenders being prosecuted.

In the US, there is no formal reflection period. Instead a person who is certified by the government as a victim of a “severe form of trafficking” and is willing to cooperate with reasonable requests by law enforcement will be issued a temporary form of residence called “continued presence.” This is renewable for the duration of the criminal proceedings. Certification as a victim entitles the person to a work permit and access to certain social benefits and free legal aid. Following the conclusion of the criminal case, the victim may apply for a T visa, which is a form of long-term residency that can later be converted to

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<sup>130</sup> Centre for Equal Opportunities and Opposition to Racism, *Belgian Policy on Trafficking*, 43 and note 146.

<sup>131</sup> Article 18 of Legislative Decree No. 286 of 1998.

<sup>132</sup> Associazione On the Road, *Social Protection and Assistance Interventions Addressed to the Victims of Trafficking: Description of the Italian System* (Martinsicuro: Associazione On the Road 2003), 1.

permanent residence status. To obtain a T visa, the victim must show that he or she has complied with reasonable requests from law enforcement and that he or she would suffer “extreme hardship” upon return to the country of origin. It is contingent on cooperation but it is not contingent on actual prosecution or conviction of an offender. In fact, T visas have been granted to victims even though offenders were never identified or charged. Since 2001, the government has granted 1,974 T visas to victims of human trafficking and their immediate family members.<sup>133</sup>

**Box 10: Norway: Changing the Law for Victims Who Testify**

In Norway, several victims who were told by police that they would probably receive permission to stay in the country and who testified as witnesses in a trafficking case then had their applications for residency rejected by the government. Norwegian counselling organisations began advising victims *not* to cooperate with law enforcement because they would be putting themselves in danger and had little hope of receiving permission to stay.<sup>134</sup> As a result, the Ministry of Labour and Social Inclusion sent new instructions to the Directorate of Immigration to provide residence permits to victims of trafficking who testify in criminal cases.<sup>135</sup>

The granting of residence permits and other such benefits have been used against witnesses at trial. For example, in a 2005 trafficking case in Stockholm City Court, the judge suggested that the testimony of victim-witnesses who had received benefits might be less than credible.<sup>136</sup> In Australia, defence counsel in a sex trafficking case drew attention to the fact that the police had helped a key witness apply for work authorisation and argued that the witness had an ulterior motive for participating in the prosecution.<sup>137</sup> Commenting on the Sneep case, one Dutch Member of Parliament stated that the granting of residence permits was problematic because “[i]n the courtroom it can be a point for the defence to say that you bought a witness.”<sup>138</sup>

<sup>133</sup> US DoJ, *Attorney General's Annual Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons* (Washington, DC: US Department of Justice, May 2008), 21.

<sup>134</sup> No author, “News Facts,” *La Strada International*, 12 June 2008.

<sup>135</sup> Ministry of Labour and Social Inclusion, “Witnesses in Human Trafficking Cases to be Granted Residence in Norway” (Oslo: Ministry of Labour and Social Inclusion Press Release, 11 November 2008).

<sup>136</sup> Swedish National Criminal Police, *Trafficking in Human Beings for Sexual Purposes: Situation report No. 8* (2006), 9.

<sup>137</sup> Fiona David, “Prosecuting Trafficking in Persons: Known Issues, Emerging Responses,” *Trends & Issues in Crime & Criminal Justice*, no.358 (June 2008): 3.

<sup>138</sup> No author, “Violent People Traffickers on Trial,” *Radio Netherlands/Expatica*, July 11, 2008.

Such concerns, however, may be overblown. First, if the practice of short-term residence permits is routine—rather than made on an ad hoc or exceptional basis—then there will be less of an appearance that any individual’s testimony is biased. Second, prosecutors and police can make attempts to elicit full statements from victims prior to informing them about potential immigration-related benefits, to ensure that such statements are not “tainted” by a desire to obtain such benefits.<sup>139</sup> Third, the use of surveillance, statements from other witnesses, bank records, and other documentary evidence should corroborate a victim’s testimony in every possible respect. In Italy, prosecutors voiced their fears that the granting of Article 18 permits might be used by defence counsel to question witness credibility at trial but on balance concluded that the usefulness of Article 18 far outweighed any potential dangers.<sup>140</sup>

#### **4. Prosecution and Protection: A Necessary and Awkward Reconciliation**

Criticisms of the criminal justice system’s use and misuse of victims and calls for a human rights-based approach are well-founded. There are promising efforts, but in many ways and in many countries criminal justice is failing victims of trafficking. There are those who argue that victims should not be simply an instrument of criminal justice aims and that victims should be released from any obligation to cooperate with law enforcement.<sup>141</sup> Specifically, neither compensation nor residency status should be conditioned on a willingness to cooperate with law enforcement.<sup>142</sup> There are, however, a

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<sup>139</sup> Note that this practice, however, may violate victims’ rights to information and statutory and procedural obligations on criminal justice authorities to provide such information as soon as possible. Of course a victim’s right to information should trump any prosecutorial concerns about potential witness bias.

<sup>140</sup> Savona, *Trafficking and Smuggling in Italy*, 241–242.

<sup>141</sup> See, e.g., Conny Rijken & Dagmar Koster, “A Human Rights Based Approach to Trafficking in Human Beings in Theory and Practice,” (May 2008) available at SSRN: <http://ssrn.com/abstract=35108> (accessed April 24, 2009); Pearson, *Human Traffic, Human Rights*, 35.

<sup>142</sup> See, e.g., Alliance Expert Co-ordination Team Joint Statement on Compensation (ODIHR Human Dimension Implementation Meeting, October 2008) (calling on governments to ensure that the right to compensation is not contingent on cooperation with law enforcement); EC, *Report of the Experts Group on Trafficking*, 105 (advocating that residence permits should be granted to identified trafficked persons, independent of their willingness to co-operate as a witness and regardless of whether the perpetrators are prosecuted); Global Alliance Against Traffic in Women, *Statement to the Fourth Session of the Conference of the Parties to the UN Convention against Transnational Organized Crime*, October 14, 2008 (urging states to end practice of making assistance to trafficked persons conditional on their agreeing to cooperate with law enforcement officials).

number of practical and normative considerations for preserving the cooperation requirement in both cases.<sup>143</sup>

It is difficult to talk about law enforcement cooperation without first unpacking two different boxes: first, the box of rights that victims may claim, and second, the different kinds of cooperation. Clearly many victim rights apply regardless of whether or not victims cooperate with law enforcement in the prosecution of criminal cases. Thus, obligations to treat crime victims with respect, to inform them of the progress of proceedings, to protect their privacy, and to provide certain kinds of assistance are incumbent on states regardless of cooperation.<sup>144</sup> Council of Europe Recommendation No. R (2006) 8 specifies that services should be granted independent of the identification, arrest, prosecution or conviction of the perpetrator.

It is only in terms of residence permits (but not reflection periods which are by definition pre-cooperation) and compensation that the picture becomes more complex. To obtain a residence permit, the relevant international instruments as well as domestic law require cooperation. Even Italy requires that the victim provide information to law enforcement, although he or she is not required to file a formal complaint; the victim may also be called upon to testify in criminal proceedings. As for compensation, there is a de facto if not de jure requirement that a victim cooperate with authorities in order to obtain compensation.

The “cooperation to obtain a residence permit” requirement is intended to induce a victim to provide information in return for a longer period of residency. It has the added benefit of giving a victim a secure and stable status during the duration of a criminal case and perhaps longer. To strike the right balance between law enforcement and victim considerations, the residence permit should not be conditioned on a victim providing useful evidence, or even on the arrest and indictment of a perpetrator. Events such as arrest and conviction are beyond the individual victim’s control. All that should be asked of victims is that they are willing to give whatever information they have in their possession. It would probably be unrealistic to expect a state to grant legal

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<sup>143</sup> This discussion assumes a functioning justice system and effective rule of law conditions. It is thus most applicable to developed countries, which tend to be destination countries. Where a criminal justice system is completely corrupt and protection against reprisal is nonexistent, witness cooperation is not advisable. See Mike Dottridge, *A Handbook on Planning Projects to Prevent Child Trafficking* (Terre des Hommes, Geneva, January 2007).

<sup>144</sup> See, e.g., the UN Basic Principles of Justice for Victims of Crime, the European Convention on Trafficking, and the EU Council Framework Decision on the Standing of Victims in Criminal Proceedings.

authorization to stay in the territory without receiving some information that leads to the conclusion that the person is in fact a victim of trafficking. The source of this information is the victim—although the transmittal route may be through an NGO as it is in Italy and the US. In Belgium, the Centre for Equal Opportunities and Opposition to Racism (CEEOR) reached a similar conclusion: “We are certain the Belgian model strikes a pragmatic, operational and fair balance between humanitarian and law enforcement components of the policy.”<sup>145</sup>

In terms of compensation, both offender-based and state-funded compensation require victim cooperation. Seizure of an offender’s assets, whether accomplished through civil law or in the context of the criminal case, requires meeting some burden of proof. Where a civil claim is appended to the criminal case, courts usually apply civil laws of evidence. In either a separate civil claim or a claim within a criminal case, the court must determine that the victim has substantiated his or her losses and that the relevant evidentiary burden has been met. In common law jurisdictions, the state also assumes the role of enforcing the compensation order. Even in some civil law jurisdictions, a state debt agency may be charged with enforcement. Where the state has seized assets as criminal proceeds, distribution of those assets to individuals who claim to have been harmed by the offender is also done on the basis of evidence of those claims. Thus, an individual cannot reach into an offender’s pockets (or bank account) without intervention in some form by the state. To exempt a trafficking victim from cooperating with these requirements would seriously threaten the procedural rights of the offender.

Compensation from state funds, which exist in some form in most EU member states and are mandated under both the European Convention on the Compensation of Victims of Violent Crimes as well as EU Council Directive 2004/80/EC of 29 April 2004, also requires victim cooperation. Although state compensation funds do not require a criminal proceeding, they do require some indication that a crime in fact occurred—usually in the form of a report to the police about the crime—as well as willingness to cooperate with law enforcement. The Explanatory Report to the European Convention on Compensation provides that, in order for compensation to be payable to the victim from public funds, the victim must have sustained an injury that is “directly attributable to the crime, a relationship of cause and effect being proven.”<sup>146</sup> In the UK, the Criminal Injuries Compensation Authority may have

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<sup>145</sup> Centre for Equal Opportunities and Opposition to Racism, *Belgian Policy on Trafficking*, 59.

<sup>146</sup> Explanatory Report of the European Convention on the Compensation of Victims of Violent Crimes para. 19.

imposed the additional de facto requirement that there actually be a criminal conviction; if so this would be a worrisome trend. On a positive note, in the US the Office for Victims of Crime, which issues policy guidance to the individual state-run funds, encourages consideration of potential barriers to timely reports to law enforcement, such as cultural or language differences, psychological factors, and shame or trauma.<sup>147</sup> Once again, in order for a state fund to distribute money to crime victims, it needs the victim to document that the crime has occurred. The largesse of the state is conditioned in part on the hope that more people will report crimes and that more crimes will get solved.

In order to unpack the second box—cooperation—we should distinguish among its various forms. This helps us move away from an “all or nothing” model. While full-blown cooperation might mean testifying in a criminal proceeding against an offender, there are lesser forms of cooperation that are very useful to criminal justice actors and should be valued. Giving a statement to police and prosecutors that enables them to begin a criminal investigation is cooperation. Providing information that allows the relevant authorities to evaluate a person’s claim to trafficking victim status is a form of cooperation. Cooperation should not require, at least not initially, the filing of a criminal complaint. Various jurisdictions have provisions for criminal investigations to be initiated without a victim filing a formal charge, and both the European Convention on Trafficking (Article 27) and the EU Council Framework Decision (Article 7(1)) require that investigations not be dependent on the report of the victim. Minimal cooperation requirements make sense because they fulfil the state’s obligations to investigate potential crimes and to ensure that the distribution of either seized assets or state compensation funds is made on a sound evidentiary basis.

There are also fundamental normative concerns at work here. While criminal justice systems generally should recognise the rights of victims and do a much better job of protecting those rights, it is equally important that victims’ advocates recognise the function of criminal justice and the central role that victims play in the effective investigation and prosecution of cases. Whether construed as a violation of domestic criminal law or of human rights, trafficking offences must be taken seriously and investigated and prosecuted effectively. Despite the limitations of law enforcement, prosecution is an important part of the response to trafficking and, what’s more, it is a response mandated by human rights norms.

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<sup>147</sup> “Final Program Guidelines for VOCA Crime Victim Compensation Grant Program,” *Federal Register* 66, (16 May 2001): 27158.



First, victims of trafficking should not be exempt from the rules of criminal procedure that govern all other witnesses, many of whom are also the survivors of violent and traumatic crimes. In other words, when a court summons a witness, that witness is under a compulsion to testify. It violates fundamental principles of equality and fairness if different categories of victims are accorded different treatment. That does not mean that a judge or prosecutor cannot recognise the especially vulnerable status of some victims, whether that vulnerability is determined by characteristics of the victim or the offence. Many countries have rules governing the treatment of vulnerable witnesses and provide courtroom procedures that, to some extent, shield such witnesses. In Denmark, the defendant but not the defence counsel may be removed from the courtroom during the examination of a victim or witness. In Scotland, “vulnerable victims” are defined as anyone for whom there is a significant risk that the quality of their evidence may be diminished by reason of fear or distress in connection with giving evidence at trial. Vulnerable witnesses are entitled to special measures that include the use of a screen in the courtroom, giving testimony by video link from outside the courtroom, the assistance of a supporter while giving evidence, and increased use of prior statements made in certain circumstances.<sup>148</sup>

In some jurisdictions, pre-trial depositions are commonly used as evidence-in-chief during the main trial proceedings. Thus, in Belgium and the Netherlands, witnesses often testify via pre-trial statements. In Italy, widespread use has been made of the “incidente probatorio”—whereby a witness or victim gives a statement in advance of trial but in the presence of the judge and defence counsel. The “incidente probatorio” is used when it is likely that the witness “is being subjected to violence, threats, or promises of money or other benefits intended to induce him or her to give false information or not to testify at all.”<sup>149</sup>

To carve out a special category for trafficking victims would not only violate basic principles of equality, it might also threaten offenders’ procedural rights to a fair trial.<sup>150</sup> Simply put, trafficking victims should not be exempt from the same procedural rules that govern the testimony of other crime victims. The Council of Europe has recognised this. Commenting on Article 12(6), which provides that access to assistance should not be conditional on a victim’s

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<sup>148</sup> Vulnerable Witnesses (Scotland) Act 2004.

<sup>149</sup> Savona, *Trafficking and Smuggling in Italy*, 219.

<sup>150</sup> In *Doorson v. The Netherlands*, the European Court of Human Rights observed that the use of anonymous statements by witnesses could raise issues under Article 6 of the European Convention.

willingness to act as a witness, the Explanatory Report states that where it is “compulsory to give evidence if requested to do so”, the provisions of Article 12 cannot be relied upon to refuse to act as a witness.<sup>151</sup> Similarly, in comments on the recovery and reflection period, the Explanatory Report states that the “[d]ecision to cooperate or to not cooperate with competent authorities does not exclude the obligation to testify when it is required by a judge. Someone who is legally required to do so therefore cannot use Article 13(a) as a basis for refusing to testify.”<sup>152</sup>

Second, the prosecution of serious crimes, including trafficking, is not subject to the control of the individual victim. Although many criminal justice systems have gradually become more responsive to victims’ needs—a result of the growing victims’ rights movement(s) of the 1970s and 1980s, especially in Western Europe and North America—the prosecutor ultimately serves the interests of society at large and not the individual victim of crime. Thus, according to the UN Guidelines on the Role of Prosecutors, they are supposed to “protect the public interest,” taking “proper account of the position of the suspect and the victim.”<sup>153</sup> In a similar vein, the Council of Europe Committee of Ministers Recommendation on the Role of Public Prosecution provides public prosecutors as “public authorities who, on behalf of society and in the public interest, ensure the application of the law ... taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system.”<sup>154</sup> In *Villagran-Morales et al. v. Guatemala*, the Inter-American Court of Human Rights emphasised that the duty to investigate crimes is the state’s “own legal duty” and not one that depends upon the “initiative of the victim or his family.”<sup>155</sup>

Third, the idea that there could be effective substitutes for direct victim testimony is unrealistic in the majority of cases.<sup>156</sup> Surveillance, electronic eavesdropping, and asset tracing are all important components of a thorough investigation but, as discussed above, it is difficult to imagine the kind of

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<sup>151</sup> Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings (2005), Para. 170.

<sup>152</sup> *Council of Europe Explanatory Report*, Para. 176.

<sup>153</sup> Guidelines on the Role of Prosecutors, adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>154</sup> Recommendation Rec (2000) 19, adopted by the Committee of Ministers of the Council of Europe, 6 October 2000.

<sup>155</sup> *Villagran-Morales et al. v. Guatemala*, Judgment of the Inter-American Court of Human Rights, 19 November 1999, para. 226.

<sup>156</sup> For examples of such proposals, see EC, *Report of the Experts Group on Trafficking*, 123; Goodey, “Migration, Crime and Victimhood,” 426.

evidence that would substitute for direct victim statements. Nor are electronic eavesdropping and surveillance likely to be options if the investigation is triggered by a victim escape, which will also put the offenders on notice of possible law enforcement activity. Prosecutors and law enforcement have repeatedly stressed the centrality of victim testimony. Unlike murder cases, which typically feature a corpse, or assault cases, where there is usually medical and visual documentation of injury, most trafficking cases cannot be prosecuted without testimony by the victim about his or her experiences. The defining characteristic of trafficking is exploitation. Where the exploitation is forced labour, the inquiry must be into the voluntary nature of the work or services provided.<sup>157</sup> That is a subjective question. It depends on the individual person's perception of an offender's statements and actions. Without that first-hand account, trafficking is likely to get prosecuted as some lesser crime and the concept of trafficking as an offence against the will of the person is diminished.<sup>158</sup>

Finally, states have a duty, grounded in human rights law, to prosecute trafficking. This duty exists independently of the UN Trafficking Protocol, although it is certainly strengthened by it. There is a clear international norm to prosecute grave crimes and violations of human rights and to give victims effective access to justice. In a series of cases, the European Court of Human Rights has held that "where fundamental values and essential aspects of private life are at stake," the failure to provide a criminal law response violates the Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>159</sup> In the case of *Siliadin v. France*, the European Court interpreted the Convention to impose "positive obligations" on states to provide effective criminal law prosecution and punishment for those who violate the Article 4 prohibition on slavery, forced labour and servitude.<sup>160</sup> Similarly, the Inter-American Court of Human Rights has held that states have legal duties to

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<sup>157</sup> Note: The ILO's view is that forced sexual services comes within the scope of forced labour. Although the ILO does not take a stand on the legalization of prostitution, it recognises the commercial sex industry as an economic sector. See, for example, Lin Lean Lim, *The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia* (Geneva: ILO, 1998).

<sup>158</sup> The Centre for Equal Opportunities and Opposition to Racism (CEOOR) expressed similar concern about the enactment of recent labour trafficking that eliminated any requirement of proving "means." The Centre feared that cases "involving acts of violence and threats of reprisals, factors that are the most difficult to prove and often mostly based on the statements of victims," would only be treated in a limited way that could ultimately erode the status of the trafficked person. Centre for Equal Opportunities and Opposition to Racism, *Belgian Policy on Trafficking*, 112.

<sup>159</sup> *X & Y v. The Netherlands*, Application No. 8978/80, Judgment dated 26 March 1985; *M.C. v. Bulgaria*, Application No. 39272/98, Judgment dated 4 December 2003.

<sup>160</sup> *Siliadin v. France*, Application No. 73316/01, Judgment dated 26 July 2005.

investigate and punish violations of the rights embodied in the American Convention on Human Rights. “Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the state responsible on an international plane.”<sup>161</sup> The human rights perspective—and not just the criminal justice perspective—thus requires prosecution.

## 5. Conclusion

Some observers of the criminal justice response to trafficking have urged victim-centred prosecutions in the belief that it will make investigations more effective and result in higher conviction rates. This is true generally—as the experience of countries with established victim rights cultures has borne out—but it is not always true. There will be times when the interests of the victim and the prosecutor collide. A prosecutor wishes to pursue a case. A victim does not wish to cooperate. The prosecutor faces the unhappy choice of compelling the victim to testify as a witness or dropping the case. Where to strike the balance is often up to the individual prosecutor.

The coercive power of the criminal justice system over defendants is well-established. What is less frequently recognised is the coercive nature of criminal justice’s interactions with individual victims of crime. The experience of trafficking victims is by no means unique. What happens to unwilling participants in the machinery of criminal justice is often similar regardless of the nature of the underlying offence.

Witness the history of the domestic violence movement in the US. For decades, domestic violence cases were not taken very seriously by law enforcement and charges against violent and abusive partners were often dismissed when the victim became recalcitrant or recanted. The women’s rights movement successfully lobbied for “no drop” policies—prosecution policies that pursued domestic violence charges against offenders regardless of the individual wishes of the victim. Some jurisdictions even adopted “mandated participation” policies that required the woman to sign statements, be photographed, and appear in court throughout the proceedings. In other words, non-cooperation was not an option. Battered women faced arrest and imprisonment if they refused to cooperate.

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<sup>161</sup> *Velasquez-Rodriguez Case*, Judgment of the Inter-American Court of Human Rights, 28 July 1988. See also *Villagran-Morales*, Judgment of 19 November 1999.

In the domestic violence context, “no drop” and “mandated participation” policies illustrate the classic tension between what the individual wants and systemic societal goals. The victim wants to be left alone and the state wants to punish criminal conduct and deter future violence. There is no right answer here. In one recent trafficking case in the United States, the victim, a woman from India, worked as a domestic servant for a family. She had no wish to see the couple prosecuted because she feared what would happen to the family’s small children if the parents were imprisoned. The prosecutors worked out a plea arrangement that did not involve prison time for the offenders, but did involve payment of compensation to the victim. In another case, a different prosecutor might make a different judgment call. The tension may be resolved on a case-by-case basis, but it is a tension inherent in all systems of public justice and cannot be willed or legislated away.

For domestic violence prosecutions in the US, “no drop” policies are often accompanied by support services and counselling for battered women. Such programmes do not undo the coerced nature of participation, but do recognise that the state has a role to play in healing and prevention that goes beyond simply incarcerating offenders. A similar approach can be observed in the best practices of programmes for trafficking victims. Those states that have residence permits for victims require some degree of cooperation in the judicial process. They also provide shelter, education, job training, legal aid, and psychosocial assistance. According the crime victim significant participatory rights in legal proceedings—a trend we see reflected in international instruments, domestic law, and the Statute of the International Criminal Court—is another example of attempting to reconcile the demands of criminal justice with the interests of the victim. What we are left with is an awkward compromise between prosecuting offenders and protecting victims. It is imperfect but it is better than no compromise at all.

### **Policy Recommendations**

#### *Implement International Standards Concerning Trafficking and Crime Victims*

Ratify the applicable international instruments and monitor their enforcement. For states within the Council of Europe, the European Convention on Trafficking and the European Convention on Compensation guarantee important rights for trafficking victims and crime victims generally, including a reflection period, temporary residence, and access to state-funded compensation schemes. In addition, states should adhere to the standards reflected in the UN Declaration of Basic Principles of Justice for Victims of

Crime and Abuse of Power, the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, and Council of Europe Committee of Ministers Recommendation 85(11) on the Position of the Victim in the Framework of Criminal Law and Procedure.

*Look Beyond Sex to Identify and Prosecute Other Forms of Trafficking*

Trafficking exists in many different economic sectors. To effectively investigate trafficking cases, criminal justice actors need to involve other partners, including labour inspectors, trade unions, and nongovernmental organisations. Criminal justice actors also need to learn to view severe violations of labour law as potential crimes. States should recognize the connection between abuse of workers' rights and trafficking, as well as the ways that structural or systemic vulnerabilities of migrant workers, especially undocumented migrant workers, can lead to exploitation and trafficking.

*Match Resources with Rhetoric*

States should invest the appropriate time, energy and resources needed to conduct full-scale trafficking investigations rather than opt for easier cases on lesser charges. The individual case agent or street-level police officer needs to know that the commitment to investigating trafficking is matched with sufficient time and investigative tools.

*Follow the Money*

Financial investigations should be conducted to identify and perhaps seize assets at an early stage of investigation. In addition to criminal proceeds, other assets should also be identified and frozen if appropriate. Such funds can be used at a later date in the event that a court awards compensation or orders payment of a fine. Financial investigations can also provide evidence that corroborates witness statements.

*Corroborate Victim and Witness Statements*

Full-scale investigations should include gathering evidence—in the form of documents, bank records, witness statements, surveillance, and electronic interceptions—that corroborate victim testimony. If and when a victim does testify, he or she will be less subject to attacks on credibility if there is corroborating evidence.

### *Impose Appropriate Penalties*

Light sentences may reflect an outdated view of trafficking as similar to prostitution or pimping. Sentences should be commensurate with penalties for other severe crimes that involve violations of individual rights.

### *Protect Victims from Arrest and Summary Deportation*

Potential victims should not be charged for involvement in offences that are the result of being trafficked. Nor should they be summarily expelled or deported without an investigation to determine whether they are victims. Individuals should be viewed as potential crime victims rather than as “illegal” migrants/law-breakers.

### *Make Victims’ Rights a Reality*

Victims need to be informed of their rights if they are to be able to exercise them. Impose the legal obligation on all criminal justice actors to inform victims of their rights in criminal proceedings, including their rights to information, to be heard, to compensation and to protection. The obligation to provide information to victims should be part of the job description and performance evaluation of each criminal justice actor. Make victim rights legally enforceable so that victims have a remedy if their rights to information and to be heard are violated by criminal justice actors. Consider using standard forms as checklists for the provision of information to victims to ensure that it is always provided and provided consistently. Also, consider the use of professional victim advocates within criminal justice agencies. In some countries, police are required to refer crime victims to victim counselling centres unless a victim chooses to “opt out” of the referral process.

### *Recognise that Compensation is Part of Access to Justice*

To make filing compensation claims easier, ensure that victims are informed of the right to seek compensation from the offender and, where applicable, from a state fund. Streamline application procedures and provide assistance with completing application forms, if necessary by referral to an appropriate victim service provider or counselling centre. Law enforcement investigators and prosecutors should be under an obligation to document a victim’s losses/injuries and provide such documentation to the court, with an opportunity for the victim to supplement the record if necessary. Criminal courts should consider such claims within the context of the criminal case

wherever possible. Collection of compensation orders can be improved by using national debt collection agencies.

#### *Have Realistic Expectations about Cooperation*

A victim should not be held responsible for the eventual success of an investigation and decisions about residency status should be independent of the outcome of a prosecution. The obligation to cooperate with law enforcement should be limited to law enforcement requests that are “reasonable.” In other words, if the victim is not able to identify the offender or is too traumatised to give a statement, it would be unreasonable to expect him or her to testify. Consider “graduated cooperation” models. The initial expectation on a trafficking victim should only be that he or she provide the information that will allow authorities to make a reasonable determination to treat him/her as a victim. Expecting a victim to file a complaint in order to initiate a criminal investigation may not be realistic in many cases. “Full cooperation”—meaning testimony in court in a trial against the offender—may not be necessary in many cases. Ensure that trafficking offences can be prosecuted independently of a victim filing a complaint, or else that an advocacy NGO can file the complaint on behalf of the victim.

#### *Provide Cross-Border Access to Justice and Ex-Official Complaints*

Create channels for victims who have been returned to countries of origin to have meaningful participation in legal proceedings against offenders, including access to compensation funds.

#### *Don't Do It Alone*

Build partnerships with NGOs and other members of civil society that can provide care, support, counselling and legal advocacy services for trafficking victims. Such partnerships are also valuable sources of information about the needs of victims and can teach criminal justice agencies and actors how to make the justice system more responsive.

### **Recommendations for Civil Society/Victim Advocacy Organisations**

#### *Recognize the Broader Goals of Criminal Justice*

Holding wrongdoers accountable and ending impunity for perpetrators of human rights violations are important goals of international and domestic



justice. Many human rights instruments require the investigation and prosecution of abuses. To achieve those systemic goals, victims must play a part in the process. Without a trafficking victim's testimony, many trafficking crimes cannot be prosecuted as such. Moreover, the lack of victim testimony may impede a defendant's rights to a fair trial.

*Create a Victims Rights Culture—For All Victims*

Forging alliances with advocacy organisations that represent other types of victims (domestic violence, child abuse, street crime) or other interest groups (migrants, farm-workers, etc.) helps build a broad culture of support and concern for victims. Cultural change can lead to institutional changes.

*Inform Victims and Others of Rights under International and Domestic Law*

Making sure victims are aware of their rights is the first step toward implementation. Educate criminal justice actors about existing rights. Information strategies should be tailored to specific audiences.

*Focus on Criminal Procedural Law*

Changes in procedural law are often as important as changes in substantive law. Moreover, changes in procedural law work to the benefit of victims of all crimes and do not link a victim's access to benefits, information, and services to a particular charging decision.

*Document Injuries and Losses*

Gather evidence of a victim's injuries and losses (photos, medical records, payslips) and provide such evidence to investigating officers. Encourage victims to file compensation claims, either as pendent civil claims or separate cases, depending on the legal system. Publicise positive outcomes.



## **PART 3: *Cooperation***



## CHAPTER 10

# Combating Human Trafficking: Improving Governance Institutions, Mechanisms & Strategies<sup>1</sup>

Phil Williams

### Introduction

Global governance has become a highly fashionable concept. In many areas, however, a large gap continues to exist between concept and effective implementation. This is certainly true in governance efforts to combat trafficking in human beings—although it has to be acknowledged that considerable progress has been made since the mid-1990s, when trafficking in human beings, especially women and children for the commercial sex trade, was recognised as an important but undesirable accompaniment to contemporary globalisation. The 2000 United Nations Protocol on the Prevention, Suppression and Punishment of Trafficking in Humans, which supplements the UN Convention on Transnational Organized Crime, placed the issue squarely on the global agenda. In the same year, the United States passed the Trafficking Victims Protection Act, which established the goals of punishing traffickers, protecting victims of trafficking, and preventing trafficking. The scope of the act was global, and the US Congress, displaying an enduring penchant for what George Kennan termed a “legalistic moralistic” approach to international relations, mandated that the Department of State develop an annual report card in which states were formally graded on their efforts to combat trafficking in human beings.<sup>2</sup> Those countries which receive poor grades might be subject to sanctions, in that they become ineligible for non-humanitarian, non-trade-related economic assistance from the United States. Although both the US act and the UN Protocol placed human trafficking

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<sup>1</sup> The author would like to express his appreciation to two anonymous referees and to Cornelius Friesendorf for their very constructive and helpful comments on an earlier draft of this chapter.

<sup>2</sup> George F. Kennan, *American Diplomacy* (Chicago: University of Chicago Press, 1984).

firmly on the global agenda, little progress appears to have been made in containing let alone reducing what has become a lucrative global business.

Against this background this chapter seeks to identify ways in which governance institutions and mechanisms to combat human trafficking can be strengthened. It looks initially at the limits of governance, both in general and specifically in relation to combating human trafficking. It then suggests that the networks involved in human trafficking are agile and difficult to combat, especially because they operate within a dynamic market characterised not only by a high demand for forced labour and commercial sex but also a ready supply of trafficking victims. In short, human trafficking poses enormous challenges to governance and law enforcement, and, at times, these challenges seem to be overwhelming. Even if it is something which is unlikely to be eliminated, however, more effective steps can be taken to contain or even reduce the scope of the problem.

Consequently, the next section of the paper focuses on the various kinds of networks involved in human trafficking, highlighting their vulnerabilities. Attention then focuses on how these vulnerabilities might be exploited in various kinds of attack strategies. The problem is that attacking only the criminal networks which function in these markets without in any way stifling the market dynamics simply leads to a more rapid turnover of these networks. Consequently, counter-network attacks have to be part of a broader approach which seeks to disrupt and if possible alter the market dynamics.

After suggesting ways in which this might be done, attention is turned to the development and strengthening of global governance institutions, international cooperation, and law enforcement mechanisms to combat human trafficking in ways that overcome the inhibitions and limitations which have hitherto characterised these efforts. A key theme of the analysis is that the issue is not just about inter-governmental cooperation and networking; it is also about strategy. It also needs to be emphasised that the creation of more effective governance networks is ultimately no more than a means to an end—which is a massive reduction in what is a contemporary form of slavery.

## **1. Limited Governance, Agile Networks, and Powerful Markets**

### *1.1 Limited Governance*

To some extent, of course, law enforcement and judicial networks have already emerged as a bottom-up response to globalisation. This phenomenon was elucidated in the mid-1990s by Ethan Nadelmann in an incisive analysis of law

enforcement cooperation to combat transnational drug trafficking.<sup>3</sup> Not only did Nadelmann argue that cross-border cooperation was vital when confronting drug trafficking networks which spanned national borders, he also highlighted some of the difficulties of establishing effective cooperation, especially with countries where corruption was systemic.<sup>4</sup> More recently, Anne-Marie Slaughter has noted that “networks of government officials—police investigators, financial regulators, even judges and legislators—increasingly exchange information and coordinate activity to combat global crime and address common problems on a global scale.”<sup>5</sup> She acknowledges, however, that while these “government networks are a key feature of world order in the 21st century ... they are underappreciated, under-supported, and underused to address the central problems of global governance.”<sup>6</sup>

Yet, this should not be a surprise. State-based legal systems are an important inhibition on cooperation across national borders. Moreover, in the 21<sup>st</sup> century governance within many nation-states is woefully inadequate. Expectations about the emergence of governance mechanisms beyond the nation-state and especially at the global level, therefore, should be tempered by realism, history, and a recognition that gaps in national governance almost inevitable translate into even larger gaps in global governance. In a world where the predominant units remain sovereign states, global governance is inherently limited; in a world where many of these states lack capacity for both resource extraction and service provision, and suffer from legitimacy deficits, global governance inevitably contains holes and gaps that are not easily filled. In some respects the problem is even worse than this suggests. Weak states are characterised by limited border controls, ineffective laws, the absence of a compelling concept of collective good or public interest, and inadequate provision for the citizenry. Moreover, other typical state functions are not carried out with either efficiency or effectiveness. Not surprisingly, these weaknesses act as a hot-house for the growth of trafficking organisations.

Even allowing for the problems stemming from weak states, there is another difficulty associated with governance mechanisms to combat human trafficking. Governments have become so accustomed to dealing with each other that they have really been unprepared for the diversity of actors,

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<sup>3</sup> Ethan A. Nadelmann, *Cops Across Borders: The Internationalization of US Criminal Law Enforcement* (University Park PA: Penn State University Press, 1993).

<sup>4</sup> Ibid.

<sup>5</sup> Anne-Marie Slaughter, *A New World Order* (Princeton University Press, 2004), 1.

<sup>6</sup> Ibid.

including trafficking organisations and networks—playing major roles in contemporary global political and economic life. Because trafficking is generally a transnational activity, only collective, multilateral or transnational responses will succeed in having a major impact. Trafficking networks often present moving and difficult targets for governments, partly because of their agility and partly because of their ability to use national sovereignty for defensive purposes, retreating to safe havens when international pressure is on them. Indeed, many trafficking organisations engage in jurisdictional arbitrage, exploiting both jurisdictional asymmetries (highly divergent laws and penalties) and jurisdictional voids (countries in which there are no effective laws and regulations or no effective implementation of the laws and regulations against trafficking and its profits).

Consequently, no government, no matter how powerful, can adequately respond to transnational trafficking in isolation—although clearly some governments could do a lot more to deal with internal trafficking in people. While it is important not to ignore internal trafficking, transnational human trafficking is a distributed problem that requires a distributed solution. In many instances, however, reluctance to engage in distributed responses is driven by concerns about ceding or relinquishing national sovereignty, particularly in the areas of law enforcement and national security. Ironically, as Moises Naim has noted, the aversion of governments to “multilateral action for the sake of protecting their sovereignty is often a moot point. Their sovereignty is compromised daily ... by stateless networks that break laws and cross borders in pursuit of trade ... Without new forms of codifying and “managing” sovereignty, governments will continue to face a large disadvantage” in their efforts to combat trafficking.<sup>7</sup> Yet, multilateral responses alone are not enough, particularly as the strategies which emerge are often diluted compromises that do not adequately reflect the scale of the challenges that are faced.

In view of all this, it is hardly surprising that, in spite of the grandiose rhetoric about the evils of trafficking, the various global and regional initiatives, and the annual scorecards issued by the United States, policies to combat human trafficking remain a low priority for many (if not most) governments. The low priority is reflected in the paucity of resources devoted to criminal justice in general and to combating trafficking in human beings in particular. In many cases, this is simply a result of the constant and often mundane tradeoffs of energy and resources that are inherent in government. The upshot, however, is that all too many governments have failed to give efforts to combat human

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<sup>7</sup> Moises Naim, “The Five Wars of Globalization” *Foreign Policy* (January–February 2003): 29–37 at 36.



trafficking the resources or attention they deserve. Penalties for human trafficking have remained grossly inadequate, law enforcement agencies have not been trained and equipped either to investigate adequately or to provide victim support, and only NGOs and international organisations have managed to keep the issue alive. Even in the United States, where trafficking in women was placed firmly on the policy agenda during the Clinton presidency, an “exploratory study of a limited number of local police agencies” revealed not only the paucity of “local law enforcement preparation to deal with trafficking” but also “general attitudes that would not promote a proactive and informed response to this crime.”<sup>8</sup> Much the same appears to be true in the European Union. As the European Commission working document on monitoring and evaluating the EU Plan on combating and preventing trafficking in human beings noted,

the total number of cases investigated in the EU was 195 in 2001, 453 in 2003, 1,060 in 2005, and 1,569 in 2006. Despite the upward trend, the number of criminal proceedings is still not high enough to reflect the presumed scale of the crime, especially given the fact that about 500,000 people might be trafficked to Europe every year according to IOM estimates. In 2006, 180 cases were recorded of this offence being committed against children. As regards trafficking for labour exploitation, the legislative framework has been recently completed, and thus implementation is even less advanced. The conclusion has to be that, trafficking in human beings is still a low-risk crime concerning both trafficking for sexual and labour exploitation.<sup>9</sup>

The weaknesses of the efforts to combat human trafficking are perhaps even more obvious in the global figures for indictments and convictions of traffickers in human beings. According to the US State Department’s Global Law Enforcement data, presented in the Trafficking in Persons Report 2008,

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<sup>8</sup> Deborah Wilson, William Walsh, and Sheryllyn Kleuber, “Trafficking in Human Beings: Training and Services in US Law Enforcement Agencies.” *Police Practice and Research* 7, no.2 (May 2006): 149–160.

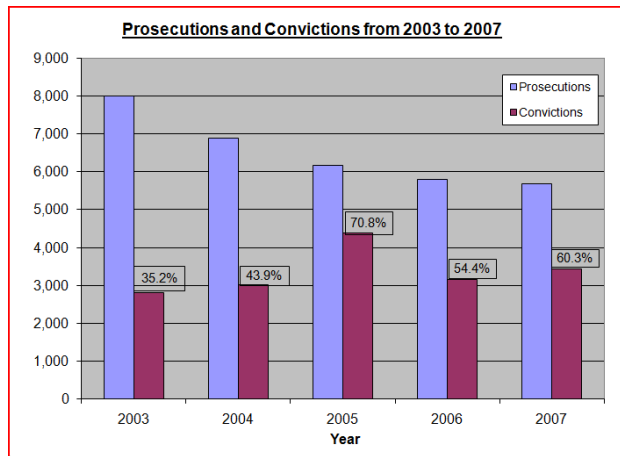
<sup>9</sup> Commission of the European Communities, *Commission Working Document: Evaluation and Monitoring of the Implementation of the EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings*, COM 2008 657 Final (Brussels: EU Commission, October 17, 2008), 3, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0657:FIN:EN:PDF> (accessed May 18, 2009).

the number of prosecutions and convictions for the five years from 2003 to 2007 is broken down as shown in Table 1.<sup>10</sup>

<b>Table 1.</b>		
<b>Year</b>	<b>Prosecutions</b>	<b>Convictions</b>
2003	7,992	2,815
2004	6,885	3,025
2005	6,178	4,379
2006	5,808	3,160
2007	5,682 (490 for forced labour)	3,427 (326 for forced labour)

Although there are always several ways to explain such trends, the declining number of prosecutions is a cause for concern, especially as there is no evidence that the scale of the problem has decreased during this five-year period. As highlighted in Figure 1, the reduction in prosecutions is offset to some degree by a significant—if uneven—improvement in the conviction rate. Overall though, the figures remain remarkably modest, to say the least.

Figure 1.



<sup>10</sup> US Department of State, *Trafficking in Persons Report* (Washington DC: US Department of State, 2008), 37, [www.state.gov/g/tip/rls/tiprpt/2008/](http://www.state.gov/g/tip/rls/tiprpt/2008/) (accessed May 18, 2009).

All this is not to suggest that combating trafficking is simply a matter of will and commitment. Even when will and commitment are accompanied by the allocation of significant resources, anti-trafficking policies encounter many problems, not the least of which are the inhibitions on and obstacles to cooperation among law enforcement agencies, at all levels. It is often forgotten that most police departments and law enforcement agencies are local and not national and have a narrow perspective within a specific jurisdiction. Another closely related inhibition to cooperation—and one which is rarely given the attention it deserves is that incentive structures both locally and within national law enforcement agencies are typically tied to short-term tactical results rather than long-term strategic impact. The transnational dimensions of human trafficking have inherently low priority because they require complex and lengthy investigations, which demand significant resources and manpower, have uncertain results, and do not necessarily yield tangible short-term benefits. Moreover, the system of rewards and penalties in almost all bureaucracies is based on metrics that are easily identified and readily counted, on narrow notions of organisational missions and on political salience and expediency. And this is in countries with well-developed and relatively efficient criminal justice and law enforcement systems.

In many countries, however, law enforcement agencies are lacking in highly-trained personnel and funding. This is certainly the case for many source and transshipment countries for human trafficking; consequently, they lack the capacity required for effective international cooperation. Another problem for many developing countries and countries in transition is that law enforcement is not widely trusted by society and is susceptible to corruption by organised crime and trafficking networks. Consequently, countries with lower levels of law enforcement corruption are loath to share information with them—a reluctance that is intensified by the way in which law enforcement has become one of the last bastions of national sovereignty. Sometimes this reluctance and suspicion comes across as a form of condescending arrogance which further hinders communication and cooperation.

An additional problem for combating human trafficking is that some countries still lack legal instruments to combat trafficking within their national territories, let alone the laws and mandates which underpin international cooperation. The UNODC Global Report on Trafficking in Persons noted that between the Protocol on human trafficking entering into force in 2003 and November 2008, 45 per cent of the 155 countries examined put in place laws

against trafficking in persons.<sup>11</sup> Equally impressive, almost half of the countries had developed a specific national plan against human trafficking or created a specialised police unit.<sup>12</sup> Although, at one level, progress has been remarkable, it is worth emphasising that many international regimes are characterised more by cosmetic conformity and tacit defection than by enduring efforts to live up to norms and standards by passing appropriate laws and implementing them effectively. Even in the European Union, for example, major gaps remain. As a European Commission working paper in October 2008 noted, “the past years have witnessed a dynamic process of approximation of legislation in the Member States, in the field of both criminal law and victim assistance. However, the figures available indicate a serious gap between the legislation in force and actual implementation. Figures concerning criminal proceedings are still not high enough. In the field of victim assistance and protection, in particular, a critical lack of effective implementation must be underlined.”<sup>13</sup>

What makes this critique particularly powerful is that it focuses on governments, which not only have significant resources and expertise, but have also developed strong habits of cooperation—as in the European Union. Yet, different laws on personal privacy and the handling of data have hindered and complicated the sharing of critical information. In spite of the progress, therefore, governance efforts to combat human trafficking remain fragmented and ad hoc in form, partial and incomplete in substance, and still inadequate to meeting the challenge of a global problem, the scale and scope of which are still not fully understood. The situation is worsened by the formidable problems governments have to confront in their efforts to combat illicit transnational networks and markets.

### *1.2 Agile Networks*

It has to be acknowledged that human traffickers—like other kinds of traffickers—have many advantages over governments and law enforcement agencies. These include: the capacity to hide human trafficking in the huge volume of travel facilitated by globalisation; the initiative in terms of the

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<sup>11</sup> United Nations Office of Drug And Crime (UNODC), *Global Report on Trafficking in Persons* (Vienna: UNODC, February 12, 2009), 24, [http://www.ungift.org/docs/ungift/pdf/humantrafficking/Global\\_Report\\_on\\_TIP.pdf](http://www.ungift.org/docs/ungift/pdf/humantrafficking/Global_Report_on_TIP.pdf) (accessed May 18, 2009).

<sup>12</sup> *Ibid.*, 25.

<sup>13</sup> Commission of the European Communities, *Evaluation and Monitoring of the Implementation of the EU Plan*, 5.

methods, timing, and routes used for human trafficking; and the capacity to neutralise or overcome some control mechanisms and regulatory measures imposed by governments through corruption and co-option. In addition, as suggested above, trafficking organisations have the ability to use multiple jurisdictions and thereby ensure that their activities are distributed in ways that make them very difficult to counter. Sometimes it is not even clear which countries “own the problem.” Moreover, network organisational forms appear to have a degree of flexibility, a capacity for adaptation, and a resilience that make them difficult for hierarchical and bureaucratic structures to counter. Networks also vary significantly, in size, scope, structure, membership, and purpose. Some networks can be understood as organisations; others operate inside formal organisations; others are anything but organisations with formal structures. Some networks are purely social or political; others are related to the operation of markets, which can be either licit or illicit, or even some combination of the two.

The notion that networks have lots of advantages over hierarchies has recently been challenged by an analysis which suggests that both the threat from networks and the difficulties they present to hierarchical organisations attempting to combat them have been exaggerated. In a provocative and important, if ultimately unpersuasive, article Mette Eilstrup-Sangiovanni and Calvert Jones contend that “the prevailing pessimism about the ability of states to combat illicit networks is premature. The advantages claimed for networks vis-à-vis hierarchical organizations ... are often not well characterized or substantiated. Although they tend to enjoy flexibility and adaptability, networks have important—and often overlooked—structural disadvantages that limit their effectiveness.”<sup>14</sup> A key part of their argument is that “clandestine organizations—whether terrorist groups, guerrilla movements, or drug-smuggling enterprises—face a unique set of constraints that distinguish them from their legal commercial counterparts.”<sup>15</sup> The authors claim that many illicit networks “may be prone to inefficiencies and short life cycles,” but that this has been ignored because of the focus on the advantages rather than the weaknesses of networks.<sup>16</sup> In addition, they contend that the “disadvantages claimed for hierarchies are often based on bad management and are not inherent to form ... law enforcement agencies enjoy several advantages over

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<sup>14</sup> Mette Eilstrup-Sangiovanni and Calvert Jones, “Assessing the Dangers of Illicit Networks: Why Al-Qaida May be Less Threatening Than Many Think,” *International Security* 33, no.2 (Fall 2008): 7–44 at 8.

<sup>15</sup> *Ibid.*, 11.

<sup>16</sup> *Ibid.*, 17.

clandestine networks, such as centralized information processing monitoring of activities, formal training, and reliable organizational memory. All this, combined with a significant force advantage, implies that states can inflict costs on illicit networks with a greater efficiency, and for longer periods of time, than illicit networks can with regard to states.”<sup>17</sup> Eilstrup-Sangiovanni and Jones offer some important examples which show that networks are sometimes slow to respond to law enforcement efforts and that they can be degraded and even dismantled.<sup>18</sup>

This argument—which emphasises the weaknesses not strengths of networks and the strengths rather than the weaknesses of bureaucracies—is an important counterweight to assessments which exaggerate the strength of networks and ignore their weaknesses. Indeed, Eilstrup-Sangiovanni and Jones challenge the notion—which they see as the new conventional wisdom even though governments have been very slow to accept, let alone implement, this wisdom—that “it takes a network to defeat a network”, arguing, in effect, that it takes a hierarchy to defeat a network.<sup>19</sup>

Some parts of this thesis are persuasive in relation to states where law-enforcement and intelligence agencies are unusually well-resourced and relatively efficient. Even in such cases, however, the transnational and distributed nature of many illicit networks ensures that even when a single state can hurt one part of the network, other segments are out of reach and immune from damage. The critique also ignores the fact that members of networks are socially embedded in particular societies which enables them to overcome some of the information limitations and communications failures described by Eilstrup-Sangiovanni and Jones. Closely related to this, networks tend to be “edge organizations” which are far closer to the environment in which they operate than are hierarchical, bureaucratic organisations.<sup>20</sup> Indeed, hierarchical bureaucratic structures are all too often arthritic, with organisational cultures that erode flexibility, reward conservatism, and stifle innovation. Moreover these structures operate through standard operational procedures that inhibit cooperation with other agencies even at the domestic level, let alone across national borders. Extolling the virtues of bureaucracy, and ignoring

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<sup>17</sup> Ibid., 42–43.

<sup>18</sup> Ibid., 19–33.

<sup>19</sup> The argument that it takes a network to defeat a network was initially developed by John Arquilla and David Ronfeldt, *Networks and Netwars* (Santa Monica CA: RAND, 2001).

<sup>20</sup> David S. Alberts and Richard E. Hayes, *Power to the Edge: Command and Control in the Information Age* (Washington DC: Department of Defense, 2003).

“organizational pathologies,” bureaucratic politics and the dominance of standard operational procedures, does not produce a compelling argument.<sup>21</sup>

Another problem is that Eilstrup-Sangiovanni and Jones exhibit the same kind of selection bias that they criticise. Whereas network theorists focus on strengths rather than weaknesses, Eilstrup-Sangiovanni and Jones buttress their arguments by focusing on unsuccessful or failed networks, largely ignoring the fact that these particular networks are often the most unsophisticated and inept of their kind. There is little recognition in their analysis that law enforcement acts, if often inadvertently, as a Darwinian selection mechanism weeding out the weakest and most vulnerable and leading to the survival of the fittest in the criminal world. Consequently, what they see as government and law enforcement success was, in some cases at least, little more than picking low-hanging fruit.

Perhaps most important, however, Eilstrup-Sangiovanni and Jones genuflect to power differentials between states and illicit networks but then largely ignore the imbalance. Given the power differentials, the ability of networks to confront states with serious and persistent problems suggests that other considerations are at play—and it seems likely that one of these considerations is the network form. Even states with fully developed criminal justice systems and effective and efficient law enforcement agencies, for the most part, find it easier to deal with familiar and conventional security challenges posed by other states than with the more dynamic problems posed by networks. This not surprising: the whole thrust of the Westphalian state system has been organisation for diplomacy and the use and threat of force in relation to other competing and cooperating state entities. Responding to networks poses different kinds of challenges and, although states are sometimes successful in meeting these challenges, success is often based on an allocation of resources that is asymmetrically large. In the final analysis, it is not surprising that states, historically, have obtained some success in combating networks; what is more surprising is the level of effort and resources this has required given the paucity of resources deployed by networks. Indeed, since the mid-1990s, considerable analysis has been done of how non-state actors with limited power are able to challenge and undermine states with much greater power—a phenomenon typically described as the asymmetric threat problem.

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<sup>21</sup> See, for example, Harold L Wilensky, *Organizational Intelligence: Knowledge and Policy in Government and Industry* (New York: Basic Books, 1967) and Graham T. Allison, *Essence of Decision: Explaining the Cuban Missile Crisis* (Boston: Little, Brown, 1971).

None of this is meant to deny that illicit networks suffer from certain deficiencies and weaknesses, nor is it to ignore the inescapable tradeoffs between, for example, security and efficiency.<sup>22</sup> Such tradeoffs, however, also exist in business networks, as is revealed by Ronald Burt's analysis of the inherent tensions between brokerage (which is essential for openness and vision) and closure (which is necessary for trust and cohesion).<sup>23</sup> Similarly, tradeoffs between redundancy and duplication (which enhance resilience) on one side and economy and streamlining on the other confront both licit and illicit networks. Different networks, of course, deal with such tradeoffs in different ways, with illicit networks often accepting the costs of redundancy because of the additional resilience it can provide in the face of attacks by law enforcement.

### *1.3 Dynamic Markets*

It also bears emphasis that what confounds governments is not only networks but also the operation of markets. The inability of governments to control licit markets has been evident in the US's continued trade imbalances, in the financial contagion in currency markets in 1998 and in the global financial crisis which began in 2008. The inability to control illicit markets is even more striking.<sup>24</sup> Indeed, even when law enforcement is able to destroy trafficking networks, the illicit market or markets in which these networks operate continue to exist so long as prohibitions and regulations are not universally accepted as desirable. For those who want to consume illicit or highly taxed products, use psychotropic drugs, or frequent prostitutes, prohibition and regulation are hindrances to be overcome. For those who meet this demand, illicit markets create enormous and tempting opportunities. Even if one accepts—which this author does not—that Eilstrup-Sangiovanni and Jones are right to emphasise the success of governments against illicit networks, therefore, the issue then becomes one of explaining why this has not translated into an equal level of success against illicit markets. This is certainly evident in the demand for forced labour and for women and girls and, to a lesser extent, young men and boys for the commercial sex trade.

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<sup>22</sup> See Carlo Morselli, *Inside Criminal Networks* (New York: Springer, 2008), 63.

<sup>23</sup> Ronald Burt, *Brokerage and Closure: An Introduction to Social Capital* (New York: Oxford University Press, 2005).

<sup>24</sup> On this point the author is particularly grateful for several vigorous discussions with Professor R. Thomas Naylor of McGill University.



Indeed, one way of looking at the phenomenon of human trafficking is to understand it as a complex, emergent—and highly profitable—market which is constantly evolving and adapting in ways that complicate if not negate efforts to combat it. The realities of the market for human beings and the trafficking business which feeds this market, although compelling, have often been obscured by government rhetoric, moral simplicity, and a failure to recognise the complexity of the issues involved. Part of the difficulty is that data on human trafficking remains grossly inadequate, thereby helping to fuel unchallenged assumptions and assertions. One UN official even referred to it as a “knowledge crisis.”<sup>25</sup> Anecdote too easily becomes a substitute for analysis and much solid research still needs to be done before governments have an accurate assessment of the main contours of the problem.

Although human trafficking is far from new, the scope of the phenomenon, the ease and speed with which this and other forms of trafficking can be carried out in a globalised world, and the ability of transnational criminal groups, (however structured) to operate across borders are unprecedented, giving the modern market for human beings a scale and scope that are remarkable. The market for human beings is made up of a series of local, national and regional markets, all of which are interlocking parts of a global market. This is not surprising: trafficking in all sorts of commodities, including human beings, has grown along with licit trade (sometimes in a parasitic relationship and sometimes simply as a parallel activity) to become a truly global phenomenon. The increased speed of trade, finance, communications, and transportation significantly augment the capacity of traffickers to operate effectively.<sup>26</sup> Transaction costs have been reduced for traffickers in human beings just as they have for firms engaged in legitimate trade and transportation.

If most discussions of human trafficking acknowledge the way in which globalisation facilitates the process, however, they neglect the benefits which accrue to some people. Most obviously, those directly involved in organising human trafficking find it very lucrative. Trafficking obeys the laws of the market, brings substantial profits to those who organise the supply, and augments this with some positive secondary effects and multiplier benefits—often created by corruption payments. Ignoring the benefits, therefore, oversimplifies the trafficking problem and makes it appear more malleable than it really is.

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<sup>25</sup> Antonio Maria Costa, Executive Director, UNODC, *Global Report on Trafficking in Persons* (Vienna: UNODC, 2006), 6.

<sup>26</sup> The same was true in the late nineteenth century. See Edward J. Bristow, *Prostitution and Prejudice: The Jewish Fight against White Slavery 1870–1939* (New York: Schocken Books, 1983).

Moreover, even though human trafficking completely undercuts arguments that organised crime tends to be victimless, for many women there are so few economic alternatives that going to another country and becoming involved in prostitution often appears the least unattractive of an appalling set of choices. For many men, migration to work abroad is the least bad of a difficult set of choices although many of them have little or no idea that they will be in conditions which constitute forced labour. Being trafficked, therefore, can be a conscious, voluntary, and deliberate decision, or people can migrate with no little or notion of their fate (even it is usually if ill-informed about the extent of the victimisation, the accompanying violence, and the levels of servitude and exploitation).

Whatever the case, human trafficking is not going to disappear. The global economic downturn in 2008 and 2009 will probably have contradictory consequences. On the one hand, it might increase the supply as men and women in developing countries see their only hope in irregular migration; on the other the reduction of wealth might reduce the demand for women for commercial sex while increasing the demand for cheap—and often forced—labour. The expansion of supply will continue to be accentuated by the “youth bulge” which characterises many developing countries such as those in West Africa. Global urbanisation is an additional factor which not only makes it easy for traffickers to concentrate their recruitment efforts, but also removes some of the norms and inhibitions often associated with more rural societies, thereby ultimately making victimisation easier.

The implication of all this is clear: attacking the symptoms without also doing something about the underlying problems is a recipe for failure, if not futility. And because the problems are structural rather than transient in nature, adequate responses are particularly difficult to formulate and implement. If this suggests that expectations need to be modest, it is clear that improvements can be made and governance mechanisms strengthened and enhanced. Yet cooperative mechanisms need to be combined with a more strategic approach which attacks the markets for commercial sex and forced labour and the networks which link the demand and supply sides of these markets.

Against this background, the analysis here suggests that a counter-market approach is essential since the victims of human trafficking are being treated simply as commodities.<sup>27</sup> Within this overall approach, however, considerable emphasis needs to be placed on attacking the trafficking networks since these

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<sup>27</sup> See Phil Williams, “Trafficking in Women and Children: A Market Perspective” in *Illegal Immigration and Commercial Sex: The New Slave Trade*, ed. Phil Williams (New York: Cass, 1999), 145–170.

provide the critical facilitators and connectors between the supply and demand sides of the market.

## 2. Trafficking Networks

### 2.1 A Network Typology

The difficulty in developing a counter-network strategy in the area of human trafficking is that too little is known about the structure and operation of these networks. As Rebecca Surtees has observed, focusing on the victims of trafficking and the gross human rights violations inherent in the trafficking business has been important in bringing the issue to public attention, but it is still essential to:

understand who traffickers are and how they operate, to manage crime reduction and to anticipate future developments in the trafficking industry ... studies of the criminals can shed light on the circumstances and opportunities out of which trafficking arises and the methods that are used to organize it. This knowledge forms the basis for planning effective law enforcement and for the legal, social and economic reforms that will cause traffickers to reassess the economic benefits to them of pursuing this kind of criminal activity.<sup>28</sup>

As she observes, understanding “the who” is complemented by understanding how the trafficking business is organised and the various steps that have to be achieved.<sup>29</sup> The idea that criminal organisations can be understood in terms of both patterns of relationships and patterns of activity has been even more fully articulated by Carlos Morselli, particularly in relation to car-theft rings.<sup>30</sup> Although Morselli talks in terms of crime scripts, these can also be understood as a set of activities which have to be implemented for the crimes to be carried out effectively. Another way of seeing this is simply as a business process model. By examining the structure of trafficking networks and combining this with an understanding of the processes which are involved it should be possible to identify points of leverage.

Unfortunately, with a few notable exceptions, empirical studies of the criminal networks involved in human trafficking have been neglected—at least outside

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<sup>28</sup> Rebecca Surtees, “Traffickers and Trafficking in Southern and Eastern Europe: Considering the Other Side of Human Trafficking,” *European Journal of Criminology* 5, no.1 (2008): 39–68 at 42.

<sup>29</sup> Ibid.

<sup>30</sup> Morselli, *Inside Criminal Networks*, chapter 7.

law enforcement. Drawing on those studies which have been done, the analysis here suggests that there are several dimensions along which groups can differ. These include: size, degree of organisation and sophistication, stability in terms of the network players, the structure of the networks, and the nature of the network activities.

*The size of the network.* Networks can be small or large, truncated or extensive. Sometimes determining the size of the network is difficult because it is not always possible to distinguish relationships that are inextricably related to the criminal activities being carried out from those who are incidental to the illicit operations.

*Composition of the network.* Networks can be made up of individuals or of groups. This will depend partly upon the nature of the commodity being trafficked, partly upon the location of the market, and partly upon the barriers to entry. Networks composed of groups tend to be somewhat more powerful than those composed simply of individuals.

*The degree of organisation of the network.* As suggested above, some networks can be understood as organisations while others cannot. Network organisations typically have a more enduring structure than what might be termed transaction networks, in which the only relationships are often-one off commercial arrangements.

*The type of network structure.* Some networks have a core of organisers who oversee and direct most of their activities; others are “decentralized and ‘self-organizing,’” but come together in ways which are very effective and very difficult to counter.<sup>31</sup> Often these emergent networks have a clear division of labour among the various groups involved.

*The level of trust within a network.* A great deal has been written about the importance of trust and bonding mechanisms in criminal networks. Indeed, one reason why some organised crime is ethnically based is the degree of trust naturally existing among members who speak the same language and have the same background. Yet, some criminal organisations and networks are diverse ethnically, and seem to find mechanisms—which can range from escrow-like arrangements to the likelihood of violence in retaliation for betrayal, defection, or incompetence—which seem to compensate for the absence of trust.

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<sup>31</sup> Michael Kenney, “The Architecture of Drug Trafficking: Network Forms of Organization in the Colombian Cocaine Trade,” *Global Crime* 8, no.3 (August 2007): 233–259 at 244.

Putting these characteristics together, it is clear that trafficking networks can consist of individuals or groups, that relationships can be ad hoc and sporadic or more enduring, that trafficking networks can be organised top down or bottom up, that networks can be specialised in their activities or have a broader portfolio, and that they can operate with greater or lesser degrees of trust among those involved. Essentially though, these can be boiled down to five different kinds of network.

*Flux networks.* Some networks can be understood as transactional rather than organisational. Individuals or groups come together on an ad hoc basis rather than “doing business” with the same people time and again. These can be described as flux networks which are constantly shifting and amorphous, in which linkages are constantly being made then abandoned, in which cooperation is short term for a specific transactions or set of transactions, in which trust is limited and there are lots of defections.<sup>32</sup> These are unstable networks with little structure. Damian Zaitch described Colombian cocaine firms in the Netherlands as “informal, small, mutating, and decentralised. Some are individual enterprises; others adopt the form of temporary partnerships between two or three people. These coalitions are often formed solely for a single project, with some of the people involved also engaging in legal activities or in other coalitions.”<sup>33</sup> The participants in these networks can range from those who engage only sporadically in criminal activity to small-time career criminals who move from one type of criminal activity to another to those who specialise in a particular form of trafficking. From a law enforcement perspective, flux networks are not particularly powerful or dangerous since they tend to have limited impact in terms of their ability to engage in systemic corruption, and rarely develop symbiotic relationships with political elites. The difficulty, however, is that these amorphous and fluid networks make constantly moving targets with few, if any, critical nodes whose removal could cripple them. In the case of women trafficking, small-time traffickers who exploit individual women—and which the author has characterised elsewhere as friend and fiancé operations—tend to be part of these flux networks.<sup>34</sup>

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<sup>32</sup> Damian Zaitch, *Trafficking Cocaine: Colombian Drug Entrepreneurs in the Netherlands* (New York: Springer, 2002), 286.

<sup>33</sup> *Ibid.*, 297.

<sup>34</sup> See Phil Williams, “Trafficking in Women: The Role of Transnational Organized Crime” in *Trafficking in Humans: Social, Cultural and Political Dimensions*, ed. Sally Cameron and Edward Newman (Tokyo: United Nations University, 2008), 126–158.

*Broker networks.* One step up from the flux network is another kind of transactional network characterised by a greater degree of predictability, not least because of the existence of people with particular skills, good contacts, and reputations for trustworthiness. These networks are based on some stability of membership, repetitive rather than one-off contacts, and a critical role for brokers who are the key to connectedness and enable the network to function with efficiency and predictability. These brokers are obviously a key target for law enforcement: the difficulty is that even if they identified and removed from the network, others might simply step in and replace them.

*Chain networks.* The third kind of network is what can be described as a chain network, in which commodities or, in this case people are simply moved from one individual or group to another as they pass from supplier or source countries to market or demand countries. The chain network has more predictability than a flux network but lacks the flexibility of a broker network and is vulnerable to the removal of a key link. In practice, as Gerben Bruinsma et al. have shown, many of the criminal networks involved in human trafficking, especially trafficking in women:

can generally be typified as a ‘chain’ with at both ends some smaller clusters: one rounds up the women and the other draws them in and exploits them or sells them on to other persons in our country. The clusters are isolated from each other: the persons at both ends of the chain networks do not know each other or only superficially and the links between the clusters are made by a few persons who maintain what are principally instrumental relationships with each other. The cohesion of the criminal network is extremely low, as is the density of the network. In addition, the criminal networks are not usually large. The persons who take care of the links between the clusters occupy a strategic bridging position. They link the clusters to each other by pairing up the market parties.<sup>35</sup>

By targeting and removing those who act as strategic bridges or boundary spanners, the network can be disrupted at least temporarily.

*Mesh networks.*<sup>36</sup> If chain networks are only as strong as the weakest links, this problem is circumvented in the fourth type of network, which is characterised here as a mesh network. In the context of Colombian drug trafficking, this kind

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<sup>35</sup> Gerben Bruinsma and Wim Bernasco, “Criminal Groups and Transnational Criminal Markets,” *Crime, Law and Social Change* 41 (2004): 79–94 at 88.

<sup>36</sup> This term was suggested to me by a DoD official in September 2008.

of network has been very effectively described by Michael Kenney as “independent nodes that perform specific tasks and transact directly with other nodes without mediation and oversight by core groups ... relations among different groups are characterized by horizontal rather than vertical accountability. Drug shipments proceed through a series of arms-length transactions among independent nodes that often coordinate their activities on an ad hoc basis.”<sup>37</sup> Although Kenney uses the term chain network, he recognises that there are in fact multiple chains and multiple combinations of groups along the way. Moreover, these groups have a stable, enduring quality. They come together in what is often a division of labour but, as they work together, develop a relationship based on experience, knowledge and reputation. Mesh networks tend to have a known population of individuals and groups which have developed a degree of trust, and have established corruption linkages which facilitate the illicit flows. The mesh metaphor recognises that these networks have multiple paths to reach the same destination and consequently have a high degree of resilience. Although they have some of the dynamism of the flux networks in that there are alternative contacts and relationships which can be exploited, this is combined with a greater continuity of business relationships, which both builds and builds on trust. Finally, compared with flux networks they exhibit a greater degree of stability or continuity in the membership (both at the individual and group levels) of the network. Good examples of a large mesh network in the drug trafficking business were the Northern Valle groups in Colombia which played a large role after the fall of the Medellin and Cali organisations.

*Hub or core networks.*<sup>38</sup> Some large networks are characterised by a broad portfolio of criminal activities, a clear division of labour, and a steering group which provides the overall guidance and control. According to a 2007 threat assessment by the Police Sub-Directorate on Organized Crime in Greece, criminal gangs in the country were recruiting Albanians, Romanians, Bulgarians, and Turks, all with specialisations—“the Albanians in break-ins and drug trafficking, Romanians in human trafficking, Bulgarians in fraud and the Turks in illegal immigration.”<sup>39</sup> The report also concluded that “organized crime activities seemingly unrelated to each other are proving to be ‘pieces’ of a joint, centrally controlled criminal network active in different areas at the same time: illegal immigration networks or international criminal gangs active

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<sup>37</sup> Kenney, “The Architecture of Drug Trafficking,” 244.

<sup>38</sup> See Kenney, “The Architecture of Drug Trafficking,” 242.

<sup>39</sup> Yiannis Souliotis, “A Classified Report on Organized Crime,” *I Kathimerini* (Athens, in Greek), October 7, 2007, 38.

in the sex trade are getting involved in drug trafficking cases, and are controlled by common decision-making centres.”<sup>40</sup> This seems to be facilitated by “calls through satellite phones or the internet” and “conversations in chat rooms” which “are no longer the exception but the rule for criminal groups.”<sup>41</sup>

The relationship between the hub or core of the network and its other constituent parts varies. One possibility is a command and control network in which the core not only provides the overall direction of the network but also operates through a hands-on control and oversight structure. Another is that the core of the network acts as sponsor and facilitator to smaller groups which operate what can best be understood as a franchise. In his research on Sweden, John Picarelli found classic cases of franchises. Three groups involved in the trafficking of women to Sweden operated through a franchise system in which a Russian criminal organisation, the Kemetova group based in Estonia, sponsored small groups of entrepreneurial women traffickers and then collected 10 per cent of their profits.<sup>42</sup> The group seems to have had a much broader portfolio but was in a position where it could encourage and benefit from additional criminal profit-seeking without being deeply involved. In other instances, core groups specialise in particular activities. The Cali drug trafficking organisations of the 1980s and the 1990s can be understood as a core command and control network headed by the Rodriguez-Orejuela brothers, Santa Cruz Londono and one or two other key individuals.

Although this typology is provisional and needs to be refined through further empirical investigation, it is a useful starting point since it disaggregates the kind of networks involved in human trafficking, highlights the strengths and weaknesses of various network structures and recognises that networks can evolve and even morph from one type to another. Even if this classification helps to understand the variety of individuals and groups, as well as the various forms of cooperation and collaboration involved in human trafficking, however, it has serious limitations. One of the difficulties comes from what former US Secretary of Defense, Donald Rumsfeld, once termed the “known unknowns.” Although it is possible to have a general understanding of human trafficking, it is not clear how much of the trafficking business is controlled by broad-based criminal organisations or by specialised groups, or by mesh networks as opposed to the small friend and fiancé operations and flux networks described above. The “unknown unknowns” add further murkiness.

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<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> See the chapter of John Picarelli in this volume.



## 2.2 A Network Case Study

In October 2002, Operation Girasole, a major international effort to break up trafficking operations, culminated in a series of arrests and asset seizures in several countries.<sup>43</sup> Girasole not only disrupted a major trafficking network but also highlighted methods and modalities used by criminals to circumvent laws and migration restrictions. It revealed a very successful and sophisticated mesh network of criminal organisations working together in ways that were mutually profitable—if sometimes rather surprising. The network uncovered by Girasole was characterised by: a multiplicity of criminal individuals and organisations engaged in high levels of cooperation; the use of front companies and legitimate business for criminal purposes; the transnational scope of its operations; the specialised role of the impresarios who initially recruited the women; the ability of diverse groups and individuals to act in concert for the sake of mutual profit; links from the underworld to the “upperworld” to bring the women to Italy and other European Union countries; and the continuous and systematic financial exploitation of the women. This last characteristic was particularly pernicious. As one report noted, “the young women were provided with false passports bought by the gang for a few hundred thousand lire, but which they [the women] were forced to pay 8-10 million lire for by means of their ‘job’ in the clubs. Nothing was free for the ‘sex slaves’: they paid out 50,000 lire per night to sleep squashed together in concentration camp-style apartments.”<sup>44</sup> A fee was even charged for the trip from their houses to the night clubs.

The Girasole operation was Italian in origin and leadership but involved extensive cooperation with law enforcement agencies in a number of other countries. Europol also played a major role in supporting the investigation, assisting with coordination and providing analytic support that was helpful in identifying the main contours of the network, its operational methods, and its inclusion of people who would not normally be considered criminal but who assisted in the provision of legitimate cover for the women to come to Italy. The operation yielded considerable insight into a large mesh network that brought together criminal organisations from different countries, ethnic trafficking networks, and criminal controlled or influenced companies in an extensive cooperative venture which was highly sophisticated in scope and operations.

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<sup>43</sup> Francesco Grignetti, “Large-Scale Trafficking of Slave Girls From East—Traffic Between Russian Mafia and Albanian Clans—80 Arrested,” *Turin La Stampa* (in Italian) October 3, 2002, 11.

<sup>44</sup> Flavio Haver, “‘Sex Slave’ Trade: 100 Arrests,” *Milan Corriere della Sera* (in Italian), April 10, 2001, 14.

In 2001, the Carabinieri Special Operational Unit (ROS) began to investigate a transnational criminal network involved in trafficking women from Eastern Europe for prostitution in Italy, possibly in response to the murder of a prostitute. It was subsequently discovered that large numbers of women had been brought from Russia and placed in sexual servitude in a variety of clubs and brothels. The first phase of the operation resulted in 105 individuals—including a large contingent of Albanians—being detained in Italy. It also revealed that women—from Romania, Russia, Ukraine, Poland, Hungary, Bulgaria, Colombia, Somalia, and Tunisia—were being subjected to high levels of violence both en route and on arrival in Italy. They were “forced to become prostitutes after being raped by their Albanian ‘protectors’ who were linked to the Camorra in Naples and the Calabrian ‘Ndrangheta.’<sup>45</sup> Girls who fought the system were viciously killed and at least three murders were believed to have occurred. Ten cases of classic Cosa Nostra murder rituals were also identified.<sup>46</sup> Those arrested were charged with “mafia-style criminal association, enslavement, illegal immigration, forging documents, and drugs trafficking. Nine night clubs were seized, along with one hotel and several apartments in which the young women were housed.”<sup>47</sup> The criminal activities were clearly very lucrative.

The second phase of the operation was aimed at the disruption of the wider trafficking network including those who facilitated the entry of the women into the European Union. Although the Carabinieri still played the leading role, law enforcement agencies in Austria, Belgium, France, Germany, Portugal, Spain and Netherlands assisted in the operation. Moreover, cooperation extended beyond the European Union to Albania, Czech Republic, Poland, Romania, Switzerland, Russia and Ukraine. Europol provided analysis of the intelligence gathered not only in Italy but in all the relevant countries and offered a comprehensive assessment of the modus operandi and the structure of the criminal network. Europol also helped to identify the major participants and their respective roles and responsibilities in the network, highlighting critical nodes and links and delineating points of vulnerability in the network which could be exploited by targeted disruptive measures. Although it was not portrayed in this way in Europol’s announcement and press conference on Girasole, what Europol really did was provide intelligence for transnational law enforcement efforts to engage in what Arquilla and Ronfeldt term “netwar.”<sup>48</sup>

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> See Arquilla and Ronfeldt, eds. *Networks and Netwars*.

The concept of netwar refers to crime and conflict short of war in which the adversaries used networked organisational forms. In the case of Girasole law enforcement agencies in several countries formed a transnational law enforcement network to fight a major criminal network—with some success.

The arrests in October 2002 were concentrated in Italy, with eighty arrests made and thirty-two people charged. Proceedings were also initiated against people in Germany, Austria, Russia, Ukraine, and Poland. One of the arrests in Poland was of an Italian, Antonio A., who seems to have been a key figure in the network. Antonio had reportedly been in Poland for three weeks but had been kept under police surveillance and was arrested in Krosno. Italian police also arrested a 53-year-old Polish woman, Irena G. who recruited women and trafficked them to Italy, where she also employed them.<sup>49</sup>

Radio Tiberi, one of the leading figures in the network, owned clubs in Italy and was suspected of paying local police to allow his operations to continue without interference. Radio was reported to be one of the major organising figures and described as “ruthless ... capable of all sorts of crimes, and ... highly dangerous.”<sup>50</sup> He used front men and women to control the women in his recreational clubs which were also hubs for drug distribution, and was a prime example of someone who combined trafficking of women and control of prostitution with involvement in drug retailing. In market terms, it was Radio who provided much of the demand for the women and established the outlets for prostitution.

Others in the network included several Italians linked both to Albanian groups and the ‘Ndrangheta. One of the Albanians frequently travelled to Montenegro to purchase women. In some cases women were bought from Serb criminals—a relationship that illustrates once again that politics and ethnic animosity are no barrier to criminal cooperation. For their part, the Serbs purchased the women from East European traffickers and then sold them to Albanians to be brought into Italy. Supply operations involved an intricate mesh network of different groups with differing roles and responsibilities.

In Naples, Vincenzo and Luigi Calazzo were arrested. They appeared to be involved primarily in the money laundering aspects of the trafficking business. Others taken into custody included leading members of the Farao-Marincola

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<sup>49</sup> Jakub Kowalski and Jozef Matusz, “Italian Pimp Arrested in Krosno” *Rzeczpospolita* (Warsaw), October 4, 2002.

<sup>50</sup> Haver, “‘Sex Slave’ Trade.”

clan—which apparently supplied the cocaine that was distributed through the night clubs.<sup>51</sup>

The other key components of the network were Russian and Ukrainian organised crime groups. Considerable concern was generated by the involvement of Russian criminal organisations which combined their power of intimidation with considerable sophistication and a capacity to extend their reach into most aspects of the business. Russian and Ukrainian criminal organisations were behind a network of criminal controlled companies which played a critical role in the trafficking process. Indeed, one of the most significant aspects of the operation was the infrastructure of Ukrainian travel companies and travel agencies and hotels in Austria, Italy, Germany, France and Spain—all of which facilitated the trafficking process. The individuals and companies based in Ukraine, along with their associates in Western European travel agencies, facilitated illegal immigration into the EU by means of Schengen visas that were fraudulently obtained. “The tourist agencies had the girls arrive by regular bus trips and with tourist visas, the complaisant hotel-keepers came up with false reservations.”<sup>52</sup>

What the Carabinieri termed a “closely woven collusive network” extended beyond the travel agents and hoteliers to encompass people who facilitated the acquisition of residence visas and permits by providing forged documents for certifying attendance at university courses, arranging marriages of convenience or devising similar schemes.<sup>53</sup> This was reflected in the arrests which included, not only the usual suspects such as night-club managers and madams, but also lawyers, complicit hotel-keepers, and a university professor in Rome who provided at least one false university certification for a Russian girl, enabling the criminals to obtain a residence permit for her.<sup>54</sup> Marco Presciutti, UBF welterweight boxing world champion, was charged with recruiting several women from outside the European Union and forcing them to become prostitutes.<sup>55</sup>

Operation Girasole sought not only to arrest the members of the trafficking network but also to dismantle the infrastructure that facilitated the process. Consequently, three travel agencies in Ukraine were seized, while elsewhere four hotels, thirteen apartments and nine nightclubs were shut down or

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<sup>51</sup> Ibid.

<sup>52</sup> Grignetti, “Large-Scale Trafficking of Slave Girls.”

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Haver, “‘Sex Slave’ Trade.”

confiscated. Both the arrests and these seizures were a blow to criminal enterprises that had an inherently expansionist quality about them. As one report noted: “the girls were sent to the West in a continuous cycle; there were terminals in the various countries to welcome them, and by paying handsomely they would find the way to obtain pseudo-legal entries; the capital obtained from the prostitution of those girls was immediately reinvested in Russia to feed the circuit and in thousands of other dirty businesses.”<sup>56</sup> Operation Girasole interrupted the cycle and temporarily at least dented a major criminal network which involved cooperation among some of the newer criminal entities and some of the more established and traditionally hierarchical groups. If the network had some hierarchical nodes, what made it both effective and lucrative were the transnational connections and the flexibility it displayed.

### **3. Attacking Networks: Identifying and Exploiting Vulnerabilities**

In spite of the notion that it takes a network to fight a network and in spite of the partial success of Operation Girasole, there is no simple or straightforward strategy for attacking networks. Even in the case of Girasole, the Russian and Ukrainian components of the network remained largely intact, in the most part because of the inadequacies or even corruption of law enforcement agencies in these countries. Indeed, this highlights the limitations of counter-trafficking networks even when they have impressive results. Nevertheless, it is necessary to think comprehensively about attacking human trafficking networks. Even acknowledging the diversity of networks involved in human trafficking, and that different networks have different kinds of vulnerabilities, there are also some common or overlapping vulnerabilities common to all kinds of networks. Consequently, some of the methods for attacking networks remain the same, irrespective of the network configuration.

Attacking the networks connecting the demand and supply sides of the market in trafficked people has both legal and operational dimensions. In order to strengthen the legal framework, it is necessary to develop specific anti-trafficking laws and regulations. Many countries have laws explicitly directed against organised crime. They include in their criminal codes penalties for criminal association, for criminal conspiracy or for patterns of racketeering activities. Many have also introduced some measures to conform with the UN Protocol to Prevent Suppress and Punish Trafficking in Persons, which

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<sup>56</sup> Grignetti, “Large-Scale Trafficking of Slave Girls.”

supplemented the Palermo Convention Against Transnational Organised Crime.

In addition, efforts to achieve at least cosmetic conformity with the minimum standards set by US law are assessed annually in the United States annual Trafficking in Persons Report, which is modelled on the certification process related to the cooperation of other nations with US efforts to combat drug trafficking. The report places those governments fully in compliance with the minimum standards set forth in the Trafficking Victims Protection Act of 2000 in Tier one; governments which are making significant efforts to comply in Tier Two; and governments which are making no significant efforts to meet these standards in Tier three. Significantly, where there is some doubt about the significance of the efforts the governments are placed on the Tier Two watch list rather than relegated immediately to Tier three. There are several problems here. First, the bar is not very high, which gives the assessment an inherent bias towards grade (or ranking) inflation. Second, an apparent reluctance to place states with woefully inadequate efforts to combat human trafficking in Tier three has led to 40 states being on the Tier 2 watch list, with only 14 placed in Tier three. Third, the emphasis on “significant efforts” rather than results encourages states to create anti-trafficking laws and regulations which do little or nothing to deal with the problem. In addition, some of the United States assessments are highly politicised, as is evident in the placement of North Korea, Iran and Cuba in Tier three.

The implication is that the United States needs to overhaul its assessment system to focus on measures of effectiveness rather than measures of effort.<sup>57</sup> Examining implementation might prove far more revealing than a focus on the legal framework itself. For example, even in many countries with penalties for human trafficking, the penalties are too low to create a sufficient level of risk to deter traffickers. Moreover, the emphasis on treating trafficked persons as victims rarely filters down clearly enough to stop police treating trafficked women coerced into prostitution in particular as illegal immigrants rather than as victims. Having said all this, the need for countries to be pressured into taking effective measures against human trafficking is indisputable. Such measures are an essential complement and supplement to—although certainly not a replacement for—laws directed against organised crime (whether in the form of attacking a criminal enterprise or trying to prove criminal association or a pattern of racketeering), since not all those involved in human trafficking are members of criminal organisations. Some are simply crooked businessmen

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<sup>57</sup> The author is grateful to Paul Shemella and Edward Hoffer for this distinction.

who engage in both licit and illicit activities; others in the area of women trafficking and forced labour are essentially opportunistic but ruthlessly entrepreneurial amateurs who act alone and do not meet the requirements for the UN definition of organised crime which envisages a group of three or more. A focus on human trafficking as a crime is also particularly useful when the networks involved are fluid and amorphous rather than the tightly-knit criminal families that are the more traditional targets of anti-organised crime legislation.

Such measures help to increase the risks faced by those involved in human trafficking. As Ernesto Savona has persuasively argued, however, the risks and costs of criminal activities such as human trafficking must be both increased and distributed more widely and more evenly.<sup>58</sup> Only if this is done, does it become difficult for the traffickers to find safe havens and sanctuaries from which they can operate with impunity. Crucial to achieving this is greater inter-operability of legal systems, a goal that is more realistic and acceptable than notions of complete harmonisation. Indeed, a degree of inter-operability that allows for dual criminality combined with the extension of mutual legal assistance treaties and extradition treaties to encompass major kinds of trafficking activities, could significantly increase the degree of risk faced by traffickers, irrespective of where they are operating. In this connection, it bears emphasis that Mutual Legal Assistance Treaties (MLATs) and extradition treaties allow the international community to compensate to some degree for the inadequacies and shortcomings in the criminal justice systems of weak states.

Attacking trafficking networks through more comprehensive and better distributed laws needs to be accompanied by operational attacks on these networks. This is not as easy as it sounds. Perhaps the first and most important prerequisite for attacking networks is to think in network terms. Although this seems obvious, many law enforcement personnel and prosecutors still think in terms of hierarchical traditional mafia-type criminal organisations. Even putting aside the issue of whether or not the Mafia was ever really as pyramidal as many commentaries suggested, it is necessary to recognise that simply because an organisation lacks a clear hierarchy does not mean that it is ineffectual, inefficient or harmless. Recognising that trafficking operates through various kinds of network is the beginning of wisdom in efforts to degrade and dismantle networks. Indeed, in recent years, the capacity for network analysis has been enhanced by the development of increasingly

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<sup>58</sup> See Ernesto Savona and Phil Williams, eds. *The United Nations and Transnational Crime* (London: Cass, 1996).

sophisticated software tools. These tools are extensively used in law enforcement for investigations at the tactical level; they can be used even more effectively for strategic mapping of trafficking networks and identifying points of vulnerability for attack.

A second prerequisite for effective attacks on networks involved in human trafficking is the fusion of operational law enforcement and law enforcement intelligence in a cohesive task force which operates at various levels, national, regional, and at times even global. Some of the requirements are very familiar: telephone toll analysis along with surveillance of meetings involving members of the network are used extensively in law enforcement agencies in many countries and allow analysts to determine patterns of communication and interaction and, therefore, to map the network. In order to determine the kind of network being targeted in an operation, however, it would also be useful to mix network methodologists with policemen who are highly experienced and practical but recognise the importance of understanding their target. Once a network is under surveillance and there is a centralised point for data collection and assessment, it is helpful to probe the network for knowledge elicitation.<sup>59</sup> Probing strategies could be implemented through undercover operations, such as controlled deliveries, as well as the short-term arrest and temporary removal of people believed to be critical figures in the network. By monitoring telephone conversations within a network that has just lost—if only temporarily—some of its members, it would be possible to see how the network responds to stress, perhaps even making it possible to identify key defence mechanisms which could subsequently be neutralised. Once intelligence has been acquired, it also needs to be shared as widely as can be done without compromising the mission.

In terms of operational strategy, one of the keys is to target critical nodes and connections. Yet this is easier said than done, not least because it requires detailed understanding of the network structure and the kind of nodes and connections which might actually be critical to the kind of network being attacked. The notion of criticality itself can be understood as nodes or connections which are high in importance and low in redundancy. Nodes or connections which are important but are also high in redundancy or substitution

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<sup>59</sup> David Snowden, "Complex Acts of Knowing: Paradox and Descriptive Self-Awareness," *Journal of Knowledge Management* 6, no.2 (May 2002): 100–111.



capacity can be regarded as sub-critical. Keeping this in mind, it is possible to identify at least five kinds of critical nodes in networks.<sup>60</sup>

*Leadership nodes.* These are particularly important in a hub or core network. Successfully attacking the leaders in a core network can leave the network without clear direction. On the other hand, it can also create smaller less identifiable networks. Where taking out the leadership nodes is accompanied by attacks on other dimensions of the organisation, then it is possible to dismantle a core network almost completely. This has been done in the drug trafficking business, and was perhaps most obvious in the attack on the Cali drug trafficking organisation in Colombia in the mid-1990s and more recently in the attack on the Gulf drug trafficking organisation in Mexico and the arrest and subsequent extradition of its leaders, Osiel Cardenas.

*Nodes in the network with a high degree of actor centrality.*<sup>61</sup> In networks, some members have a high concentration of direct links and act as key hubs and are often critical in terms of communications and facilitation of flows within the network. Brokers sometimes play this role although there is dynamism to their linkages which sometimes makes them difficult to identify and to target. Moreover, in broker networks there is a certain degree of unplanned redundancy with multiple brokers playing key roles and, therefore, able to substitute for one another.

*Nodes in the network which have a high concentration of indirect links.*<sup>62</sup> In a simple chain network, nodes with what is sometimes termed “high betweenness centrality” (for example, B and C in a chain from A to D) make attractive targets for efforts to break-up supply operations. Bruinsma and Bernasco have suggested that many women trafficking networks to the Netherlands are characterised by cliques or groups connected by a chain network.<sup>63</sup> In this instance, taking out one or two nodes in the chain would certainly create a short-term disruption.

*Nodes in the network which connect across structural holes or act as what is sometimes termed “boundary spanners.”*<sup>64</sup> Someone who has contacts in

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<sup>60</sup> This draws in part on the pioneering study by Malcolm Sparrow, “Network Vulnerabilities and Strategic Intelligence in Law Enforcement,” *International Journal of Intelligence and Counterintelligence* 5, no.3 (Fall 1991): 255–274.

<sup>61</sup> Morselli, *Inside Criminal Networks*, 12–17.

<sup>62</sup> Ibid.

<sup>63</sup> See Bruinsma and Bernasco, “Criminal Groups,” 88.

<sup>64</sup> See Ronald Burt, *Structural Holes: The Social Structure of Competition* (Cambridge Mass.: Harvard University Press, 1995). The author is also grateful to Professor Kevin Kearns, University of Pittsburgh, for pointing out the importance of the notion of boundary spanners.

another country for example can be important in linking up criminal individuals or organisations operating only at the national level. Nodes at the intersection of the criminal and the legal worlds can also be important in the trafficking business. For example, the facilitators who deal with travel agents or hotel managers and staff play a very important role in enabling trafficking networks to carry out enduring and large-scale operations. In some cases, of course, it is necessary to target not simply the critical nodes in the criminal network, but also those in the legitimate world who act as their support structure, entrée point, and cover. This might require the identification and arrest of politicians, bureaucrats and complicit police who are linked to the criminals, facilitate their activities, and profit to some degree or another from them. In other instances, it requires going after businesses, such as newspapers and apartment owners, which, in one way or another, act as facilitators or provide infrastructure for human trafficking.

*Nodes which are critical not so much in network terms or as facilitators of communications and connections within the network, but in terms of the substantive tasks or functions the network has to carry out to ensure the success of its illicit activities.* In human trafficking networks, these tasks range from recruiters at the supply end, through the facilitators, drivers, and minders en route, to the managers and exploiters at the demand side.<sup>65</sup> Critical nodes might also include those who manage the proceeds, whether these are put through a money laundering cycle in an effort to make them appear legitimate or simply re-invested in the illicit business. The difficulty is that, apart from the facilitators and money-managers (and the latter specialists are only likely to be present in larger networks), roles in human trafficking are perhaps not as highly specialised as in other criminal businesses such as drug trafficking where chemists, for example, have a critical substantive role.

Although a network attack strategy appears largely a matter of identifying and then systematically removing critical nodes and connections, it is actually more complex than this suggests. There are, for example, inescapable tradeoffs. If law enforcement agencies using electronic surveillance have successfully identified key communications nodes within a network, and are monitoring these to obtain a more comprehensive snapshot of the network, at what point do they move from exploitation of these nodes to their removal?

Perhaps even more difficult is determining exactly which kind of network is involved in the trafficking, and developing an appropriate strategy. Core networks, once identified as such, are vulnerable to decapitation—although the

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<sup>65</sup> Bruinsma and Bernasco, “Criminal Groups,” 85.

core leadership often has considerable resources at its disposal and is therefore able to deploy an array of defensive measures which makes them an elusive target for law enforcement. With enough effort, however, such networks can be brought down.

Mesh networks are more difficult to deal with because they exploit multiple pathways which, in effect, transcend the typical and simple supply chain. Attacking mesh networks in which groups share risk, specialise in specific tasks, but differ in terms of personnel, routes and method from one consignment to the next is particularly difficult. This is not to imply that they are invulnerable. Operation Girasole targeted what appears to have been a mesh network while in June 2007, Greek authorities succeeded in dismantling a similar kind of network “involved in the sexual exploitation of women”, arresting seventy-three people.<sup>66</sup> The network included:

Greeks, Albanians, Russians, Ukrainians, Moldavians and Romanians, each of whom had distinct roles in the network. The recruitment of the victims was handled by Russians, Ukrainians and Moldavians active in their home countries, the forged documents were handled by the Romanians, Bulgarians and Greeks, while the distribution of the women in apartments in Athens and their transport to their clients were handled by the Greeks and Albanians.<sup>67</sup>

Using the Internet and advertisements to recruit women, the traffickers charged between 25,000 and 30,000 Euros to move them to Greece where the women were forced into sexual exploitation and kept there by threats to harm their families.<sup>68</sup> It was not clear whether this network specialised in human trafficking or if this was simply one part of a much broader set of criminal enterprises. Nevertheless, it does appear to have been a classic mesh network, with different potential sources for the women, a variety of suppliers of false documentation and transporters and even some variation in the network end-users. And at the end of the day, it was brought down by law enforcement.

Chain networks, of course, are much more vulnerable at least to disruption by focusing on the arrest of the transportation and facilitation nodes between source and destination countries. The limitation in this is that transporters and facilitators are replaceable, although not always easily. Yet, even this replacement process creates opportunities, as it might be possible to insert

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<sup>66</sup> Souliotis, “A Classified Report on Organized Crime.”

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

undercover operatives as substitute links in the transportation and facilitation chain.

Broker networks are harder to attack directly, as they have considerable dynamism. Nevertheless they are a prime target for attacks on the bonds which hold networks together, or “trust-busting” operations.<sup>69</sup> Brokers depend on reputation and are susceptible to reputational harm. They can also be identified through undercover sting operations, both on the demand and the supply sides. Such operations also offer a very good way of introducing risk into the network’s activities.

Ironically, flux networks, which initially appear to be the weakest and least worrisome, because of their limited impact for corruption, are also the most difficult to target through counter-network strategies because they are so dynamic, have low entry and exit barriers, and have limited linkages. In effect, their weaknesses and limitations become their strength. They lack critical nodes which can be readily identified and removed, connectors and collaborators are few, and successes yield very limited results in terms of number of people arrested.

This leads to an important conclusion: Attacks have to go beyond the network itself. As suggested above, it is essential to focus not only on attacking networks but also the markets within which they operate. While networks facilitate the operation of both licit and illicit markets, the drivers are the markets themselves and the profits they generate. Consequently, attacking networks is necessary but not sufficient to make progress which goes beyond the law enforcement front. Although such attacks make the market less profitable and more risky, they do not alter the fundamental dynamics of supply and demand. The question arises, therefore, about the best ways to do this. The next section explores some of the possibilities.

### *3.1 Attacking Markets*

In thinking about attacking markets it is necessary to go after both ends (supply and demand) and the middle. This is particularly the case for the market in human beings, where the market facilitators greatly outweigh market inhibitors. These facilitators range from poverty and desperation in supply countries, official corruption and indifference among officials and police in supply, transshipment, and destination countries, and government policies which

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<sup>69</sup> See Robert J. Bunker, ed. *Networks, Terrorism and Global Insurgency* (London: Routledge, 2005).

explicitly or tacitly accept flourishing commercial sex industries and demand for cheap labour in unregulated economic sectors in the destination countries. The paucity of inhibitors is in striking contrast. There is no real deterrent to human trafficking, the risks are low and the profits at various stages in the trafficking process, but most especially at the enslavement and exploitation end, are very high. For criminals, however they are organised, rational, economic decision-making encourages initial entry into the market and efforts to remain in this market.

The aim, therefore, must be to change this calculation—for traffickers, and those who exploit the trafficked persons, whether entrepreneurs using forced labour, brothel owners who use trafficked women, or the men who frequent prostitutes. Changing the incentive structure is critical. At the very least, this requires that traffickers face much higher risks of apprehension, indictment and conviction as well as much longer sentences.<sup>70</sup>

Efforts also have to be made to decrease opportunities. One approach that was very popular in the late 1990s was a focus on educating more women in more places in the hope of reducing naivety, gullibility, wishful thinking, and a concomitant willingness to be trafficked. Although such campaigns made women more sensitive to the risks inherent in irregular migration, they did little if anything to change the migration incentive structure and, therefore, to reduce or stop the flow. For people in extremely difficult social and economic conditions, almost any alternative can look appealing—especially if it is in an uncertain future as opposed to an all too certain present. Some observers have argued, therefore, that the supply side can only be diminished by going after root causes such as disintegration of the family, marginalisation and alienation, severe gender discrimination and the like. The difficulty is that this approach involves elements of social engineering which at best have long-term impact. Moreover, as with the drug trafficking business, supply side disruption has limited impact.

A complementary approach, therefore, is to recognise that prevention strategies are limited and to put more emphasis on mitigation and harm reduction, treating trafficked women as victims, and giving priority to rescue and rehabilitation, both of which deserve more attention than they currently receive. Without the law enforcement attack on the networks, however, women who are

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<sup>70</sup> In some countries, this is beginning to happen. In one case in 2006 in Bosnia and Herzegovina, for example, a convicted trafficker received eight years imprisonment as well as six years for money laundering. In addition, his apartment was seized to provide compensation for victims. See USAID, *Bosnia and Herzegovina: Trafficking in Persons Action Guide to Combat TIP (2007–2008)* (Pristina: USAID, 2008).

taken out of the commercial sex trade will simply be replaced by new victims. In other words, victim assistance and support programmes which have been developed primarily by NGOs need to be combined with the best of the current law enforcement efforts (and some significant enhancements). Sometimes, tensions arise between the two approaches: the extent to which trafficked women can be used as witnesses against the traffickers as opposed to simply being protected and reintegrated into society can become contentious. In fact, the systematic development of more effective witness protection programmes seems likely to enhance the viability of prosecutions. The European Commission Working Document of October 2008 suggests that prosecutions can even be strengthened by better protection for the victims of trafficking. “In countries where there are a significant number of assisted victims, statistics on criminal proceedings are higher. This implies that a human rights-centred approach is needed not only to protect victims’ rights but also in the interest of justice.”<sup>71</sup> Simply knowing that harm reduction of victims is not inconsistent with effective prosecution of perpetrators is a step forward; recognising the synergies between the two is even more beneficial.<sup>72</sup>

At the same time, it is probably necessary to recognise the impossibility of efforts to stamp out prostitution. Although anti-prostitution activists do not like the acceptance of the commercial sex trade, in some circumstances, perhaps all that can be done is to protect the women from ill-treatment and to seek to ensure that they obtain the proceeds from their business, rather than simply working for the enrichment of others. Not all those who earn money from commercial sex have been trafficked. Moreover, the sex industry could be the subject of improved regulations to protect sex workers and to eliminate, or greatly reduce, the involvement of criminals. Yet, it is important to avoid the situation which has arisen in the Netherlands where prostitution is legal but trafficking of women has increased.

Decreasing opportunities also has a demand-side equivalent and demand can be understood as a two-level process both of which need to be targeted. At the first level, it is important to make the exploitation of trafficked women a much more serious offence than currently by going after the brothel owners, and pimps who are involved in trafficking of women—if only as end-users. One way of doing this is to link them explicitly to the trafficking process and prosecute them as part of the trafficking chain. In addition, it should be

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<sup>71</sup> Commission of the European Communities, *Evaluation and Monitoring of the Implementation of the EU Plan*, 5.

<sup>72</sup> For more information please see Allison Jernow’s chapter on judges and prosecutors in this volume.

possible to establish and implement asset seizure and asset forfeiture laws against those who exploit victims of trafficking. As in Operation Girasole, this would facilitate the seizure of night-clubs and other premises used by the criminals for prostitution and would be even more effective if extended to their other property. Reducing the profit in human trafficking is difficult, and not a complete response, but is an important component of a more comprehensive approach at the first level of demand. In contrast to the drug arena, very little of this has been done on the effort to combat human trafficking—and this is a shortcoming which needs to be rectified.

Efforts also have to be made to attack the second level of demand—the customers who pay for commercial sex. Here emphasis should be placed on education of the customers to make them aware that, in effect, they could be complicit in the trafficking process. They need to be made sensitive to the degradation and despair that they might be tacitly condoning with their actions and actively encouraging with their money and to recognise that without them there would be no profit for the traffickers. In addition, efforts could be made to enable customers to distinguish between trafficked persons and other sex workers and to recruit them into detecting trafficked persons and knowing how to react if they suspect that someone has been trafficked. A more punitive element could be added by making sex with trafficked women an offence and by associated “name and shame” publicity. The difficulty here, of course, would be implementation, as proving customers knew a woman was a trafficking victim might be difficult. Nevertheless, focusing on the customer rather than penalising the prostitutes could be useful in reducing demand.

A similar approach might be possible with forced labour. Knowledge about the use of forced labour, especially involving children, can lead to boycott of goods and hurt the businesses involved. The difficulty though is that much forced labour such as domestic servitude is not publicised and is not susceptible to actions of this kind. Moreover, “many countries have not explicitly opened or acknowledged the fact that some industries, particularly labour-intensive ones, might not survive in the absence of cheap unprotected labour. This connection needs to be publicly recognised and the necessary resources allocated to agencies which are responsible for ensuring that illicit and criminal labour practices are prevented, investigated, and prosecuted.”<sup>73</sup>

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<sup>73</sup> Whitney Shinkle, “Preventing Human Trafficking: A Review of Current Efforts” (Transatlantic Perspectives on Migration, Policy Brief 3, Institute for the Study of International Migration, Walsh School of Foreign Service, Georgetown University, August 2007), <http://isim.georgetown.edu/Publications/GMF%20Materials/PreventionofHumanTrafficking.pdf> (accessed May 18, 2009).

Nevertheless, regulation for sectors that are currently subject to little or no regulation, along with more forceful inspection and enforcement, could have some impact. The Czech Republic, for example, has created a “new elite forced labour unit” within the police which “coordinates with labour inspectors who enforce labour laws pertaining to working conditions.”<sup>74</sup> This has resulted in a “major increase in prosecutions.”<sup>75</sup>

All of this highlights the need for a holistic approach which overcomes the limits and inadequacies of attacking only criminal networks by simultaneously attacking the market within which these networks operate. At the same times, it is clear that a counter-market strategy which neglects the networks which link supply and demand is also insufficient. Without a law enforcement component, neither a rights-based nor a market approach will have much success. Accordingly, the next section of this paper seeks to articulate some of the ways in which a comprehensive strategy can be more effectively developed and implemented.

### *3.2 Enhancing Governance and Enforcement to Combat Human Trafficking*

Human trafficking has all the characteristics of a complex system, characterised by emergent behaviour, network relationships, high degrees of resilience, and a remarkable degree of adaptability in response to law enforcement efforts to interfere with the business. For governments to respond more effectively and carry out the counter-network and counter-market strategy described above, they need to create a system that looks remarkably similar to the one they are trying to destroy. To paraphrase John Arquilla and David Ronfeldt, it takes an emergent complex system to fight a complex system.<sup>76</sup> To some extent this is already in evidence. The approach to combating human trafficking, inadequate though it is, represents a bottom-up emergent response.

It can be argued, however, that this response could be enhanced significantly by some elements of a top-down approach—albeit one which facilitates bottom-up activities. Leadership is important. In this connection, probably the most important single improvement would be for more governments to give combating human trafficking a higher priority. Trafficking in human beings is

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<sup>74</sup> US Embassy, Bratislava, “DCM Silverman Addresses Interior Ministry Conference on Trafficking in Persons” (paper presented at the Embassy of the United States, Bratislava, Slovakia, November 26, 2007).

<sup>75</sup> Ibid.

<sup>76</sup> The author is grateful to David T. Moore for this observation.



still a low priority within the criminal justice system of many countries. Different attitudes to prostitution, tacit acceptance of prostitution in some localities, and a tendency still to treat women involved in the sex trade as perpetrators rather than the victims of crime also mean that even where human trafficking is treated as a serious crime it is not always targeted vigorously. Similarly, many of those who are trafficked for forced labour are treated first and foremost as illegal immigrants to be deported rather than as victims to be protected. A major part of the challenge, therefore, is to make counter-trafficking a much higher priority.

This, in turn, has to be manifest in more effective laws against human trafficking. Many countries continue to have inadequate laws, enforcement is often both problematic and misguided (for example, treating women who have been trafficked for commercial sex as criminals rather than victims, or simply failing to provide adequate levels of protection and assistance), and on those occasions when penalties are enforced they are often ridiculously low. The fact that too many states continue to provide safe havens for traffickers and trafficking further reduces the effectiveness of the modest efforts at international law enforcement cooperation which are currently in place. These issues can only be overcome by a concerted effort to raise the priority of combating human trafficking and by both exerting pressure on and enhancing capacity in those countries which still lack legal instruments and serious anti-trafficking activities. If high-level commitment to countering human trafficking is essential, this does not provide the overall strategy which is needed.

While it would be ideal if there was a single global agency with the responsibility for formulating and implementing a counter-human trafficking strategy, this is not the case now, nor is it likely to be in the foreseeable future. Consequently, different international institutions and national agencies can play specialised but complementary roles, depending on their particular capabilities, resources, and mandates. The United Nations has been critical in the area of norm creation, particularly through the Palermo Convention and the Protocol on Trafficking in Human Beings, and the UNODC has also been important in training and assistance. Most recently, UNODC has played an important role in the effort to provide a real global assessment which offers an improved, albeit still imperfect, understanding of the dimensions of the problem. For their part, Interpol, Europol, and other regional law enforcement networks are critical in information-sharing activities and in providing analytic support for counter-network and counter-market initiatives.

This mix of institutions provides a useful bottom-up response to governance. Indeed, so long as critical functions are identified and implemented

appropriately, the issue of who does what is secondary. One important initiative, however, would be for a global effort to enhance cooperation among representatives of the major institutions, agencies, and organisations involved in efforts to combat human trafficking. At the very least, this should include the United Nations Office on Drugs and Crime, the Financial Action Task Force, the Egmont Group of Financial Intelligence Units, Interpol and Europol, as well as the UN Office of the High Commissioner for Human Rights, the International Labour Organization, the International Organization for Migration, and the United Nations Children's Fund (UNICEF). Other appropriate bodies could also be involved. The purpose would be to work out at least a broad division of labour, to ensure that particular problems did not fall through the gaps, to coordinate rather than duplicate efforts so that scarce resources are utilised most effectively, and to identify systematically where these organisations can most effectively work together. To have any chance of success, this would require the creation of an ad hoc coordinating group which would meet regularly in an attempt to minimise duplication of effort and resources and bring a degree of coherence and purpose to what are currently largely ad hoc and uncoordinated initiatives.

In fact, coordination and cooperation need to be enhanced at five distinct levels:

- The national level where different government agencies in the intelligence and law enforcement communities often fail to share intelligence, inform one another about operations, or coordinate their efforts for maximum impact.
- Among multiple governments affected, in one way or another, by trafficking, whether it is in source, transshipment, or destination countries.
- Among international organisations and agencies with responsibility either for combating one or more forms of trafficking or for mitigating the consequences of trafficking.
- Among governments, international organisations and relevant NGOs, which not only provide major contributions to our understanding of trafficking but also focus attention on the problem, helping to create awareness and set the political agenda.
- Between governments and the private sector, which need to work more closely together to ensure that wittingly or unwittingly businesses do not facilitate trafficking. Cooperation is required at all levels from

governments sharing of information about potential infiltration of particular industries to efforts, especially by firms in industries that are particularly important or useful to human trafficking, to police themselves in some way.

One way of seeing this is in terms of the creation of anti-trafficking networks. In order for these networks to operate effectively, however, the creation of trust is essential. This is not easy when issues of language, culture and national sovereignty are all involved. Nevertheless, it can often be done on a personal, informal level. To return to Ethan Nadelmann's work, as he showed some years ago, informal relationships among police create trust networks similar to those found among criminals. When a policeman can pick up the phone and call his counterpart in another country, then it is possible to exchange useful information, and even to develop common targets of investigation. One way of facilitating this process is through capacity building, especially training, which can lead to the creation of informal networks of trust and affiliation.

In some cases, these networks of trust among law enforcement and intelligence personnel in different countries will be maintained for the long haul; in others they will be created for specific missions against specific targets. The temporary network of the multi-national task force is extremely valuable and can yield excellent short-term results in specific investigations or against specific targets. The longer-term transnational network of officials from various countries who have developed mutual trust and respect and can operate together informally is even more valuable, if it is extended beyond two or three countries and beyond law enforcement agencies to other government departments and from there to the private and non-profit sectors, incorporating personnel and specialists from the NGO world. One way of thickening and extending networks in ways which would enhance operational cooperation as well as knowledge about human trafficking and how it can best be combated would be to establish human trafficking "intelligence units" in as many governments as possible and create a network of these institutions based on the Egmont Group model of financial intelligence units. The Egmont network operates through a common intra-net which facilitates rapid and relatively secure information sharing. This is accompanied by annual meetings and expert assessments of money laundering trends and mechanisms. Something similar could be done in relation to countering human trafficking and would provide a platform for deepening and broadening international cooperation.

Questions inevitably arise about the optimum size of the networks created to combat human trafficking—especially at the operational level. There is no single answer to this, however, apart from the somewhat trite observation that

they need to be as large as necessary but as small as possible, or as inclusive as necessary but as exclusive as possible. In the final analysis, however, the size of law enforcement networks to combat human trafficking might be less important than who is involved. A large network among demand countries in Western Europe, for example, would be based on increasingly dense habits and patterns of cooperation and would probably be very effective. The more diverse a law enforcement network becomes and the more it incorporates members from transshipment and source countries where the integrity of law enforcement is an issue, however, the greater the prospect that information will be leaked and operations undermined or even neutralised.

One way of dealing with this is simply to accept some information leaks as the price of cooperation. The Italian-American working group on combating organised crime which held its first meeting in 1984 worked even though initially it was clear that information was being supplied to the Italian Mafia. Over time, as corrupt police were weeded out and as cooperation intensified, this became far less of an issue. While this might not occur in every case, incorporating a counter-corruption element into transnational enforcement networks and task forces, through vetting the members, could also help to minimise the problem.

Another perspective is to focus on knowledge-creation and knowledge-sharing and how they can be strengthened through the development of mechanisms at several interlocking levels. If the development of a more comprehensive assessment of the traffickers and the dynamics of the various markets in human beings is to be achieved, it is essential to incorporate assessments—from all possible sources ranging from intelligence agencies to NGOs that are based on an enhanced understanding of the trafficking process, the underlying market dynamics, the nature of the participants in the trafficking business, the methods and modalities of trafficking, the profits that accrue and how and where they are distributed, re-invested, and laundered. These assessments require the creation of a knowledge base that: (1) involves pooling of data-bases; (2) is network-based; (3) crosses national borders and is shared by intelligence and enforcement agencies in multiple jurisdictions; (4) makes full use of the knowledge provided by the NGO community, which often has detailed information about local conditions relating to human trafficking; (5) makes use of information from the private sector; and (6) considers potential ways in which trafficking networks might successfully adapt to, and circumvent, law enforcement efforts. A knowledge-base of this kind is essential in human trafficking but provision also needs to be made for cross-referencing the data in

ways that reveal otherwise hidden connections between human trafficking and, for example, trafficking in drugs.

There would, of course, be difficulties. Some law enforcement information would be operationally sensitive, while information provided by intelligence agencies would have to be sanitised in ways that would not disclose sources and methods. One way to deal with this would be to create a multi-tiered system with different levels of access, but with a constant effort to make access as broad as possible while not compromising intelligence gathering, operations, or investigations. For example, a lot of the basic non-sensitive data could be housed at UNODC and made available through web-access to law enforcement agencies, NGOs and researchers. The more operational material would be much more restricted but could be accessed through Interpol, which has control systems for data already in place and has a global communications infrastructure which could be exploited much more fully than currently is done.

Whatever the precise arrangements for cooperation in knowledge-creation and information-sharing, it is clear that efforts have to be made to develop a much more comprehensive understanding and assessment of human trafficking. Even though the UNODC's 2009 Global Report on Trafficking in Persons provided a useful preliminary assessment on the scale and scope of the problem, the Executive Director of UNODC emphasised that knowledge remained fragmented and understanding was incomplete. As he noted, "policy can be effective if it is evidence-based, and so far the evidence is scanty." The kind of approach recommended here is designed to overcome this problem. It would also make it possible to reconcile divergent assessments of the kind which have arisen between UNODC and the US State Department in assessing opium and heroin production. Greater knowledge and shared understanding of all dimensions of human trafficking would provide a basis for more refined and effective strategies and policies.

This would also enhance understanding of how well both the international community and specific governments are doing in their responses to human trafficking. Defining success in countering human trafficking is particularly difficult. For some feminists, for example, reducing trafficking is synonymous with reducing prostitution—which is their overall goal. For others, prostitution is not the problem; rather it is the exploitation of prostitutes by pimps and others involved in the commercial sex trade. This clash between principle and pragmatism might be inescapable. Approaches designed to reduce the size of the markets, to reduce the scale and scope of trafficking, to reduce the number of victims and to minimise harm to others, and to make human trafficking less profitable and more risky, for example, are subject to the criticism that they do

not go nearly far enough. Yet such approaches recognise the persistent nature of the trafficking business as well as the difficulty of interventions designed to change market choices. Strategy, as much as politics, is about the art of the possible. A realistic strategy requires realistic goals that, in turn, yield tangible measures of success.

Such measures need to be both quantitative and qualitative, encompassing obvious indicators such as number of arrests, indictments, and convictions for trafficking offences, or the number of trafficked women who are rescued, as well as less obvious and less tangible assessments. Assessments of the impact of deterrence strategies as well as other preventive measures, such as education campaigns, are less easily quantified but are nonetheless significant and are also included.

It would also be helpful to know what works and what does not. In this connection, law enforcement networks could learn from both the military doing after-action assessments and from business in terms of the development of best—or at least most effective—practices.

As part of a comprehensive anti-trafficking strategy, it is also important to make it more difficult for the traffickers to profit financially from their activities. In part, this requires that any governments that have not already made human trafficking a predicate offence for money laundering do so as soon as possible. It also requires that governments introduce anti-money laundering measures that exceed the requirements enshrined in the recommendations of the G-8's Financial Action Task Force (FATF). While measures such as cash transaction reports and suspicious activity reports, along with requirements for due diligence and know your customer, make it more complicated for criminals (including those involved in human trafficking) to launder the proceeds of their activities, the results are not commensurate with the self-congratulatory approach sometimes adopted by the FATF. One specialist has argued very persuasively that law enforcement seizures of criminal proceeds are substantially less than one per cent of global criminal proceeds.<sup>77</sup> Even acknowledging this and accepting the limitations of anti-money laundering measures, it would still be worthwhile to link these efforts more directly to combating human trafficking.

In this connection, it is worth emphasising that travel agencies, transportation firms, and hotels which collude with trafficking networks—especially the

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<sup>77</sup> See Raymond Baker, *Capitalism's Achilles Heel* (New York: Wiley, 2005).

larger ones—are not only facilitators of the trafficking process but are natural conduits for illicit financial transactions. As such, they lend themselves very naturally to the kinds of money laundering that have become prevalent as tighter regulations in the financial system have led criminals to look elsewhere for laundering opportunities. The implication is that measures for asset seizure and asset forfeiture should be used as part of a direct attack on underlying trafficking infrastructures. The seizure of assets from facilitators would send a strong message about the dangers of being involved—even if only indirectly. The assets seized could also be used for victim assistance programs, especially in the area of women trafficking.

The final component of the counter-human trafficking strategy being enunciated here encapsulates this requirement for what might be termed agile law enforcement—the adoption of intelligence-led policing and other measures that are forward-looking and proactive, combined with the maintenance of a capacity for adaptability and flexibility. In effect, law enforcement and traffickers are in an adversarial relationship that, like other adversarial relationships, is in large part a battle of wits. In these circumstances, it is essential for governments to develop a capacity for strategic anticipation that not only allows them to pre-empt certain human trafficking activities, but also to respond rapidly to adjustments or innovations made by the traffickers after they have encountered setbacks. In effect, any anti-trafficking strategy must incorporate potential responses by traffickers to successful law enforcement. From the law enforcement perspective, the process is one of displacement; from the trafficking perspective, it is one of adaptability. Whichever way the process is characterised, however, some degree of planning is required to ensure that the traffickers remain on the defensive and are not always one step ahead.

In the final analysis, of course, there are no easy and simple solutions to human trafficking. The mix of variable geometry institutional cooperation, knowledge creation, and strategic thinking outlined here is no exception. It is presented with a clear recognition that it needs refinement, but in the hope that it might be a stimulus for discussion and provide a broad framework for an action plan. Even if a comprehensive approach of this kind is adopted, however, it does not guarantee success; without such an approach though continued failure in efforts to combat human trafficking is inevitable.

## **Recommendations**

### *Think in Network Terms*

Think in network terms—most criminal organisations in a globalised world are network-based rather than traditional hierarchies.

### *Human Trafficking Requires a Distributed Solution*

Recognise that transnational human trafficking is a distributed problem that requires a distributed solution and that reluctance—driven by concerns about ceding or relinquishing national sovereignty—to engage in distributed multi-national or transnational responses needs to be overcome. By clinging to the formalities of sovereignty, governments are simply allowing the substance of sovereignty to be eroded.

### *Focus on Real and Tangible Measures*

In terms of enforcement, focus on real and tangible measures of effectiveness such as the number of indictments and convictions, not on levels of efforts such as whether laws are in place. Even if they exist, unless they are adequately enforced they are meaningless.

### *Attacking Trafficking Networks is Essential*

Even in a human rights-based approach to combating human trafficking, attacking trafficking networks should be recognised as essential as these networks provide the critical facilitators and connectors between the supply and demand sides of what is a market in human commodities.

### *Recognise Network Variation*

Recognise the variations in networks in terms of size, composition and structure, determine what kind of network—flux, broker, chain, mesh or core—is involved and develop strategy accordingly.

### *Target Critical Nodes*

Identify and target critical nodes which can be leadership nodes, those nodes with a high concentration of direct or indirect links, nodes which act as boundary-spanners and cross from the criminal to the legitimate worlds, and nodes which carry out specialised substantive tasks.



*Develop Knowledge-Creation and Knowledge-Sharing Mechanisms*

Develop knowledge-creation and knowledge-sharing mechanisms at several interlocking and reinforcing levels, with varying degrees of sensitivity. These knowledge-sharing mechanisms would offer opportunities for developing evidence-based policies and strategies.

*Enhance Cooperation*

Enhance cooperation at national, regional and global levels and incorporate international agencies, the NGO community and the business community.

*Develop a Comprehensive or Holistic Strategy*

Develop a comprehensive or holistic strategy in which various components are mutually reinforcing. Recognise, in particular, that attacking networks and attacking markets are complementary approaches.

*Focus on the Profits*

Incorporate into the enforcements efforts a focus on the profits of trafficking and, where feasible, seize infrastructure that is used.

*Transform Human Trafficking into a High-Risk, Low-Profit Activity*

The bottom-line recommendation is to transform human trafficking from a low-risk, high-profit criminal activity to a high-risk, low-profit activity.



# CHAPTER 11

## Problems of Anti-trafficking Cooperation

Barbara Limanowska, Helga Konrad

### Introduction

Over recent years, cooperation among and between governments, international organisations, and NGOs against human trafficking has increased. This has helped to dismantle criminal networks and protect victims of trafficking. However, results are limited and many problems remain. This chapter discusses these problems and their origins, and also makes suggestions for overcoming, or mitigating, obstacles to anti-trafficking cooperation. The chapter shows that insufficient cooperation is part and parcel of the failure to systematically protect the human rights of trafficking victims.

Actors fighting trafficking agree that coordinating anti-trafficking efforts is key. The aim of cooperation is to disrupt traffickers' networks, put traffickers and their accomplices in jail and protect and assist victims in a way that will enable them to find a way back to normal life. Even better, efforts should prevent people from becoming trafficked in the first place. Coordination and cooperation are essential because human trafficking is a very complex, multifaceted problem that cannot be solved single-handedly. No single ministry or agency, or even a country, is capable of dealing with this problem alone; coordination is crucial.

Although human trafficking over recent years has been a topic raising much concern on the political level, only relatively few states have come to see it as their responsibility to protect individuals from trafficking and to provide effective assistance and remedies to victims. Countries in Europe and elsewhere have by now created shelters, hotlines, return programmes, and other relief measures. However, these are frequently island solutions rather than proper national referral mechanisms (NRMs). Several countries still have no or inappropriate coordination structures bringing together the various anti-trafficking actors. There are problems of cooperation among government agencies, for example between the police and the judiciary. Moreover, coordination structures have tended to work in closed loops, failing to network

with or open up to other actors. Thus, the police talk to the police, and NGOs talk to NGOs. International cooperation, especially between countries of destination and origin is still insufficient.

To the extent that coordination takes place, gatherings have often been used by organisations as an opportunity to present their own activities, rather than as an occasion to jointly develop and implement policies or change tracks. In practice, coordination has often amounted to talk shops without tangible and binding outcomes. A lack of cooperation has numerous costs. First of all, relatively few trafficking cases have been successfully prosecuted, due to a lack of evidence (which is based almost exclusively on the testimony of the victims, while hardly any additional evidence is secured). Secondly, a lack of effective cooperation between institutions tasked with protecting trafficked persons has often led to abuses of the rights of such persons and their further victimisation.

If networking has posed a problem within countries, it has proven even more challenging across borders. Human trafficking is a crime often committed by international criminal networks. These can only be disrupted by prosecuting perpetrators along the entire continuum of exploitation. However, too few investigations systematically link criminal activity in countries of origin with that in countries of destination. There is no systematic method for following up with repatriated victims. Once a trafficked person is repatriated, there is no coordination between governments to ensure that those responsible in countries of origin are brought to justice or to ensure protection of the victims. Frequently, cross-border legal assistance gets bogged down in red tape. There is almost no evidence that governments in source countries take responsibility for the protection of their nationals upon their return. On the contrary, in many countries trafficked persons are arrested upon repatriation and socially stigmatised, preventing their reintegration. Moreover, most victims receive little or no assistance for reintegration.

This chapter argues that the effectiveness of anti-trafficking cooperation is very much influenced by, and reflects, contradictions present in the anti-trafficking model developed to implement the UN Convention on Transnational Organized Crime. The focus on transnational organised crime has resulted in the dominance of security over human rights, including with regard to considerations on the protection and assistance of victims and prevention in countries of origin. The chapter discusses the evolution of anti-trafficking measures and the problems with their practical implementation in South Eastern Europe from 2001 to 2006 (many of the problems discussed have not been resolved yet). This is a region that has attracted many anti-trafficking

programmes implemented by a variety of actors. It therefore offers valuable lessons for anti-trafficking efforts in the region and beyond.

## 1. Problems of Cooperation

In 2000, the Stability Pact Task Force on Combating Trafficking in Human Beings for South-Eastern Europe (SPTF) for the first time brought together international organisations dealing with human trafficking, law enforcement agencies and NGOs in the “SPTF Coordination Team.”<sup>1</sup> The countries that were participating in the initiative were countries of origin, transit and destination in South Eastern Europe: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, The Federal Republic of Yugoslavia (Serbia and Kosovo), Macedonia, Moldova, Montenegro and Romania. Together, supported by SPTF, they signed the Anti-Trafficking Declaration of South Eastern Europe in Palermo that commits them to address “the phenomenon of trafficking in human beings by implementing effective programmes of prevention, victims’ assistance and protection, legislative reform, law enforcement and prosecution of traffickers.”<sup>2</sup> These initial attempts were followed up in 2004 with the establishment of an “Alliance against Trafficking in Persons”, under the aegis of the OSCE Special Representative. The Alliance did have some success, due to its access to multiple information sources, and also because it influenced the decisions of governments, agencies, and institutions such as the European Commission.

Several coordination mechanisms have been established to stimulate deeper reflection on, and coordinated action against, human trafficking, and to foster dialogue with and among countries of origin, transit and destination. The goal is to provide practical background information to governments as decision-making aids and frame concerted anti-trafficking strategies. One can distinguish between different types of coordination:

- Horizontal cooperation between organisations of the same type, within a country and also between countries of origin and destination (NGOs, shelters, social services, police, border police, etc.) to exchange experience and contacts, share information, and be able to refer clients.

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<sup>1</sup> Stability Pact for South Eastern Europe, *Task Force on Trafficking in Human Beings; South Eastern Europe’s Struggle Against Trafficking in Persons* (Vienna: Stability Pact, May 2004).

<sup>2</sup> Stability Pact, *Anti-Trafficking Declaration of SEE*, <http://www.stabilitypact.org/trafficking> (accessed February 10, 2009).

- Case-focused cooperation between organisations dealing with different aspects of trafficking (local chapters of police, border police, NGOs, medical services, social services, etc.) to follow concrete cases, transfer clients, and effectively prosecute traffickers.
- Vertical cooperation between different levels of the same institution (police, border police, prosecutors, etc.) to share information, develop model procedures, coordinate action, and monitor and evaluate.
- International cooperation between political bodies from sending and receiving countries to establish legal standards, procedures, and the scope and standards of cooperation.

All these types of cooperation have been created. In Europe, the Stability Pact Trafficking Task Force proposed national and regional cooperation models, with the State Coordinators<sup>3</sup> as the responsible body in each country. Based on this model, the OSCE has proposed the National Referral Mechanism<sup>4</sup> system, which expanded the State Coordinator's model to include all agencies involved in the process of victims' identification, protection, assistance and reintegration. The Netherlands has proposed a different model of National Rapporteur, envisioning the creation of a body focused not so much on coordination but rather on monitoring of anti-trafficking agencies and organisations.

As the result of these attempts, mechanisms for inter-agency cooperation to combat trafficking were developed to cover all types of organisations and aspects of trafficking. In the early 2000s, these mechanisms were developed to such an extent that anti-trafficking state coordinators from South Eastern Europe were continuously travelling from one coordination meeting to another and reporting on their work, presenting newly established institutions, model procedures, projects and programmes. Most projects were initiated by international organisations offering support to countries of destination.

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<sup>3</sup> The Stability Pact Task Force on Trafficking in Human Beings developed a Regional Plan of Action as a model for national plans of action for the countries of the region. Implementation of the plans is coordinated by national coordinators appointed by the governments. The major areas of concern according to the model are research and assessment, raising of awareness and prevention—addressing social and economic causes, victim assistance and support, return and reintegration assistance, law reform, law enforcement, international law enforcement, cooperation and coordination. For more information, see: [http://www.osce.org/odihr/attf/index.php3?sc=Action\\_Plan](http://www.osce.org/odihr/attf/index.php3?sc=Action_Plan) (accessed May 22, 2009).

<sup>4</sup> OSCE/ODIHR, *Handbook on National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons* (Warsaw: OSCE/ODIHR, 2004), [http://www.osce.org/publications/odihr/2004/05/12351\\_131\\_en.pdf](http://www.osce.org/publications/odihr/2004/05/12351_131_en.pdf) (accessed May 22, 2009)

However, the response was not as effective as anticipated, especially in the area of victim protection, due to various obstacles.<sup>5</sup>

1. Technical: language and communication barriers, a lack of access to information, a focus on different groups of trafficked persons, differences in standard operating procedures, etc.
2. Differing levels of conformity with international laws and regulations regarding trafficking and labour standards, different legislation and practices regarding prostitution, etc.
3. Different approaches to trafficking (state security vs. human rights) by different types of institutions; controversies between countries of origin and destination, with destination countries and international organisations dominating policy priorities. Divergent priorities of, and competition between, institutions.
4. Simple financial obstacles such as a lack of resources for anti-trafficking work in the countries of origin, as well as corruption, shadow economies, organised crime, forced labour, and prostitution.

These problems are interrelated and determine the type, scope and results of cooperation. While countries of origin are willing to participate in anti-trafficking institutions, they also try to minimise any focus on the involvement of their own citizens in trafficking, both as perpetrators and as victims. Countries of origin underline the socio-economic causes of trafficking, such as poverty and a lack of legal migration opportunities for their citizens to the countries where there might be employment. In countries of destination, the focus is on foreign victims and traffickers (mainly in the sex industry). Other factors tend to be neglected, such as: the involvement of their own citizens in trafficking and as victims, root causes of exploitation, such as lack of implementation of labour laws and lack of legal protection for migrant workers.

While most European countries have signed and ratified the Trafficking Protocol, not all of them have amended domestic laws. For example, in some countries trafficking is understood as trafficking of women for the purpose of prostitution only. Laws relating to trafficking, such as laws on migration, minors, labour, and prostitution vary, which negatively impacts on cooperation.

The diversity of anti-trafficking actions results from the differing mandates of institutions. While governmental institutions tend to focus on state security

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<sup>5</sup> B. Limanowska, *Trafficking in Human Beings in Southeastern Europe* (Warsaw: OHCHR, OSCE, UNICEF, 2002), 140.

issues, NGOs focus more on individual rights. There is also competition for resources and turf between organisations with a similar outlook, for example those offering assistance to victims and also among international organisations that are trying to negotiate a space for themselves, offering services to governments.

A scarcity of resources often translates into cooperation problems. While all institutions are obliged to cooperate, institutions that do not have the means to participate in meetings, translate materials, or go on study visits have trouble cooperating. In most cases, funding is provided by countries of destination (on projects that reflect their priorities) and channelled through international organisations. The anti-trafficking agenda thus reflects the interests of donors. Rhetorically, cooperation should include all types of institutions, including those protecting victims and addressing root causes of trafficking in countries of origin. But since many of these institutions are short of funds, institutions focusing on prosecution and anti-migration measures (often financially better endowed) dominate cooperation mechanisms.

## **2. Cooperation and the Palermo Trafficking Protocol**

In the 1990s, a Dutch NGO trying to draw attention to growing sex tourism from the Netherlands to Thailand triggered a public discussion on trafficking in human beings. The NGO organised protests at Schiphol airport and send information to the media about Dutch tourists in Thailand using prostitutes who were often underage. At the same time, the number of Thai women working in the Dutch sex industry began to increase. It became apparent that at least some of them were brought to Europe against their will. Women contacted by street workers were telling stories that clearly described common patterns of abuse and exploitation.

For NGOs in the Netherlands supporting sex workers' rights, it became obvious that many migrant prostitutes (other groups that were clearly visible were women from the Dominican Republic and Poland) were victims of crimes as they had been cheated and were not protected against violence and exploitation. The Foundation against Trafficking in Women (Stichting tegen Vrouwen Handel)<sup>6</sup> was created. While the organisation was determined to help victims trying to escape from traffickers, its capacities were limited because victims were treated as illegal migrants and faced deportation and because

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<sup>6</sup> In 2007, STV decided on a name change and is now the Coordination Centre Human Trafficking (CoMensHa).



traffickers were not seen as criminals, unless it was possible to prove concrete acts of violence such as beatings or rape. Exploitation of migrant women in the sex industry was not recognised as a crime, in the Netherlands as well as in countries of origin.

At the same time, knowledge increased about trafficking in women from different parts of the world (Eastern Europe, Africa, Latin America) to other EU member states. Moreover, organisations promoting the rights of prostitutes became better organised and connected. NGOs, facing cases of trafficked women who were not able to obtain any assistance and knowing of perpetrators who went unpunished, realised that the 1949 Convention against Trafficking in Women and Exploitation of Prostitution of Others was insufficient.

Yet there was another important, although not official, document, The Standard Minimum Rules for the Treatment of Victims of Trafficking<sup>7</sup> was a document prepared by NGOs in 1994 to establish international standards of protection. It was based upon international human rights standards. Its authors hoped that the UN would adopt it, thus paving the way for the prosecution of traffickers and assistance to victims, i.e., give them the status of victims of crime instead of illegal migrants, protect them from secondary victimisation and offer compensation for damages. The minimum standards was intended to protect victims from deportation, offer a basis for protection and assistance during and after identification and set out guarantees for voluntary safe return, resettlement and reintegration. It was non-discriminatory and paid particular attention to gender-related problems common in trafficking for sexual exploitation.

After several years of lobbying by NGOs it became apparent that there was no political will within the UN to adopt the document. However, trafficking was now recognised as a serious international problem, also due to media reports on migrant women forced into prostitution. As a consequence, there was an opportunity to add anti-trafficking provisions to the new Convention against Transnational Organized Crime—in the form of the Palermo Trafficking Protocol. The NGOs using the Standard Minimum Rules document were able to participate in the process of writing the Convention. However, the focus of the Protocol was unmistakably on combating crime—the language used in the Protocol was very weak in relation to victim protection and addressing the root causes of trafficking.

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<sup>7</sup> Foundation against Trafficking in Women (STV), Global Alliance against Trafficking in Women (GAATW) and International Human Rights Law Group (now Global Rights), *Human Rights Standards for the Treatment of Trafficked Persons* (Bangkok: GAATW, 1999), [http://www.no-trafficking.org/content/PDF/human\\_rights\\_standards\\_for\\_the\\_treatment\\_of\\_trafficked\\_perso.pdf](http://www.no-trafficking.org/content/PDF/human_rights_standards_for_the_treatment_of_trafficked_perso.pdf) (accessed May 22, 2009).

Placing trafficking within the TOC Convention had three main consequences:

1. The focus on prosecution of traffickers, not protection of the victims was the aim of the Trafficking Protocol. This translated into a lack of clear, binding provisions for protecting trafficked persons. Moreover, law enforcement agencies became the key anti-trafficking actors, usually tasked with coordination and cooperation on the national level, while human rights NGOs were marginalised.
2. The definition of trafficking was extended, now including trafficking for non-sexual purposes.
3. The Convention directly influenced legislation in the countries that ratified it. It obliged countries to criminalise trafficking and take measures to combat and prevent the problem.

Concern about the lack of human rights protection in the TOC Convention was voiced not only by NGOs but also by international organisations. From the beginning, two UN agencies (UNOHCHR and UNICEF) and the OSCE had promoted a human rights approach. Soon after the adoption of the UN Trafficking Protocol both UN agencies proposed standards and guidance on prevention and protection. The *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, issued by UNOHCHR in 2002,<sup>8</sup> were intended to promote and facilitate the integration of a human rights perspective into national, regional and international anti-trafficking laws, policies and interventions. After being approved by the ECOSOC, the Guidelines were promoted in South Eastern Europe, among others by the SPTF.

In addition, UNICEF, in collaboration with governments and NGOs in South Eastern Europe (SEE), has developed *Guidelines on the Protection of the Rights of Child Victims of Trafficking in South Eastern Europe*.<sup>9</sup> These guide the protection of and assistance for child victims of trafficking from identification to reintegration and recovery, addressing governments and state agencies, international organisations and NGOs. However, neither set of the Guidelines was binding for UN member states; they merely showed the direction that states should take to fulfil their obligations arising from the

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<sup>8</sup> United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, report to the Economic and Social Council, E/2002/68/Add.1., July 2002., [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.2002.68.Add.1.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.2002.68.Add.1.En?Opendocument) (accessed June 2, 2009).

<sup>9</sup> UNICEF, *UNICEF Guidelines for the Protection of the Rights of Children Victims of Trafficking in South Eastern Europe* (New York: UNICEF, June 2003).

various UN human right instruments in relation to the protection of victims of crime.

### 3. Defining Trafficking and Implications for Cooperation

The definition of trafficking in human beings (see the introduction to this book) is contained in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the UN Convention on Transnational Organized Crime adopted by the UN General Assembly in November 2000. The UN distinguished between trafficked persons and smuggled migrants, defining migrant smuggling as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State party of which the person is not a national or a permanent resident.”<sup>10</sup> In principle, the smuggling of persons constitutes an illegal border crossing and is therefore a violation against the security of the state. In contrast, trafficking in human beings is a violation of the rights of the individual; the victims are the trafficked persons. The Trafficking Protocol therefore uses the term ‘victim’ (yet without defining a victim), whereas the Smuggling Protocol does not (see also the chapter of Benjamin S. Buckland in this book).<sup>11</sup> The focus of the TOC Convention and its Protocols is on law enforcement and organised crime. Although the Trafficking Protocol determines that trafficked persons are to be granted protection, it soon became obvious that the language is relatively unspecific:

Unfortunately, there is little guidance in either instrument regarding how the identification process is to be undertaken and by whom. This is especially important because identifying an individual as a trafficked person carries different responsibilities for a State party than is the case if that person is identified as a smuggled migrant. It is hoped that States parties will address such issues in the near future.<sup>12</sup>

The Palermo Trafficking Protocol stresses the need for a comprehensive approach (addressing prevention, protection and prosecution issues) and cooperation among the actors involved. It foresees cooperation, among others,

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<sup>10</sup> UN, *Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime*, Art.3a. UN A/55/383, November 2, 2000., [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/index.htm](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/index.htm)

<sup>11</sup> Please compare: OSCE, “Europe against Trafficking in Persons” (conference Report, Berlin, October 15–16, 2001), 103.

<sup>12</sup> Kofi Annan, “Smuggling and Trafficking in Persons and the Protection of Their Human Rights,” note by the UN Secretary-General, E/CN.4/Sub.2/2001/26 (New York: UN, July 5, 2001), 3

in the areas of assistance to and protection of victims, repatriation, prevention, information exchange and training (see text box).

#### **Article 8**

##### **Repatriation of victims of trafficking in persons**

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

#### **Article 9**

##### **Prevention of trafficking in persons**

1. States Parties shall establish comprehensive policies, programmes and other measures:
  - (a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimisation.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organisations, other relevant organisations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

## **Article 10**

### **Information exchange and training**

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organised criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organisations, other relevant organisations and

other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Cooperation with NGOs is mentioned explicitly only in relation to assistance, training and prevention of trafficking. While NGOs were, when the Protocol was drafted, the principle organisations that were assisting victims of trafficking and often facilitating their return to countries of origin, they are not mentioned in Article 8, which refers to repatriation. As Article 8 states: “return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and **shall preferably be voluntary**” (emphasis added). NGOs from the beginning argued that victims should have the right to stay, at least temporarily in the country of destination and should not be treated as illegal migrants and deported. The Protocol does not offer this option (with an exception for witnesses in anti-trafficking cases). It is therefore not surprising that the Protocol does not foresee any role for NGOs in the process of “preferably voluntary return.” Deportations of illegal migrants are governed by other laws and are the matter of the state and law enforcement agencies.

Assistance to victims is foreseen in Article 6, which states that each State Party “shall consider implementing measures” to assist victims of trafficking “in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.”<sup>13</sup> The Protocol is weak in relation to protection and general in relation to prevention. Human rights concerns are not properly expressed, and cooperation with human rights organisations is foreseen only “in appropriate cases.”

These shortcomings led the UNOHCHR to prepare *Recommended Principles and Guidelines on Human Rights and Human Trafficking*.<sup>14</sup> The document, issued in 2002, is based on existing UN human rights instruments that prescribe the protection measures trafficked persons are entitled to in accordance to UN

<sup>13</sup> Article 6. Assistance to and protection of victims of trafficking in persons

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.

<sup>14</sup> United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines*.

human rights treaties. Guideline 11 is entirely dedicated to cooperation and coordination between States and regions. In addition to law enforcement cooperation and the adoption of labour migration agreements in accordance with existing international standards, Point 3 of Guideline 11 foresees “Elaborating regional and sub-regional treaties on trafficking, using the Palermo Protocol and relevant international human rights standards as a baseline and framework”, and Point 2 “Offering ... technical and financial assistance to States and relevant sectors of civil society for the purpose of promoting the development and implementation of human rights-based anti-trafficking strategies.”<sup>15</sup>

The *Principles and Guidelines* recognise that fighting trafficking requires cooperation between the state agencies, intergovernmental and non-governmental organisations.<sup>16</sup> Cooperation frameworks should not only pertain to law enforcement, but also promote victim identification,<sup>17</sup> facilitate labour migration agreements to eliminate trafficking and related exploitation,<sup>18</sup> and assist the development and implementation of human rights-based anti-trafficking strategies.<sup>19</sup> International human rights organisations used the *Principles and Guidelines* to promote human rights based anti-trafficking strategies in which law enforcement agencies were one of the partners adopting a human rights based approach.<sup>20</sup>

Yet the main source of standards for law enforcement cooperation was the much more concrete *Organized Crime Convention*. Several articles of the Convention are dedicated to inter-agency cooperation in areas of: international cooperation for purposes of confiscation (Article 13), mutual legal assistance (Article 18), joint investigations (Article 19), transfer of criminal proceedings (Article 21), and law enforcement cooperation (article 27).<sup>21</sup> The provisions do not exclusively pertain to human trafficking. But they incorporate anti-trafficking action into a broader context of international cooperation by police, border police, criminal justice actors and other state agencies tasked with

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<sup>15</sup> Ibid., Guideline 11, Point 2 and 3.

<sup>16</sup> Ibid., Guideline 11, Point 12.

<sup>17</sup> Ibid., Guideline 11, Point 5.

<sup>18</sup> Ibid., Guideline 11, Point 4.

<sup>19</sup> Ibid., Guideline 11, Point 2.

<sup>20</sup> See, for example, Sector Project against Trafficking in Women, ed., *Challenging Trafficking in Persons. Theoretical Debate and Practical Approaches* (Eschborn: GTZ, 2005).

<sup>21</sup> UN General Assembly, *United Nations Convention Against Transnational Organized Crime*, General Assembly Resolution 55/25, annex I, 55 U.N. GAOR Supp. (no.49), 44, U.N. Doc. A/45/49 (Vol. I) 2001.

fighting organised crime. In the light of the Convention, cooperation with NGOs and international agencies as foreseen in the Trafficking Protocol was an exceptional concession that should help, “in appropriate cases”, to build a state security system, the development and implementation of which is dominated by law enforcement agencies.

#### **4. Anti-trafficking Efforts in Practice**

The definition of trafficking in the Protocol reflects the complex nature of the problem. It can be broken down into acts, means, and purpose. Only a combination of these elements constitutes the crime of human trafficking. To operationalise the Convention, human rights organisations use the OHCHR and UNICEF Guidelines as well as their own interpretations of international and domestic legislation emphasising protection and prevention. What victims an NGO focuses on depends on their interests and mandate. Their work therefore usually does not cover all types of trafficking.

Law enforcement agencies tend to place human trafficking among other types of international organised crime such as trafficking in arms and drugs and smuggling of migrants, and tend to use the same methods to combat all of them. As trafficking in human beings occurs together with the smuggling of migrants and trafficking in arms and drugs, law enforcement agencies have problems with seeing trafficked persons as victims of crime and using human rights standards and methods to treat them accordingly. Instead, they focus on members of organised crime groups. Unless they can be useful as witnesses in trafficking cases, victims are simply treated as illegal workers and, if found in countries of destination, as illegal migrants to be deported. The Protocol definition can lead to skewed interpretations by other actors as well. Depending on their mandate, and similar to NGOs, international organisations tend to focus on specific aspects of anti-trafficking, such as the protection of human rights of specific groups of trafficked persons while ignoring other aspects, such as the prevention of irregular migration, the prosecution of traffickers, and the protection of children. The media focuses on trafficking for the purpose of sexual exploitation.

Singling out specific aspects is problematic because the distinction between trafficking and smuggling, or trafficking and labour exploitation or prostitution, is often not clear on the ground (see also the chapter by Benjamin S. Buckland in this volume). This is reflected in data and information on trafficking



collected from governments, international agencies, NGOs, and other sources.<sup>22</sup> Sources did not always refer directly to trafficking, as defined in the UN Protocol, but instead to:

- The number and/or situation of illegal migrants
- The number and/or situation of female migrants working in the sex industry
- The number of girls deported to their country of origin
- The number of women and girls assisted in returning to their country of origin
- The number of women not allowed to cross a border for various reasons
- The number of smuggled women or women trying to cross a border without valid documents
- Factors influencing people's decisions to migrate

This indicates that anti-trafficking actors interpret the Palermo definition of trafficking differently. Some may label all situations relating to the migration of (especially young) women “trafficking”, especially when the women work or are willing to work in the sex industry. Most governmental institutions involved in anti-trafficking work ignore trafficking for forced labour or internal trafficking. Governments hardly acknowledge trafficking of children for forced labour as trafficking. A further problem is that data and information are not reliable and that they relate to actions taken against illegal migrants, rather than against trafficking. Moreover, state authorities understand anti-trafficking efforts as anti-migration action intended to prevent economically motivated migration, especially of women. Last, fieldwork shows that uncertainty affects particularly women working in the sex industry in places controlled by organised crime groups that do not pay the women and restrict their freedom of movement. These women tend not to consider themselves as trafficked persons, although they would be defined as such under the Trafficking Protocol.<sup>23</sup>

Such uncertainty results from the fact that the Convention says what trafficking is but not who the victims are. It is therefore difficult to use the definition. Some groups are included (such as exploited children and women working in the sex industry), while others are excluded (such as internally trafficked

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<sup>22</sup> Limanowska, *Trafficking in Human Beings in Southeastern Europe*, 3.

<sup>23</sup> *Ibid.*, 3.

persons or migrant men forced to work in agriculture or construction). Interpretations of the Protocol depend on political and economic factors as well as on institutional mandates. Most counter-trafficking efforts in the area of victim protection have focused on assisting their return. For example, the most common anti-trafficking action in South Eastern Europe, in early 2000, were police raids on brothels. After the raid, IOM (or NGOs using the IOM model) would interview victims and, after arranging necessary documents, return them to their country of origin. Return was the final outcome of programmes that were supposed to offer “protection and assistance to victims of trafficking”. In a majority of cases against their will.<sup>24</sup> Therefore, protection measures funded by the EU and other donors have been very limited, focusing almost exclusively on short-term housing/sheltering until return documents are ready. This has everything to do with national security and almost nothing to do with a human rights approach.

## **5. The Influence of Countries of Destination**

As shown above, most NGOs have focused on protecting the human rights of exploited migrant workers, women and children. Law enforcement agencies, on the other hand, tend to perceive trafficking as one type of international organised crime, which law enforcement agencies give priority to fighting, along with measures against irregular migration. The definition of trafficking in the Protocol is broad enough to accommodate both human rights and organised crime focused approaches.

The EU and the USA—the biggest donors for anti-trafficking activities—have, in practice, largely limited their anti-trafficking efforts to the security concerns stressed by the Organized Crime Convention. This approach is reflected in agreements with, and recommendations for, other countries, as well as in financial support for certain types of programmes and projects. Countries that wish to join the EU or receive financial support from the US have been obliged to act in conformity with their anti-trafficking models.

The EU Stabilisation and Association Process (SAP) for South Eastern Europe,<sup>25</sup> and, in particular, the Stabilisation and Association Agreements,<sup>26</sup>

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<sup>24</sup> See: *Ibid.*, 139–148.

<sup>25</sup> The Stabilisation and Association Process for South Eastern Europe (SAP), initiated by the EU in 1999, includes political dialogue, regional cooperation, trade, movements of people and goods, capital and services, justice and home affairs as well as fighting corruption and organised crime (including trafficking).

prepares for possible EU accession. In return, SEE states have accepted EU conditionality rules. The SAP regards human trafficking exclusively in the context of security, organised crime, and illegal migration. The SAP texts do not oblige or encourage SEE states to use a human rights approach to trafficking or to protect the rights of trafficked persons. Instead, they focus on 'hard' anti-migration and organised crime measures:

the authorities in the countries of the region (should) work together to respond effectively to the common threats to the region's and the EU's security which come from organised crime, illegal immigration and other forms of trafficking. In many cases, e.g., on visa policy, a common approach by all the countries will be needed to deal with the threat effectively.

While intergovernmental and non-governmental human rights organisations advocate for a human rights approach and support SEE states in introducing human rights based policies, other institutions, especially the EU, give priority to state security, promoting the creation of an effective migration control system and anti-organised crime cooperation.<sup>27</sup>

Another source of cooperation and policy has been the US State Department and its annual Trafficking in Persons Report (TIP). The report clearly states that trafficking is a human rights violation. The 2004 edition of the report highlighted the "three P's" of prosecution, protection, and prevention. Acknowledging that "a victim-centred approach to trafficking requires us equally to address the "three R's"—rescue, removal, and reintegration."<sup>28</sup> In reality, however, countries have been, and continued to be, judged first on their prosecutorial efforts and the conformity of domestic legislation with international law, rather than on their human rights record. The TIP Report does not include information on the protection of victim rights, such as the need for at least a temporary stay in the country of destination, or the same treatment for all victims regardless of their nationality, legal status in the country of destination or their willingness to co-operate with law enforcement.

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<sup>26</sup> The Stabilisation and Association Agreements establish formal mechanisms and benchmarks for each country of the region to develop standards similar to those which apply in the EU. The standards reflect the political, economic and institutional criteria established by the Copenhagen European Council in 1993 and are basic entry requirements for the countries that aspire to join the EU. Criteria pertain, among others, to opportunities for refugees and internally displaced persons to return, respect for human and minority rights, and regional co-operation.

<sup>27</sup> See also: Limanowska, *Trafficking in Human Beings in Southeastern Europe*, 70–73

<sup>28</sup> US Department of State, Introduction to the Trafficking in Persons Report (Washington D.C.: US Department of State, June, 2004), <http://www.state.gov/g/tip/rls/tiprpt/2004/34021.htm> (accessed May 22, 2009).

Countries are also not judged on having (or not) long term prevention programmes addressing root causes of trafficking or for (not) including prevention of trafficking into poverty reduction strategies and development agendas.

The US can use sanctions against countries that do not conform to the TIP Report criteria, such as the blocking of assistance (except for humanitarian, trade-related and certain development-related purposes) and vetos against funding from international financial institutions. But the TIP report does not mention the need to support countries, especially countries of origin, that cannot offer long term re-integration support for returning victims and long term prevention programmes aimed at high risk groups and the eradication of the root causes of trafficking. While the UN Palermo Trafficking Protocol states that “States Parties (sic) shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity,” this is not reflected in the SAP agreements.

Thus, human rights organisations have been advocating for a human rights approach. But the EU and the US, and institutions implementing the policies of major donors, have given priority to measures focused primarily on state security of countries of destination. In SEE, international donors have stopped funding certain activities, such as the provision of shelters for trafficked persons, arguing that governments of the countries concerned should finance these programs themselves. Using the same argument, international donors are also reluctant to support reintegration programmes.

## **6. Cooperation and the Lack of a Human Rights Approach<sup>29</sup>**

To illustrate the contradictions inherent in anti-trafficking cooperation, it is worth examining two aspects of cooperation: cooperation between law enforcement agencies and human rights organisations and their approaches with regard to victim identification and reflection periods; and international cooperation in the area of return and re-integration of victims, intended to prevent re-trafficking.

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<sup>29</sup> The criticisms in the following section apply specifically to SEE and are drawn from extensive regional fieldwork. They also apply, however, in many cases outside the region.

### 6.1 Cooperation between law enforcement agencies and human rights organisations

After signing and ratifying the Palermo Trafficking Protocol, the governments of South Eastern European countries were strongly committed to anti-trafficking. As a result, national coordination structures were created. Anti-trafficking efforts reflected international law, especially the *UN Convention against Transnational Organized Crime*, and were co-ordinated by the Stability Pact Trafficking Task Force. By 2005, SEE had the best regional anti-trafficking system in Europe and Central Asia.<sup>30</sup> The system, that the states opted to follow as it did not have a formal mandate to coordinate national efforts, is based on the Regional Plan of Action developed by the SPTF in 2001 in cooperation with OHCHR, OSCE and UNICEF. Several steps were taken:

- National Co-ordinators were appointed in all SEE countries
- National Committees and thematic working groups were established
- National Plans of Action were developed (with the exception of Kosovo)
- There was close co-operation between domestic anti-trafficking actors and international organisations
- There was good regional co-operation and sufficient political will to continue the process after the waning-out of the SPTF in 2004

However, the creation of this cooperation system has not always translated into effective anti-trafficking measures. Programmes developed as part of National Action Plans have not been fully implemented, and cooperation among governmental agencies, as well as between governments and non-governmental partners, has often been insufficient. Moreover, programmes implemented by international agencies have at times been inadequately co-ordinated with local partners and not fostered local ownership. SEE governments have recognised their responsibility, reformed legal frameworks, and established anti-trafficking structures. But implementation has proven more difficult than expected.

One main problem is victim protection.<sup>31</sup> Special anti-trafficking police units have been created, police trained, and guidelines and law enforcement

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<sup>30</sup> This part of the article is based on: Limanowska, *Trafficking in Human Beings in Southeastern Europe*.

<sup>31</sup> According to the OHCHR Principles and Guidelines and the SPTTF regional documents approved by the states of the SEE, all victims should have the right to be identified as such and offered assistance. They also should have the right to a reflection period in a safe shelter to decide whether they want to claim the status of victim of trafficking and/or testify against traffickers.

cooperation with NGOs developed. Yet, police, when faced with potential cases of trafficking, are often still unable to identify victims, leading to arbitrary decisions. Usually, presumed victims are perceived as guilty of prostitution or illegal migration, rather than victims of crime, especially when they refuse to cooperate with the police and give statements as evidence. Police decisions are based not so much on an assessment of the person's situation, but on the person's usefulness as a prosecution witness. In most cases, victims not having been identified as such, have been put into detention centres and deported as illegal migrants, without being given a reflection period.

In many cases where victims have been seen as useful to a prosecution, they were interviewed and placed in a shelter, again without being granted a reflection period. In such cases, placement in a shelter is offered as an alternative to deportation. It is thus not a voluntary option; instead, it resembles a form of detention, less harsh than imprisonment, but a deprivation of liberty all the same. Unsurprisingly, shelter staff are perceived as an extension of law enforcement, rather than as being responsible for the wellbeing and protection of the rights of their clients. Shelter staff are also not allowed to decide, in case of foreign victims, whether the assisted person needs more long-term assistance. Given these circumstances, many presumed victims are not willing to share their stories or testify against traffickers. Police therefore does not see them as victims, leading to their deportation.<sup>32</sup> Hence, in reality, law enforcement agencies deal with victims from the narrow perspective of criminal investigations. At the same time, governmental institutions focusing on law enforcement (such as Ministries of Interior) are responsible for coordinating anti-trafficking responses. They therefore establish rules of cooperation for NGOs. These rules reflect state security concerns and often force shelters to breach human rights standards. For example, Ministries of Interior and NGOs have signed agreements. As the police are usually the institution referring victims of trafficking to NGOs, they receive a list of NGOs they are supposed to cooperate with. By bringing trafficked persons to a shelter they are in the position to enable the chosen NGO to implement their activities, prove their effectiveness and justify the need for donors support. Police benefit from this arrangement as well, as NGOs return the "favour" and assist police in obtaining evidence and statements from victims. Usually both sides are unaware that these practices are equivalent to a (continuing) violation human rights.

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<sup>32</sup> See: Barbara Limanowska, "Bosnia and Herzegovina," in *Collateral Damage*, ed. Mike Dottridge (Bangkok: GAATW, 2007).

From the perspective of the victim, the option to remain in the country of destination (with the exception of Italy) is almost non-existent. Being identified as a victim can therefore be worse than being simply deported, as it may mean a prolonged stay in a shelter, police interviews, and being labelled a prostitute after return to the home country. These are not good incentives to participate in assistance projects. From the perspective of law enforcement, the prosecution of traffickers relies heavily on evidence from victims. Lack of such evidence is therefore problematic. For human rights NGOs, the inability to fulfil their mandate and protect their clients constitutes failure as well. This “identification dilemma” inherent in the anti-trafficking model—who should identify victims, what should be the criteria for their identification, and how can NGOs be included in this process—is still, after many years of discussions, very visible on the ground and is an obstacle to effective inter-agency cooperation.

The practical applicability of another element of the protection system—reflection periods—raises concerns as well. It is difficult for victims to benefit from this instrument as long as granting agencies (usually migration or foreigner departments and Ministries of Interior) are not convinced of its usefulness. The question is how to ensure both effective prosecution and victim protection.

There is also no system for conducting risk assessments for repatriated victims, nor for ensuring the protection of victims’ rights in their countries of origin. OSCE member states in 2006 committed themselves to “conduct risk assessments to ensure that return of victims is done with due regard for their safety.”<sup>33</sup> This places the responsibility to provide victims with adequate assistance on both parties, not only countries of origin but also countries repatriating/deporting trafficked person. But this commitment has still not been translated in practice.

There are doubts as to whether the anti-trafficking cooperation model can work as long as victims are not identified and protected. These shortcomings have been discussed for several years now, yet without having been resolved in practice. They show that the model approach to combating trafficking has not been able to resolve the conflict between protecting victims’ rights and the preferences of migration and law enforcement agencies resenting interference from outside. The model as a whole is therefore questionable.

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<sup>33</sup> OSCE, *Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, Through a Comprehensive and Proactive Approach*, MC.DEC/14/06, (Vienna: OSCE, 2006), [http://www.osce.org/documents/mcs/2006/12/22551\\_en.pdf](http://www.osce.org/documents/mcs/2006/12/22551_en.pdf) (accessed June 2, 2009).

Involving the governments of the countries that had trafficking problems and building cooperation structures supported by international agencies originally aimed at shifting responsibility for anti-trafficking work and for victim assistance from NGOs and foreign donors to governments. Ratification of the Protocol started this process. Unfortunately, many governments saw taking responsibility as equivalent to exercising control over the activities of human rights NGOs working with and for victims. At the same time, governments focused on transnational organised crime and irregular migration, which led Ministries of Interior or their equivalents, and law enforcement agencies, to dominate anti-trafficking efforts.

As the international community initiated and supported cooperation and coordination efforts, it quickly became apparent that systems such as National Coordinators and National Plans of Action lacked effectiveness. National Plans of Action were mostly compilations of various activities, usually financed and conducted by IOs and NGOs (including awareness raising campaigns and training activities), instead of systematic, sustainable plans endowed with sufficient financial and personnel investment from governments. OSCE-sponsored National Referral Mechanisms—systems of cooperation and coordination of anti-trafficking institutions—were never fully understood and implemented, even in Serbia, where NRMs were first developed.<sup>34</sup> In many countries, a lack of understanding of NRMs, and anti-trafficking more generally, has led to the creation of ‘coordination bodies’. Governmental institutions represented in these bodies have dominated policy-making and implementation, with no transparency and evaluation of results. As a consequence, no (or only very few) victims were identified. Moreover, as NGOs created parallel systems (for shelters, for example), there has been a lack of coordination between governments and NGOs.

Local NGOs were given an inferior role. Even when NGOs were included in coordinating bodies (such as National anti-trafficking Commissions in SEE), they were often excluded from the decision making process, and their opinions and expertise were not taken into account. In the area of victim assistance, well-established, experienced NGOs promoting the rights of victims were replaced by new organisations willing to accept the conditions of governments and international organisations. In some cases, governments were also establishing their own assistance services based on the old structures of social

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<sup>34</sup> See: OSCE/ODHIR, *National Referral Mechanism: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook* (Warsaw: OSCE/ODHIR, 2004), [http://www.osce.org/publications/odihir/2004/05/12351\\_131\\_en.pdf](http://www.osce.org/publications/odihir/2004/05/12351_131_en.pdf) (accessed May 22, 2009).



welfare systems, replacing existing shelters with new ones or establishing their own NGOs to better control the process and the funds.

It must be remembered that there is competition between NGOs and governments for foreign funds allocated to anti-trafficking. Governments do not trust NGOs who rely on foreign donations, accusing them of exaggerating problems to obtain funding. Mistrust is also caused by different priorities and working methods. Furthermore, there are accusations on both sides about inaccuracy and manipulation of estimates of the numbers of people being trafficked. Indeed, governments and NGOs have often presented divergent information on trafficking, especially in relation to the numbers of assisted victims and the scale of the trafficking problem.

Another problem is that just because an anti-trafficking project is run by an NGO, the protection and well being of victims is not automatically given priority. Co-operation agreements between governments (mostly law enforcement agencies), international organisations (in many countries IOM is the agency responsible for assisting governments on migration related issues), and NGOs describe, among other issues, the responsibilities of NGOs. While NGOs are provided with security and funding, agreements restrict NGOs' freedom of manoeuvre and their ability to protect the rights of their clients.

Moreover, in many countries, after governmental anti-trafficking structures had been established, new organisations with little experience in anti-trafficking replaced NGOs with more experience. These new NGOs often do not base their work on human rights principles; they are more like income generating institutions or private contractors ready to implement any project proposed by their government or by international organisations. Also, there is no common understanding or clear vision of the ways in which NGOs should be included in anti-trafficking teams, nor of the ways in which their activities should contribute to the implementation of National Action Plans. This problem results not least from the absence of external or internal evaluation mechanisms for anti-trafficking activities, as well as the absence of a mechanism monitoring adherence to human rights standards, especially with regard to identification, referral, and protection. The presence of willing NGOs and the lack of effective evaluation and monitoring systems indicate that the anti-trafficking cooperation model neglects the effects of cooperation on the people that are to be protected. On the other hand, The Netherlands, Belgium, or Germany show that, in countries with strong human rights based NGOs, mechanisms of protection and monitoring can be part of anti-trafficking cooperation.

## 6.2 International Cooperation

The reintegration of victims of trafficking, in addition to identification and protection, as discussed above, is another indicator that anti-trafficking operations are successful. Return to the country of origin and reintegration are seen as the main options open to victims of trafficking. However, the capacity of countries of origin to socially reintegrate victims is rarely questioned. Under conditions of poverty, unemployment, and a lack of effective social support structures and resources, it is not realistic to expect countries of origin to develop programmes and measures offering returning victims the necessary long-term support. Countries of origin thus depend on international support to build their capacities for creating social inclusion programmes. Sustainable reintegration is necessary. After all, the factors that forced people to take their chances and resort to irregular migration in the first place, and in the process become victims of trafficking, do not disappear after their return but are reinforced by social stigmatisation and other problems.

By 2008, almost all reintegration programmes in the SEE region continued to be small in scale, and the help they offered, while invaluable, was ad hoc and not sustainable. There is considerable need, not only for reintegration, but also, and indeed primarily, for prevention. However, governments of countries of origin have not yet included prevention and reintegration programmes into their National Plans of Action against trafficking in a meaningful way, as well as, more broadly, into poverty reduction and anti-discrimination strategies. Systematic prevention seems to be beyond the financial and technical capacity of SEE governments and implementing agencies.

International cooperation in this field is very weak. International documents on trafficking deal with reintegration in an overly general manner<sup>35</sup> Recommendations for supporting reintegration developed by international organisations reflect the absence of legal opportunities for victims of trafficking to remain in the country of destination, thus stressing repatriation.<sup>36</sup> In most countries of destination, return and reintegration are the only legally available option open to victims of trafficking. The problem is that SEE policymakers and implementing agencies have not yet developed clear standards even an understanding of how to ensure “reintegration” (or in more general terms, social inclusion) of returning victims of trafficking. Indeed,

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<sup>35</sup> See: Limanowska, *Trafficking in Human Beings in South Eastern Europe*, 89–91.

<sup>36</sup> The Trafficking Protocol (Article 8) obliges countries of origin to accept and facilitate the return of trafficked persons with due regard for their safety and without undue or unreasonable delay. And, as mentioned further above, the Trafficking Protocol states that returns shall “preferably be voluntary”.

countries of origin are not obliged to offer the possibility of social inclusion at all.

It seems that the theory and practice of reintegration is still not well understood, in SEE and beyond. There is little information about the meaning of reintegration and the obligations of states to support trafficked persons after their return. In the new millennium, SPTF documents stressed these issues.<sup>37</sup> Combining prevention and reintegration, with a focus on addressing root causes of trafficking, was the model developed and proposed by OHCHR, OSCE and UNICEF, working in SEE under the coordination of the SPTF. The ILO has since proposed a similar approach (with a focus on labour market and the rights of migrant workers and their families).<sup>38</sup> However, there has been no coordinated effort so far to discuss experiences and ways of promoting and implementing reintegration.

The strategies mentioned in the SPTF documents, approved by the countries of the SEE region, are very general,<sup>39</sup> relating less to reintegration and more to general assistance, such as the active prevention of stigmatisation, legal assistance, social, medical and psychological care, shelter, counselling, material assistance, skills training, and job counselling.<sup>40</sup> Only the skills training and job counselling elements indicate that assistance should be long term and lead to the social including of returned trafficked persons. While international documents have not paid much attention to reintegration, agencies on the ground working with returned victims of trafficking recognise the need for reintegration. Assisting agencies have repeatedly drawn attention to the fact that some women are trafficked several times, and that the lack of long term support and options after return make them easy prey for traffickers. Reintegration has started, therefore, to be seen not only as humanitarian help offered on an individual basis, but as necessary for empowering victims to break the trafficking circle.

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<sup>37</sup> Stability Pact for South Eastern Europe, *National Programmes to Combat Trafficking in Human Beings (National Plans of Action) Background Paper* (Vienna: Stability Pact for South Eastern Europe, Task Force on Trafficking in Human Beings, 2001); Angelika Kartusch, *Reference Guide for Anti-Trafficking Legislative Review with Particular Emphasis on South Eastern Europe* (Vienna: Ludwig Boltzmann Institute of Human Rights, September 2001).

<sup>38</sup> ILO, *Human Trafficking and Forced Labour Exploitation: Guidelines for Legislators and Law Enforcement* (Geneva: ILO, 2004).

<sup>39</sup> UNICEF's *guidelines on the Protection of Child Victims of Trafficking* from 2003, were approved and promoted by the SPTF in the SEE region. The Guidelines proposed standards for reintegration of child victims of trafficking.

<sup>40</sup> Cathy Zimmerman, Mazedra Hossain, Kate Yun, Brenda Roche, Linda Morison and Charlotte Watts, *Stolen Smiles: The Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe* (London: WHO and LSHTM, 2006).

But as governments are not obliged by international law to provide them, international organisations and local NGOs provide most reintegration programmes, with only limited support from governments of countries of origin, undermining their effectiveness and sustainability. While they depend on funding from abroad, international actors do not focus on reintegration, despite the significant attention paid to trafficking in the Balkans. In 2001, the SPTF presented to donors programmes proposed by SEE countries. Not even one project on the prevention of trafficking was chosen. Worse, in some cases, funding for anti-trafficking programmes resulted in the shifting of attention and support away from issues of development, equality and human rights to state security and migration. Many anti-trafficking programmes funded not only by governments of destination countries but also by independent foundations and UN agencies did not focus on human rights, development and non-discrimination. Instead, they promoted anti-migration projects that reflected the narrow interests of countries of destination, rather than seek long-term solutions and social change. The main focus was on information campaigns in the countries of origin, warning against irregular/labour migration that could result in trafficking and on “protection” projects in destination countries that aimed at returning foreign sex workers (who often were not identifying themselves as victims of trafficking) to their countries of origin.

By 2008, there still was no structure for coordinating anti-trafficking programmes and needs between SEE countries and international donors, and among donors. Intergovernmental institutions have arranged donor meetings (such as OSCE in Serbia). Although useful, such meetings have not been continued. The role of the SPTF as an intermediary between domestic government institutions and NGOs, on the one hand, and international donors, on the other, was crucial. When the SPTF was closed down in 2004 with the aim of inaugurating the transition of its central anti-trafficking leadership role in the region to the SEE countries themselves and thus providing for national/regional ownership, coordination between and among domestic and international institutions has become even more difficult.

## **Recommendations**

### *Shifting Human Rights to the Centre of Anti-trafficking Efforts*

In the first decade of the new millennium, various institutions began to develop models for human rights-based anti-trafficking strategies. The ratification of the Protocol and, consequently, the criminalisation of trafficking created legal grounds for anti-trafficking efforts. However, anti-trafficking cooperation has

not been a smooth process. Often, there has been a lack of cooperation and networking between governmental agencies and NGOs and among local and international NGOs. Moreover, and related to this point, many victims have not been given protection in the prosecution phase. These problems result not least from the fact that, in practice, cooperation has been determined by the needs of implementing state agencies, respect for human rights in a given country, the strength of NGOs, interpretations, and political will—rather than theoretical frameworks. There are doubts as to whether implementing agencies can properly coordinate their work given that the cooperation model is de facto dominated by state security measures and the interests of countries of destination to reduce migration, rather than human rights concerns. Human rights concerns should therefore be at the centre of all anti-trafficking efforts. Moreover, clear rules of cooperation between NGOs and governmental and intergovernmental organisations, including transparent evaluation and monitoring systems, need to be established.

### *Strengthen Protection*

Anti-trafficking efforts in South Eastern Europe have so far focused on the prosecution of traffickers. Moreover, they have been dominated by law enforcement agencies, with ministries of interior tasked to coordinate efforts and to establish cooperation modalities. This model has often been detrimental to the protection of trafficked persons. In this system, there is no space to effectively coordinate and implement projects focused on protecting victims' rights. Protection should therefore be given greater prominence. Human trafficking must not be seen primarily or exclusively from the perspective of national security nor exclusively in the context of organised crime; and it must not be seen only as a fight against illegal migration. It is essential to raise awareness of the fact that trafficking in human beings is both a security issue and a human rights concern. In fact, security and human rights considerations are often two sides of the same coin. This is the case, for example, with regard to the need to improve protection for victim-witnesses testifying against their traffickers.

### *Pay Special Attention to Migrants*

The criticisms in this chapter are common knowledge among everyone working on trafficking. Recalling them makes it possible to understand that problems with anti-trafficking cooperation are not related only to the complexity and international nature of the crime. First of all they are result of conflicting approaches, agendas and mandates of states and institutions, which focus,

variably, on state security and human rights. The problems discussed in this chapter are also part of a broader debate on labour migration and the protection of migrants' rights. Human rights NGOs have managed to draw attention to victims of trafficking and proposed special protection measures. UN member states accepted that vulnerable groups (especially women and children) exist, and that extreme forms of exploitation should be eradicated and special instruments offered to law enforcement agencies to combat trafficking. But the States which agreed the UN Trafficking Protocol appeared unwilling to afford special protection to victims of trafficking, and to migrants more generally. What is needed is a comprehensive move towards the protection of migrants' rights. For victims of trafficking that means, among other measures, granting them compensation and the right to an extended stay in the country of destination to get access to justice and to safeguard their own security and future.

#### *Strengthen Prevention*

The emphasis on control, deterrence and immediate repatriation of victims of trafficking is often the beginning of a vicious circle which perpetuates human trafficking and plays into the hands of traffickers. Combining prevention and reintegration would encourage more work to be done with potential victims and high risk groups. To achieve this, prevention and social inclusion should be integrated into governmental poverty reduction and anti-discrimination strategies. Potential and actual victims should be included in existing initiatives for disadvantaged groups (scholarships, job placements, social support, vocational training etc.). Special attention should be given to the reintegration of children, preferably through family reunification (when appropriate). Prevention is empowerment, the development of life skills and employment opportunities for high risk groups; it mitigates the root causes of trafficking. Prevention should therefore be the priority for governments, international organisations, and donor agencies.

#### *Support NGOs*

Given the central position of NGOs in effective cooperation models and in protection and prevention, it is crucial to build the capacities of NGOs, especially NGOs working on the local level who put human rights concerns at the centre of their work. It is crucial to create and/or strengthen networks of support services, so that victims can turn to and immediately access a supportive environment that will ensure for them a necessary initial period of recovery, prior to a decision to participate in prosecution efforts or not. Studies

that looked at depression, anxiety and hostility of victims at different times (when victims first entered assistance and support services, two to six weeks later, and three months after) highlight the beneficial effects of post-trafficking assistance and long-term protection provided by NGOs.<sup>41</sup> They also point out that there are no quick fixes, and that long-term psycho-social support is needed. Therefore, states must cooperate closely with NGOs to ensure that (potential) victims are properly treated, as well as identified (identification should not be exclusively carried out by police, but rather jointly done by police and NGOs). This does not mean that all responsibility, including financial, is shifted to NGOs. Governments continue to be responsible for the well-being of victims of trafficking. To sustainably run shelters and hotlines and offer counselling services, NGOs require multi-year funding.

### *More Evaluation*

It is important to assess how actors' anti-trafficking obligations are translated into action and to identify major issues and gaps of implementation on the ground. So far, monitoring and evaluation have been neglected. At best, actors reported on project outputs and outcomes, without independent assessment. What is needed is independent external evaluation based on professional methodologies, informed by trafficking expertise. This requires that monitoring and evaluation are adequately resourced as an integral part of all anti-trafficking projects, as well as better exchange of information among agencies supporting and implementing anti-trafficking programmes. Better data-gathering is needed, too. A growing number of states identify and keep count of victims of trafficking and of traffickers. But data is frequently not disaggregated by sex, age, and year of registration. Even more crucial is to ensure that personal data is protected in the process in accordance with international standards and to process the data and transform information into effective operations and policies. Instituting national rapporteurs or observatories to collect and publish such data is therefore essential.

### *Better Implementation*

Many European countries have created anti-trafficking structures. But full implementation is moving ahead rather slowly for lack of timeframes and because it is unclear who is supposed to do what. And when there are timeframes, compliance lags behind. In addition, an ownership problem is created by the fact that governments of destination countries increasingly

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<sup>41</sup> Ibid.

channel funds earmarked for the implementation of anti-trafficking measures to international organisations. This shifts governmental responsibilities onto international organisations and prevents governments of countries of origin from effectively coordinating national implementation.

#### *Establish and Implement National Plans of Action*

To improve anti-trafficking coordination, all countries should follow the example of South Eastern Europe and create National Action Plans. These long term, comprehensive plans must address all dimensions of human trafficking—trafficking for sexual exploitation, but also trafficking for labour exploitation, domestic servitude, forced marriage, trafficking in organs, etc. In particular, they need to take account of the special assistance and protection needs of child victims of trafficking, as well as of internal trafficking. National Action Plans are valuable since they assign responsibility to, and divide tasks between, governments and NGOs. To be effective, they must include clear timeframes and budgeting as well as monitoring and evaluation mechanisms.

#### *Create National Working Groups*

Multi-disciplinary working groups, headed by national coordinators acting on the basis of national action plans, have proven important for coordinating anti-trafficking at the national level. However, they need the right size to be effective. They must not be too large. But they should be more than small inter-ministerial groups unwilling to integrate input from NGOs and international organisations. Further, working group members need training in coordinating, planning, streamlining and implementing anti-trafficking measures.

#### *Establish and Strengthen National Coordinators*

A further measure that helps improve anti-trafficking action and coordination is institutionalising National Coordinators. These would head anti-trafficking working groups and ensure coordinated interaction between different governments, international organisations, and NGOs, both domestically and internationally. Several countries have institutionalised this role. However, National Coordinators have only been partly successful. One important reason is that National Coordinators holding high-ranking positions within governments, due to their position, could promote national strategies and effectively coordinate anti-trafficking efforts. However, their workload means that they often cannot spend much time on anti-trafficking. Those in subordinate positions, on the other hand, not having much say over policy-



making, cannot streamline efforts. To alleviate this problem, national coordinators need access to governmental resources and should be working full-time on anti-trafficking.

### *Improve Domestic and International Cooperation*

Improving anti-trafficking efforts requires improved cooperation on various fronts. First, better cross-border cooperation is needed, given the often transnational nature of trafficking. Such cooperation should not aim at deterrence at the border. The over-emphasis by governments on the act of illegal border-crossing fails to address the multifaceted nature of trafficking in a meaningful and effective way. Second, as mentioned above, law enforcement agencies, other parts of governments and NGOs need to closely cooperate and better coordinate their activities. It is impractical and unacceptable to disaggregate the notion of law enforcement from assisting and protecting the victims of this crime. Third, cooperation between police and prosecutors often leaves much to be desired. The implementation of comprehensive referral mechanisms should therefore be accelerated.<sup>42</sup> National as well as Transnational Referral Mechanisms, which have built-in mechanisms protecting rights of the trafficked persons, including risk assessments for returning trafficked persons and a system of data protection based on international standards, are important (see the chapter on Transnational Referral Mechanisms in this book).

### *Train Law Enforcement Agencies*

Law enforcement officers need continuous training to better identify and properly refer trafficking victims. Moreover, they need to be informed about how to cooperate with NGOs working on victim protection and prevention. Anti-trafficking training should become part of the regular training curricula for law enforcement officers, as well as prosecutors and judges.

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<sup>42</sup> The European Commission (EC) issued *Recommendations on the Identification and National Referral of Victims of Trafficking to Services* on October 18, 2007, the first EU Anti-Trafficking Day. These recommendations, based on the OSCE/ODIHR handbook on NRMs, have a new quality in that they systematically describe the sequence of actions and measures required, from the very start of the identification process via the coordination of all relevant stakeholders (with a view to responding in an integrated and strategic manner), to good judicial practice, fully protecting victims' human rights throughout the entire process.

### *Take a Holistic View of Trafficking*

The criteria of success in fighting human trafficking can never be reduced to one single field of action. It is also important to address all forms of human trafficking. So far, the focus has been predominantly on sex trafficking, while hardly any attempts have been made to detect and properly prosecute bonded labour and trafficking for non-sexual purposes such as labour exploitation, domestic servitude, and begging.

### *Muster Political Will*

Whether the steps suggested above will be taken depends, primarily, on political will to put theory into practice. Political will means more than political leaders labelling trafficking a priority. It is more than government officials gathering periodically in inter-ministerial meetings. Political will is about proactive leadership on the issue. It means regular and consistent efforts towards better results; the review of policies and their adaptation as circumstances change and as new knowledge becomes available; the determination to bring about change; and searching for new knowledge on the scope and nature of trafficking. A truly comprehensive and multi-pronged approach is needed, bringing together those who work in poverty reduction, development, education, in employment sectors, in human rights and labour rights protection as well as those who address issues of corruption, organised crime, migration and legal reform—and last, but not least, politicians who care.

## CHAPTER 12

# Improving International Counter-Trafficking Cooperation: Transnational Referral Mechanisms

Mariyana Radeva, Elisa Trossero, Martijn Pluim (ICMPD)

### Introduction

Human trafficking is a two-fold security risk: Often linked to transnational organised crime, it constitutes a risk to states, particularly through money laundering, corruption, and illegal migration. The complex nexus between trafficking and these issues is outlined in other chapters of this book.<sup>1</sup> Trafficking also undermines human security, with trafficked persons being both psychologically and physically abused. The 2004 Report of the EU Experts Group on Trafficking in Human Beings emphasises:<sup>2</sup>

In the context of a human rights-based approach, human security is of central importance. Trafficking in human beings is related to human security in a number of ways ... Violations of individual security and the lack of economic development belong to the root causes of human trafficking. Security policy in its traditional perception articulates the protection of national state borders by military and diplomatic strategies ... The Group wants to highlight a concept of security and policies to go with it that address the need for personal security and economic development that has an influence on individual prosperity, thus concentrating on people and not only on states.<sup>3</sup>

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<sup>1</sup> See, for example, the chapter of John Picarelli on organised crime and that of Leslie Holmes on corruption.

<sup>2</sup> The Experts Group was set up in 2003 to advise the European Commission on initiatives to combat trafficking.

<sup>3</sup> EU Experts Group, *Report of the Experts Group on Trafficking in Human Beings* (Brussels: European Commission, December 2004), 86.

To fight trafficking, various stakeholders must cooperate. Bringing all relevant actors together can be challenging. An institutionalised mechanism for the referral of victims that brings together a broad range of actors is much needed. This is all the more true in case of a transnational referral mechanism (TRM)—relevant to trafficking crimes committed in more than one country. The goal of a TRM is to facilitate cross-border cooperation related to the referral of victims, thus ensuring that trafficked persons are effectively assisted by the relevant actors in different countries and that their respective needs and rights are guaranteed. A TRM is thus a response to complex transnational security risks, linking governmental and non-governmental actors across borders in a joint effort to protect victims and prosecute traffickers. It must be noted that a TRM aims to be a comprehensive tool, addressing all forms of trafficking. This chapter outlines the structure and implementation of a TRM.

### **1. Structure of the Transnational Referral Mechanism**

A TRM refers to mechanisms and the associated procedures designed for the comprehensive assistance and transnational support of trafficked persons.<sup>4</sup> The TRM integrates the process of referral from initial identification through return and assistance between countries of transit, destination and origin. This involves cooperation between different government institutions and non-governmental actors. The TRM encompasses five standard operating procedures (SOPs) which reflect the main phases of the transnational referral process:

SOP 1: Identification

SOP 2: Crisis Intervention/First Assistance

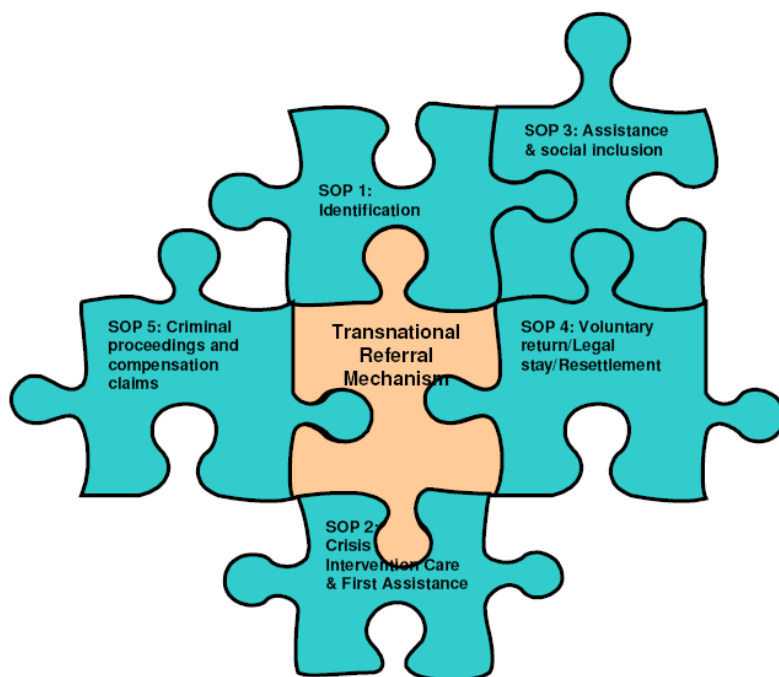
SOP 3: Assistance and social inclusion

SOP 4: Voluntary return, legal stay and/or resettlement

SOP 5: Criminal proceedings and compensation claims

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<sup>4</sup> ICMPD, *Transnational Referral Mechanism for Victims of Trafficking (TRM): Guidelines—Draft* (Vienna: ICMPD, June 2008).



Source: ICMPD, *Transnational Referral Mechanism for Victims of Trafficking*.

These SOPs are included in one “manual”: the TRM Guidelines. Each SOP includes several measures that answer four questions: WHAT is to be done; WHEN is action to be taken; WHO should be involved; and HOW should the action be executed. Accordingly, every action includes a step-by-step implementation guide. The TRM is a flexible tool that builds upon existing structures and procedures at the national, bilateral and multilateral level. Its structure is not prescriptive: actors are not obliged to implement the procedures sequentially. Instead, they can select those measures that would contribute most to the effective handling of a particular case. In short, the TRM, in practice, functions as an à-la-carte menu: the usage is left up to practitioners.

Yet, it should be understood that a TRM does not offer a comprehensive one-size-fits-all solution to the issue of trafficking. Moreover, the creation of such a mechanism is not a onetime activity; rather, it has to be regarded as a continuous process on which all involved actors continue to work in coordination with their international counterparts.

In order for authorities to address trafficking as a risk to the state and to the individual, a holistic and integrated approach is needed, as highlighted in the Report of the Experts Group on Trafficking in Human Beings. The key elements of this approach are “multidisciplinary cooperation and coordination between all involved actors and stakeholders, including civil society and labour organisations.”<sup>5</sup> There is a shift away from emphasising the role of “power ministries” (such as interior and defence) with more consideration being given to the role of “soft ministries” (such as social protection, labour, health, or family). Furthermore, non-governmental organisations (NGOs) also contribute to the sustainability of the TRM. As the Experts Group report argues: “The role of civil society actors, in particular independent NGOs, should be more extensively recognised ... also because of their critical role in maintaining and strengthening democratic process and in monitoring and advocating implementation of human rights commitments by states.”<sup>6</sup>

The efficacy of the TRM is a product of the commitment of the relevant actors to use it to its full potential. The TRM is meant to be used across the entire national range of anti-trafficking actors. It assumes involvement from police officers, border guards, judges and prosecutors, as well as NGOs, embassy officials, representatives from social and labour ministries, specialists dealing with minors and national anti-trafficking coordinators.

As the national anti-trafficking bodies are structured differently in every country where they exist, the exact composition of actors involved would naturally vary from country to country. It is, however, important that as many relevant actors apply and participate in the TRM in order to ensure a more efficient response. The TRM guidelines also include the contact details of relevant actors in participating countries, listed so as to correspond to the five SOPs.

## 2. Emergence of the TRM

The TRM was conceived and first implemented on a large scale in ten countries of South-Eastern Europe (SEE),<sup>7</sup> following a June 2006 initiative from USAID and the International Centre for Migration Policy Development

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<sup>5</sup> EU Experts Group, *Report of the Experts Group*, 18.

<sup>6</sup> EU Experts Group, *Report of the Experts Group*, 18.

<sup>7</sup> ICMPD, “The Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe (June 2006–June 2009),” ICMPD, [www.icmpd.org/725.html?&no\\_cache=1&tx\\_icmpd\\_pi1\[article\]=472&tx\\_icmpd\\_pi1\[page\]=476](http://www.icmpd.org/725.html?&no_cache=1&tx_icmpd_pi1[article]=472&tx_icmpd_pi1[page]=476) (accessed May 27, 2009).

(ICMPD). SEE is seen as a pilot region for the implementation of a TRM.<sup>8</sup> It is a region that has seen much hardship, value change, redrawing of borders and economic disparity. Transnational cooperation is therefore not necessarily a pre-existing condition in the region. In addition, several of the countries shared comparable political systems in the past, and thus a similar institutional heritage and similar institutional challenges. Additionally, two of the current TRM countries, Bulgaria and Romania, are already European Union (EU) member states, and most of the others are aiming at full membership. Accordingly, their legislation and approaches to organised crime share some characteristics with those of EU countries.

Since 2008, four more EU Member States have begun to participate in the development of a TRM process via the so-called TRM EU project.<sup>9</sup> Thus, by mid-2009, fourteen countries participated in the TRM process. This number is not significant against the backdrop of the number of countries attempting to fight the phenomenon of trafficking in human beings. However, it would not be feasible to implement such a mechanism for the first time across a larger number of countries, given the institutional, organisational and legislative differences between any two countries in this regard.

The TRM in SEE particularly addresses the needs of adult victims of trafficking. In partnership with UNICEF, specific measures for the referral of child victims were included later in the process. Despite the increased international awareness of trafficking in minors, this area remains to be expanded into a more comprehensive version of the TRM.

The fight against trafficking has been a recurring priority for SEE states for a number of years. An initiative started by the Stability Pact for South Eastern Europe, the Task Force on Trafficking in Human Beings (SPTF), managed to elevate the issue on the policy ladder. Most countries involved have made remarkable progress in terms of developing legislation, capacity building and training. Yet, when the TRM was conceived in 2006, the referral of victims of trafficking across borders was dealt with mainly on an ad-hoc basis and relied upon personal contacts between officials. Efficient and comprehensive SOPs were largely absent, creating serious gaps in protection and assistance and also

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<sup>8</sup> Initiatives similar to the TRM may exist outside Europe. The team working on the TRM has not, at this stage, researched any parallels between the TRM and similar programmes.

<sup>9</sup> For more information on the TRM-EU project, see ICMPD, "Development of a Transnational Referral Mechanism for Victims of Trafficking Between Countries of Origin and Destination (TRM – EU)," ICMPD, [www.icmpd.org/861.html?&no\\_cache=1&tx\\_icmpd\\_pi1\[article\]=1356&tx\\_icmpd\\_pi1\[page\]=1358](http://www.icmpd.org/861.html?&no_cache=1&tx_icmpd_pi1[article]=1356&tx_icmpd_pi1[page]=1358) (accessed May 27, 2009).

undermined the sustainability of the system. This underscored the pertinence of a system which allows individuals in one country to be referred for assistance and protection to another, i.e., a Transnational Referral Mechanism. These gaps became particularly evident when partner institutions from two or more countries came together to discuss how to resolve a particular case. Study visits, taking place in the framework of the TRM, brought officials together. Below is an excerpt from the study visit report of the Macedonian delegation to France.

**Box 1**

A Macedonian minor victim was promised that she would marry a man in France. However, instead she was trafficked through and exploited in Serbia and Italy. Finally she was taken to France where she was handed over to the family of the man she was supposed to marry. She was trafficked for sexual and labour exploitation and also forced to perform criminal acts. Her exploitation in France lasted for about nine months. The victim managed to call her parents in Macedonia, who informed the Macedonian police and gave them the telephone number from which their daughter had called. The Macedonian authorities made contact with the French authorities through INTERPOL. The French authorities found the location where the victim was being held (via the telephone number), then moved her to a shelter for vulnerable children. Finally, she went back to Macedonia by plane.

However, the French police had not identified the minor as a victim of human trafficking, and therefore not provided her with sufficient assistance. The shelter was not appropriately secured and its location was public information. Hence, the traffickers were waiting for her while she was in the shelter. When she returned to Macedonia, the Macedonian police took her statement and identified her as a victim of trafficking. The Macedonian police, again with the assistance of INTERPOL, made contact with the French authorities and began an investigation of the traffickers in Macedonia. The French authorities were reluctant to become involved in the case since she had not been identified in France as a victim of trafficking. During the study visit it was noted that the French authorities might reopen the case in order to investigate the perpetrators. The Macedonian officials agreed to provide their French counterparts with the relevant information.<sup>10</sup>

By mid-June 2009, representatives of the countries involved in the TRM agreed that they had begun to “speak a common language” of transnational cooperation in anti-trafficking.<sup>11</sup> The SOPs had been adhered to, and the list of contacts from the TRM had been turned into a tool, used in the daily work of

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<sup>10</sup> Internal Study Visit report

<sup>11</sup> ICMPD, “Conclusions of the Final Regional TRM Seminar” (seminar conclusions, Ohrid, 2–3 June 2009).



practitioners. According to the practitioners involved, cooperation has become more institutionalised, less problematic and more practical.

### **3. From National Referral Mechanisms (NRMs) to the TRM**

The TRM does not replace any existing national anti-trafficking structures; it is meant to build upon NRMs, where they exist, and take them a step further to a transnational level. An NRM is a cooperative framework established at the national level (for example, involving some statutory organisations and civil society) that delineates referral strategies to support and protect victims of trafficking.<sup>12</sup> The TRM and the NRM involve the same actors and are based on the same human rights principles.

Accordingly, the TRM should be closely coordinated with a country's NRM. Indeed, one of the main preconditions for successful transnational cooperation is an established national response. In this sense, the existence of NRM structures in most of the SEE countries serves as a stepping stone for transnational efforts. This interconnectedness may create challenges: while most SEE countries tend to have NRMs, this is not the case for Western Europe. Yet, an NRM and a TRM for one country could also be developed in parallel, as has been the case for some TRM SEE countries (e.g. Bulgaria, Kosovo,<sup>13</sup> and Romania).

A TRM adds an entirely new level of complexity to victim referral, when compared to the NRM. On the national level, the actors involved in the NRM are based in the same country, speak the same language, are bound by the same overarching interest to protect their own citizens and, in a very general sense, are subjected to one authority (the government of that country). On the transnational level, different interests, priorities, languages, criminal codes and criminal procedures can hinder cooperation. An additional difficulty is the language of communication—often officials from various countries relevant to one case of transnational trafficking are not able to speak the same language. Furthermore, some countries have an obligation to communicate through their Ministries of Foreign Affairs in all matters that involve international partners.

International institutions can promote international cooperation. The role of international organisations in the framework of the TRM is of a technical,

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<sup>12</sup> OSCE/ODIHR, *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook* (Warsaw: OSCE/ODIHR 2004), 15.

<sup>13</sup> Under UNSCR 1244

facilitating nature—providing transnational contacts if these are required, as well as contributing expertise and resources. The rest is done by national actors at an international level, to ensure national ownership, one of the underlying principles of the TRM.

A TRM caters to the specific needs of each country that applies it. In SEE, the TRM already reflects the national legislation, anti-trafficking structures and national priorities.<sup>14</sup> This national adaptation inevitably creates discrepancies between the different versions of the TRM. In practice, this means that while the SOPs remain the same, the answers to the questions Who, When, What and How may differ. For example, while the Ministry of Interior of Croatia is the sole body that can carry out official identification, in Serbia the identification interview is led by the Coordination and Protection Agency for Victims of Trafficking. Yet these discrepancies do not override the principle of international cooperation.

National responses to trafficking may vary since states use different definitions and tools, task institutions with different mandates, and face different patterns of trafficking. Within the context of the European Union, entities such as the EC Group of Experts on Trafficking in Human Beings, and documents such as the EU Action Plan<sup>15</sup> and various Council Directives, have reduced these differences to some extent. It is also noteworthy that it was among the priorities of the Czech Presidency of the European Union (1 January–30 June 2009) to draft a new Council Framework decision on combating trafficking in human beings. On a practical level, meetings between SEE countries and their EU counterparts facilitate the recognition of differences and stimulate efforts for overcoming them (although, in 2009, these meetings did not include all twenty-seven EU member states). The TRM study visits are an important step in this regard. The EU and its member states, however, must still match rhetoric and action. As the EU Commission reported in fall 2008:

All stakeholders involved in the implementation of the EU Action Plan have taken action and achieved some results. However, some measures have not yet been implemented. Moreover, it is still difficult to assess the real impact of actions that have been implemented on the actual development of anti-trafficking policy. Although the Commission and

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<sup>14</sup> The ten SEE countries involved in the TRM SEE have, between June and November 2007, adapted the general TRM guidelines to their national anti-trafficking legislation. Thus, each country has a national version, yet with the same structure and the same general principles.

<sup>15</sup> EU Council, *EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings* (OJ 2005/C 311/1 (Brussels: EU Council, December 12, 2005)

the Council have been particularly active in the field of victim assistance and protection, the factual situation shows substantial weaknesses.<sup>16</sup>

By creating a transnational network composed of institutions that also participate in the NRMs, the TRM contributes to a more comprehensive implementation of counter-trafficking strategies.

#### 4. The TRM in Practice

Since the late 1990s, numerous EU documents have listed organised crime as one of the key threats to the security of EU member states, and emphasised the need to adopt a comprehensive approach against organised crime and other non-traditional security problems. The EU is ideally equipped to address problems through social, developmental and economic measures. However, it has proven difficult to address both states' perceived security needs and the human security of citizens and migrants, especially where transnational cooperation is needed. Numerous counter-trafficking provisions exist, but they need to be translated into practice. The TRM addresses this gap—it extends the practical how-when-who-what answers also to the international realm.

One important European instrument is the Council of Europe (CoE) Convention. It was adopted on May 16, 2005, and entered into force on February 1, 2008. By late 2008, the convention was signed by forty states and ratified by nineteen of them.<sup>17</sup> Chapter VI—International cooperation and cooperation with civil society—relates directly to the TRM. Below are a few (non-exhaustive) examples of the relationship between general provisions of the Convention and their translation into action in the TRM guidelines.

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<sup>16</sup> Commission of the European Communities, *Commission Working Document: Evaluation and Monitoring of the Implementation of the EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings*, COM 2008 657 Final (Brussels: EU Commission, October 17, 2008).

<sup>17</sup> Council of Europe, "Status of Signature and Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings," [www.coe.int/t/DG2/TRAFFICKING/campaign/Flags-sos\\_en.asp](http://www.coe.int/t/DG2/TRAFFICKING/campaign/Flags-sos_en.asp) (accessed December 8, 2008).

Council of Europe Convention	TRM Guidelines
<p><b>Article 10—Identification of victims</b></p> <p>Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims.</p>	<p><i>SOP Identification. Measure 1: Initial Referral</i></p> <p>WHAT: The referral of a person assumed to be a victim of trafficking to the institution that acts as a central point of information, referral and initial support for presumed victims and that should nominate the case manager.</p> <p>WHEN: After the person is identified as a presumed victim of trafficking.</p> <p>WHO: The body that is the first point of notification of suspected cases of trafficking. Depending on the country, this could be the national coordinating institution, police or service providers.</p> <p>HOW: Suspicions of trafficking should be reported to the first point of notification, which should be known to all institutions that might get in contact with trafficked persons.</p>
<p><b>Article 33—Measures relating to endangered or missing persons</b></p> <p>1. When a Party, on the basis of the information at its disposal has reasonable grounds to believe that the life, the freedom or the physical integrity of a person referred to in Article 28, paragraph 1, is in immediate danger on the territory of another Party, the Party that has the information shall, in such a case of emergency, transmit it without delay to the latter so as to take the appropriate protection measures.</p> <p>2. The Parties to this Convention may consider reinforcing their co-operation in the search for missing people, especially missing children, if the information available leads them to believe that she/he is a victim of trafficking. To this end, the Parties may conclude bilateral or multilateral treaties with each other.</p>	<p><i>Measure 4: Family Tracing</i></p> <p>WHAT: If the victim expresses the wish to return home and stay with her/his family, the family may have to be traced (this procedure does not apply when victims seek asylum).</p> <p>WHEN: Simultaneously with the security assessments.</p> <p>WHO: The case manager from the country of origin or a focal point from the institution responsible for repatriation, in close cooperation with NGOs if the victim is not returned by an NGO.</p> <p>HOW: Via NGO/IO networks or national authorities.</p>

In addition, the TRM offers a new approach to the existing legal framework governing relations between victims, perpetrators, and the location of a crime. Individual trafficking operations are often conducted in multiple countries, involve nationals of yet other countries, and are subject to the jurisdiction of a

third set of countries. Functioning systems for exchange of information across borders, for mutual legal assistance, and for expedient and secure transportation are preconditions, but also accompanying elements of a functional TRM. International cooperation is addressed throughout the TRM guidelines:<sup>18</sup> countries of origin, destination and transit might have to contact each other to establish or confirm the identity of the victim, or gather further evidence, as the example below illustrates.

<b>Box 2</b>
A Macedonian victim of trafficking, identified in Croatia, was returned to Skopje. The Macedonian and Croatian authorities discussed the status of the trafficked person, the way the person had been exploited, and the identity of the trafficker. With the help of the TRM Guidelines, the authorities were able to contact their most relevant counterpart in the process. The most challenging question pertained to the physical return of the trafficked person. Discrepancies in the standards for safe return made the process cumbersome, thus pointing to the need for unified procedures. The relevant actors on both sides admitted that following the TRM guidelines would have facilitated the process.

The TRM is being implemented at a time when the EU is attempting to lay the foundations for a common migration and asylum policy. The difference between the TRM and a common policy is that the TRM does not require the harmonisation of legal systems and institutional structures. A flexible tool for the coordination of anti-trafficking efforts by practitioners, it can accommodate the particularities of each country in which it is implemented. This flexibility constitutes the TRM’s greatest advantage—the mechanism provides specific answers, but is broad enough to accommodate differing legal systems and national anti-trafficking structures.

Part of the difficulty in implementing a TRM is that some national officials are reluctant to put into practice non-binding guidelines, so long as the officials’ respective governments have not officially endorsed the guidelines. The adoption of the TRM as a part of national anti-trafficking strategies thus commits national actors to implementing the TRM. In this respect, Macedonia and Bosnia-Herzegovina provide examples of good practices. In Macedonia, the TRM guidelines have been adopted by the Council of Ministers.<sup>19</sup> In

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<sup>18</sup> ICMPD, *Transnational Referral Mechanism*, 31.

<sup>19</sup> Government of the Republic of Macedonia, National Commission for Combating Trafficking in Human Beings and Illegal Migration, *Standard Operating Procedures For Treatment Of Victims Of Trafficking In Human Beings* (Skopje: Government of Macedonia, 2008).

Bosnia-Herzegovina and also in Kosovo,<sup>20</sup> the TRM has been incorporated into the National Anti-Trafficking Action Plan for 2008–2009.

The TRM is an essential part of a national anti-trafficking strategy. It complements, and may even substitute existing manuals, regulations, guidelines and procedures, in order to streamline the referral process. More generally, the TRM is part of multi-level counter-trafficking security governance.<sup>21</sup> Such a system forges—at times unlikely—alliances between various actors by creating an institutional framework linking various actors and institutions. The TRM seeks to create a stable trans-border network that covers all aspects of the trafficking process, from identifying and assisting victims to prosecuting criminals. Counter-trafficking policies must be multifaceted, integrating law enforcement and criminal justice responses with migration, labour, human rights, and social policies. By bringing together the various institutions specialising in different elements of counter-trafficking, the TRM facilitates communication across national and institutional boundaries.

## 5. TRM and Trust

Fighting trafficking raises the issue of accountability. Both the increased degree of complexity at the transnational level and the involvement of multiple actors decrease accountability. National institutions such as parliaments provide accountability at the national level but do not exist or do not have the same robust mandates at the international level. This is why promoting trust is crucial. Confidence-building measures during the Cold War provide valuable lessons. While such measures pertained to military security, their underlying premise – that cooperation depends on partners’ trusting one another – can be applied to other spheres as well.<sup>22</sup>

The TRM *relies* on trust: After all, participating individuals and institutions entrust foreign counterparts with the well-being, or even the life, of a victim of trafficking. At the same time, the TRM *promotes* trust. Serving as a confidence-building measure among anti-trafficking actors, the mechanism

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<sup>20</sup> Under UNSCR 1244.

<sup>21</sup> On this concept and an application to counter-trafficking, see Cornelius Friesendorf, “Pathologies of Security Governance: Efforts Against Human Trafficking in Europe,” *Security Dialogue* 38, no.3 (2007): 379–402.

<sup>22</sup> For a discussion of confidence-building measures and an application to the non-military sphere, see Heiner Hänggi, “Good Governance Of The Security Sector: Its Relevance For Confidence-Building” (Paper presented at the Seminar on “Practical Confidence-Building Measures: Does Good Governance of the Security Sector Matter?”, New York, October 16, 2002).

facilitates communication: it provides a contact list of the most relevant actors and defines communication lines. The contact list mirrors the structure of the TRM guidelines and enumerates the institutions, departments and in many cases the individuals responsible for each particular SOP in the TRM countries.<sup>23</sup> This list, when updated regularly and distributed to all relevant anti-trafficking actors, has the potential to counteract staff turnover and thereby make the referral process more efficient.

**Box 3**

In order to prepare national actors to use the TRM guidelines, training was organised between February and May of 2008. Overall, 750 practitioners took part in thirty training events in Southeastern Europe. The events focused on the practical implementation of TRM guidelines, with participants working on real or simulated cases. Members of the National Multidisciplinary Implementation Team from each country (representing ministries of interior, ministries of social welfare, NGOs, prosecutors' offices and other relevant institutions) trained their own colleagues. This form of "cascade training" ensured national ownership of the guidelines, as well as providing for continuity and sustained commitment.

The TRM encourages multidisciplinary actors on a multilateral and bilateral level to meet in person. Ideally, such meetings will become institutionalised and more frequent over time. Trust is especially important with regard to the exchange of information about the victim and the trafficking case. Such exchanges should be in accordance with the data protection laws of participating countries, with due respect for the well-being of the victim. The TRM SOPs pay particular attention to the victim's right to privacy and confidentiality. They are in full accordance with the ethical considerations in Guideline 6.6 of the UN's *Recommended Principles and Guidelines on Human Rights and Trafficking*, which calls on states to:

ensure that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and

<sup>23</sup> ICMPPD, *Transnational Referral Mechanism*.

should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard.<sup>24</sup>

The guiding piece of legislation in this field is the Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995, which makes explicit the need for the consent of victims at every step of the referral process. With regard to evidence-gathering with the support of victims, the TRM thus prescribes that neither countries of origin nor their consular services shall be contacted in order to collect evidence if there is no consent on the part of the victim and if the security of the victim could be jeopardised prior, during or after the trial.<sup>25</sup> The box below illustrates the need for trust among the actors involved in a transnational referral.<sup>26</sup>

<b>Box 4</b>
<p>To ensure that the victim will be received and assisted by a service provider upon arrival, referring and receiving service providers have to constantly and promptly exchange information to coordinate the return process. The following notifications are recommended:<sup>27</sup></p> <ul style="list-style-type: none"><li>○ Notification of <b>request for assistance</b> by the referring organisation</li><li>○ <b>Confirmation of request</b> for assistance by the receiving organisation</li><li>○ <b>Reintegration assistance request</b> by the referring organisation</li><li>○ <b>Reintegration assistance confirmation</b> by the receiving organisation.</li></ul>

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<sup>24</sup> R. Surtees, *Handbook on Anti-Trafficking Data Collection in South-Eastern Europe: Developing Regional Criteria* (Vienna: International Centre for Migration Policy Development, 2007), 27. Further, guideline 8.9 of the UN *Recommended Principles and Guidelines on Human Rights and Trafficking* calls on states to protect, as appropriate, the privacy and identity of child victims and to take measures to avoid the dissemination of information that could lead to their identification.

<sup>25</sup> ICMPD, *Transnational Referral Mechanism*.

<sup>26</sup> ICMPD, *Transnational Referral Mechanism*.

<sup>27</sup> Adapted from IOM, *Direct Assistance for Victims of Trafficking* (Geneva: IOM, 2007).



The information provided by the referring organisation to the receiving organisation should include:

- o **Name** of the victim
- o **Date of birth and place of residence** in the country of origin (if returning to country of origin)
- o Any suspected or actual **medical condition or vulnerability** of the victim
- o **Security and risk assessment**
- o Short outline of **assistance needs**
- o Estimated **date and time of departure**, if applicable
- o Any other relevant information.

Based on this information, as well as on direct consultation with the referring organisation, it is up to the receiving organisation to determine whether or not the referred person is eligible for assistance and if assistance can be provided.

## **6. From a Programme to a Concept**

The elements outlined in this chapter show the evolution of the TRM from a pilot programme into a concept that can be exported and further developed in other regions. Effective transnational cooperation in the referral of trafficked persons requires effort, vision and action. The TRM programme conceptualizes the manner in which this could be achieved efficiently and encourages national actors to reach out to one another.

### **Recommendations**

#### *Monitor and Evaluate the Implementation of the TRM*

At the time of the publication of this book it remained to be seen what exactly the pilot TRM programme can and cannot achieve. Even though significant progress had been made, as of June 2009 not enough time has passed for the involved actors to conduct an objective evaluation of the usage of the TRM Guidelines in the resolution of actual trafficking cases. Several drafts of the TRM Guidelines were produced between June 2006 and March 2009. The TRM now requires monitoring and evaluation. Different models of evaluation exist—from independent institutions, such as national rapporteurs, to self-evaluation of each implementing body. High expectations are invested in the Group of Experts on action against trafficking in human beings (GRETA), the body responsible for monitoring implementation of the Council of Europe Convention on Action against Trafficking in Human Beings. An evaluation of

the TRM needs to show to what extent the SOPs have been followed and implemented in practice, and should also facilitate the updating and upgrading of the TRM. The most appropriate way to find out how effective the TRM is would be for national institutions responsible for coordinating the anti-trafficking responses to evaluate their own work against the backdrop of the TRM.

#### *Improve NRMs*

The TRM is only one additional building block in larger counter-trafficking efforts. It is intended to rest upon a solid national base. Although it can be developed in parallel, as in some SEE countries, in the long run a TRM cannot function without an effective NRM. Even in those countries that have national anti-trafficking coordinators, often the will and/or political clout to implement both the NRM and TRM are lacking. Without an institutional recognition of the problem of human trafficking and at least initial attempts for a structured national response, it is difficult to implement an effective mechanism for transnational referral. What is needed are national coordinating institutions, a functioning NRM, trained law enforcement and judicial personnel, active NGOs, and governments that recognise these NGOs as cooperation partners.

#### *Regularly Train National Counter-trafficking Actors on the Implementation of the SOPs*

By mid-2009, ten countries were using the TRM guidelines, while the additional four EU countries involved in the TRM-EU project were beginning to adapt the TRM guidelines to their specific needs. Already at this stage it had become clear that counter-trafficking actors require training to familiarise themselves with the TRM. National-level training helps to crystallize the actors' respective roles in the context of the TRM SOPs, thus providing a more solid basis for transnational cooperation. Using the contact list to work on case studies and practicing the skills needed for international cooperation essentially complement the day-to-day work of counter-trafficking actors.

#### *Counter-trafficking Actors from Different Countries Should Regularly Meet*

Cooperation hinges on trust. In Southeastern Europe, the region for which the TRM was developed as a pilot programme, international cooperation in general has partly been imposed from above on state authorities throughout the years. But trust was not a given, not least due to the region's recent past—and trust has to come from within a country. The experience in the region underlines that

representatives of the main anti-trafficking actors (such as ministries of interior, prosecutors offices, service providing NGOs) should hold regular meetings within the framework of the TRM. At such meetings, trafficking cases may be discussed, with due respect to data protection. This would allow actors to learn from one another and to exchange information.

#### *Assess Possibilities for Geographically Expanding the TRM*

By mid-2009, the TRM existed as a pilot programme in Southeastern Europe. A sign that the TRM works is that other countries have opted to join the programme. To the extent that the TRM promotes international cooperation in the process of referral of trafficked persons, it should be exported to other regions.<sup>28</sup> Implementation of the TRM would be facilitated by countries' sharing common political and legislative features. Any assessment should evaluate existing NRMs, modes of international cooperation, and the willingness and capacity of relevant actors to participate in an institutionalised mechanism for referring victims across borders. The region whose members share the greatest legislative similarity is the EU. Southeastern European states participating in the pilot TRM project have now conducted study visits to EU countries and communicated their positive impression of the TRM. To increase the number of participating countries, a "train-the-trainer" approach may be applied, in that countries more experienced with the TRM help others in implementing analogous initiatives. Recalling the EU commitment to fight organised crime and to protect victims, one would expect all EU member states to establish a TRM.

#### *Take Into Account Individual Circumstances Within an Institutionalised Framework*

Every case of trafficking needs to be looked at individually, with particular attention to the needs and rights of each victim. Notwithstanding this needs-tailored approach, an institutionalised framework of SOPs should be developed in order to ensure efficient referral. The ultimate goal of a TRM is to assist and support people who have been exposed to cross-border human trafficking in a coordinated and effective manner.

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<sup>28</sup> An assessment was conducted in Ukraine in September–October 2008.



# CONCLUSIONS

## Improving Counter-Trafficking Efforts Through Better Implementation, Networking & Evaluation

Cornelius Friesendorf

### Introduction

This book is both practical and analytical.<sup>1</sup> It is practical in that each chapter provides recommendations for reducing human trafficking. It is analytical, pointing out that there is no one technical solution to trafficking and that even seemingly positive trends such as tougher law enforcement are problematic. The book shows that the story of counter-trafficking is rife with obstacles, trade-offs, and unintended consequences. Progress has been made and lessons have been learned. Yet the global counter-trafficking system is still deficient, whether one applies criteria of effectiveness, efficiency, or legitimacy.

This concluding chapter, drawing on the chapters in this book, discusses challenges of counter-trafficking.<sup>2</sup> It argues that better counter-trafficking action hinges on progress being made in three areas. First, more systematic policy implementation is needed. Second, counter-trafficking networks should be stealthier and better coordinated. Third, counter-trafficking actors should

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<sup>1</sup> An earlier draft of this concluding chapter was presented at the 50<sup>th</sup> Annual Convention of the International Studies Association, New York City, February 15–18, 2009, and at a meeting of the Women's & Children's Advocacy Centre, Geneva, February 6, 2009. For comments and criticism I thank the conference participants, as well as Beate Andrees, Benjamin S. Buckland, Austin Choi-Fitzpatrick, Sarah L. Craggs, Mike Dottridge, Blanka Hancilova, Allison Jernow, Laurent Knubel, Mumtaz Lalani, Chris Pallaris, Albrecht Schnabel, and Louise Shelley. Many thanks also go to the interviewees (who are cited anonymously) and to the individuals and institutions contributing to this book. All of the shortcomings of this concluding chapter are my responsibility. Moreover, the views expressed here do not necessarily represent the opinion of DCAF, the chapter authors, and those who have sent me comments on previous versions.

<sup>2</sup> Additional sources include scholarly writings and news reports. Moreover, this chapter draws on interviews with counter-trafficking actors conducted from 2005 to 2008 especially in Southeast Europe. With the exception of Southeast Asia, no other world region has seen as large a number of counter-trafficking programmes as the Balkans. By early 2009, the topic was largely off the agenda of international donors and governments in the region. Yet for many years, the region was a testing ground for counter-trafficking, and thus offers valuable lessons.

give higher priority to research on trafficking and to assessing the impact of their efforts, including negative effects.

The three areas of implementation, networking, and research/evaluation are overlapping and reinforcing: Policy implementation hinges on smooth networking and evaluation; only an accountable security sector can be an effective and efficient one. Good networking facilitates policy implementation and is a precondition for policy evaluation. Research and evaluation are preconditions for implementation and effective coordination and cooperation.

One may argue that this book is published too late, as trafficking is no longer as much of a priority issue for donors as it was in the middle of the first decade of the 21<sup>st</sup> century. However, the fact that issues are no longer at the top of policy agendas does not mean they have been resolved. Those with money and influence put issues on the agenda for various reasons, only one of which is the “real” nature of a problem. Even though numerous academic treatise and practical manuals on trafficking have been produced, many gaps remain. By combining a practical and analytical approach, this book helps to close these gaps.

One may equally argue that this book is published too early, since human trafficking has been on the international security agenda only since the late 1990s, making policy evaluations difficult. However, as John Picarelli shows in his chapter, trafficking and counter-trafficking have a long history. And while it is true that it is too early to judge the impact of counter-trafficking efforts, the same, as the famous adage holds, applies to the French Revolution.

This book comes at the right time. Much time has passed since counter-trafficking began to preoccupy security actors (over a hundred years ago, people were concerned about what at the time was labelled the ‘White Slave Trade’). It is easier now to say what works and what does not than it would have been a few years ago. History also shows that the elimination of trafficking is unlikely, and that counter-efforts are problematic. This book contributes to counter-trafficking by answering as many questions as possible. Yet its contributors also do a service to those formulating and implementing counter-trafficking policies (and, albeit indirectly, to vulnerable people) by questioning common assumptions. Without asking the right questions, finding the right answers is elusive.

## 1. Implementation

Implementation is about what happens between an intended policy and action on the ground.<sup>3</sup> Policies must be translated into practice. Policies may have intrinsic value, by shaping norms of appropriate behaviour. But generally, policies must be implemented to have any effect.

A distinction can be made between output, outcome, and impact.<sup>4</sup> *Output* would be a new international convention or national law. An *outcome* would be the result of legal measures, such as the conviction of traffickers and the protection of victims. Hence, implementation is partly about output producing outcome. However, outcome may merely yield tactical success, to use military language. What really matters is *impact*, i.e. strategic success. A policy has impact when it changes the nature of a problem. Ultimately, whether counter-trafficking efforts matter depends on whether they reduce trafficking. One can speak of success only when output leads to outcome *and* when outcome leads to impact.

This book, as well as other studies, shows that the implementation of counter-trafficking agreements lags behind.<sup>5</sup> Since the late 1990s, governments have created global, regional, and national counter-trafficking instruments. These still have loopholes, whether because of the failure to ratify international agreements, the failure to translate these agreements into national law, the failure of governments to allocate enough resources to make them effective, or the weakness of international instruments themselves (on the latter shortcoming, see the chapter of Richard Danziger, Jonathan Martens, and Mariela Guajardo). Agreements focused on human trafficking as well as legal instruments, including soft law, obliging states to protect human rights (see the chapter of Allison Jernow), are not properly applied. Moreover, counter-trafficking instruments are often too complicated to allow “the cop on the beat”

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<sup>3</sup> See Laurence J. O’Toole Jr., “Research on Policy Implementation: Assessment and Prospects,” *Journal of Public Administration Research* 10, no.2 (2000): 263–288, here p. 266.

<sup>4</sup> For an early treatment of these concepts, see David Easton, *A Systems Analysis of Political Life* (Chicago: Chicago University Press, 1965). For an application, see Ursula C. Schroeder and Cornelius Friesendorf, “Statebuilding and Organized Crime: Implementing the International Law Enforcement Agenda in Bosnia,” *Journal of International Relations and Development* 12, no. 2 (2009): 137-167.

<sup>5</sup> See, for instance, European Commission, *Evaluation and Monitoring of the Implementation of the EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking Human Beings* (Brussels: EC, October 17, 2008), COM(2008) 657 final; Organization for Security and Co-operation in Europe, *A Legal Analysis of Trafficking in Persons Cases in Kosovo* (OSCE: Pristina, October 2007).

to translate them into action.<sup>6</sup> Similarly, a lack of comprehensible and implementable legal frameworks leads criminal justice actors to press charges for pimping, smuggling, or money laundering, instead of for trafficking. Yet generally, progress has been made. Within a relatively short time span, states have produced much output. Many states have created new counter-trafficking laws, action plans, and special police units.<sup>7</sup> The output of international organisations has been impressive, too.

Output has also translated into outcome. Numerous traffickers have been convicted over recent years in many countries; the business is no longer as low-risk as it once was. However, conviction rates remain deeply unsatisfactory.<sup>8</sup> This indicates that it is much easier to sign a convention, adopt a law, or create a National Action Plan than it is to prosecute traffickers, to prevent trafficking and to protect trafficked persons. While few official documents fail to mention the “three Ps”, counter-trafficking lags behind rhetorical commitments. And, while implementation has been skewed towards coercive practices, prosecutorial successes have been limited, and coercive practices have often undermined the protection of trafficked persons and the prevention of trafficking.<sup>9</sup>

The shortcomings of implementation are even more obvious when studying impact. If moving from output to outcome has been problematic, moving from outcome to impact has been even harder. Even though little is known about the overall impact of counter-trafficking efforts, due to a lack of research (see further below), there are no signs that trafficking, when looked at from a global perspective, has been reduced, local and regional successes notwithstanding. Moreover, even presumed instances of success are not necessarily the result of better law enforcement. A case in point is the Balkans, where a possible reduction of trafficking has coincided not only with greater law enforcement pressure, but with relative economic improvement, the withdrawal of most international peacekeepers, and other contingent factors.

The contributors to this book have pointed at numerous implementation gaps. Most importantly, trafficking operations are still likely go undetected. Related to this problem, security agencies are not sufficiently intelligence-led. As Fred

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<sup>6</sup> According to an official of the Council of the EU: “I am a lawyer, and I sometimes cannot understand these documents.” Interview, Brussels, January 2007.

<sup>7</sup> For an overview of such output, see United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons* (Vienna: UNODC, February 2009).

<sup>8</sup> See UNODC, *Global Report*, 25; 38–44.

<sup>9</sup> For an insightful analysis, see Barbara Limanowska, *Trafficking in Human Beings in Southeastern Europe* (Sarajevo: UNICEF, UNOHCHR, OSCE, 2005).



Schreier shows in his chapter, especially traffickers' need to advertise is an "Achilles heel" that law enforcers could exploit. Intelligence-led strategies and tactics have gained in salience as traffickers have resorted to more sophisticated methods. Yet human trafficking still does not attract the same attention as terrorism or the trafficking in drugs, weapons, or nuclear material. Moreover, many apprehended traffickers are not sentenced to appropriate prison terms.

A serious problem is the continuing lack of human rights protection afforded to victims of trafficking, as noted by Benjamin S. Buckland, Allison Jernow, and Barbara Limanowska and Helga Konrad in this book. It is well known that the deportation of trafficked persons often violates their rights, the protection of which are enshrined in numerous international agreements. Deportation also deprives prosecutors of victim-witnesses. Yet deportation continues (officially, this practice is often labelled as repatriation or return; such terms are euphemisms to many of those affected). Deportation is only the most obvious example of border security concerns trumping criminal justice concerns over the prosecution of traffickers, and of measures that often violate the human rights of trafficked persons, as well as of refugees, asylum seekers, "economic migrants", and other vulnerable groups.<sup>10</sup>

Existing provisions protecting trafficked persons are largely insufficient. Reflection periods, for instance, tend to be too short to allow a traumatized person to make decisions that might endanger the person and his or her family.<sup>11</sup> Many victims face the dilemma of whether to testify and incur high risk for themselves and their families (due in no small part to weak victim protection), or be deported. Often, they are not even offered this option. Authorities often fail to identify trafficked persons; they fail to make the "imaginative leap" to recognize a trafficking situation as such.<sup>12</sup> Or even if they do, authorities send trafficked persons back anyway. In many cases, governments even disregard minimal obligations towards trafficked persons,

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<sup>10</sup> On the negative consequences of counter-trafficking policies, see Global Alliance Against Traffic in Women, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World* (Bangkok: GAATW, 2007); Dina F. Haynes, "Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers," *Human Rights Quarterly* 26, no.2 (2004): 221–272; Benjamin S. Buckland, "Neither Seen Nor Heard: The Unintended Consequences of Counter-Trafficking and Counter-Smuggling," in *Rethinking Security Governance: The Problem of Unintended Consequences*, ed. Christopher Daase and Cornelius Friesendorf (London and New York: Routledge, forthcoming).

<sup>11</sup> Mike Dottridge, "Introduction," in *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, ed. Mike Dottridge (Bangkok: GAATW, 2007), 15.

<sup>12</sup> I owe this term to John Picarelli.

not offering the reflection periods, residency permits, and social support that victims are entitled to.<sup>13</sup> To make matters worse, as pointed out by Limanowska and Konrad, there has been a lack of sustainable, systematic prevention through proper reintegration of trafficked persons. While donors have spent a great deal on protection and prevention, funding often does not trickle down to vulnerable groups.

Another shortcoming is the failure to reduce demand for services provided by trafficked persons, ranging from commercial sex to cheap agricultural products or construction.<sup>14</sup> As Phil Williams shows in his chapter, reducing crime means attacking criminal markets. In other words, attempts to disrupt and alter markets lead to strategic advantages, while attacks on individuals, groups, and networks at best result in tactical victories.<sup>15</sup> A market-based approach is two-pronged. Addressing the supply side of crime will be ineffective without demand reduction.

A host of conditions hampers implementation. Some of these are “technical” and can be alleviated through more training (institutions have produced valuable training material, much of which is referenced in this book). Border guards and police need training to identify trafficked persons; police, prosecutors, and judges need to know how to interview victims of trafficking after identification; and law enforcement and criminal justice actors need training to better cooperate with one another.<sup>16</sup> Picarelli underlines that police must be trained in understanding the structure of the trafficking groups they are

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<sup>13</sup> For analyses of insufficient protection in Germany, see Annette Louise Herz, *Menschenhandel: Eine empirische Untersuchung zur Strafverfolgungspraxis* (Berlin: Duncker & Humblot, 2005), 274–275; Ricarda Rolf, *Die Bekämpfung des Frauenhandels mit den Mitteln des Strafrechts, des Öffentlichen Rechts und des Zivilrechts* (Osnabrück: V & R unipress, 2005), 96–99 and 238–247; Ulrike Mentz, *Frauenhandel als migrationsrechtliches Problem* (Frankfurt am Main: Peter Lang, 2001). The failure of European countries to protect was confirmed in an author interview with a trafficking expert seconded to the EU Commission, Brussels, January 2007.

<sup>14</sup> On the reduction of demand for trafficked labour, see Kevin Bales, *Understanding Global Slavery: A Reader* (Berkeley: University of California Press, 2005), 154–171.

<sup>15</sup> See also Moisés Naim, *Illicit: How Smugglers, Traffickers and Copycats are Hijacking the Global Economy* (New York City: Doubleday, 2005); H. Brinton Milward and Jörg Raab, “Dark Networks as Organizational Problems: Elements of a Theory,” *International Public Management Journal* 9, no.3 (2006): 333–360.

<sup>16</sup> Shortcomings of coercive efforts are particularly visible in fragile democracies. In Bosnia-Herzegovina, for instance, “police often do not know how to testify in the courtroom, use special investigative methods, and better apply rules and evidence.” Interview with US embassy official, Sarajevo, June 2008. However, such shortcomings mark counter-trafficking police work in “established” democracies, too.

trying to dismantle. Indeed, there is evidence that training has led to the arrest of traffickers.<sup>17</sup>

Police officers, border guards, and others confronted with human trafficking on the ground also need training to adequately protect the human rights of trafficked persons. In many cases, negative attitudes towards prostitutes, “illegal” migrants, and other “undesirables” lead to human rights abuses. Security sector officials who have received training and who work with NGOs tend to change their attitudes.<sup>18</sup> Ideally, training should help officials to understand the complex definition of human trafficking as laid out in the Palermo trafficking protocol. All too often, law enforcement agencies misapply and misinterpret the definition.<sup>19</sup>

At the same time, as underscored by Benjamin S. Buckland in his chapter, counter-trafficking interventions should not lead to arbitrary distinctions between individuals deserving protection and those who supposedly do not.<sup>20</sup> The wrong kind of training can cause more harm than good. Informing diplomats and local staff dealing with visa applications about trafficking should not lead these officials to simply no longer issue visas to arbitrarily defined groups; such discriminatory practices only benefit smugglers and traffickers.

For training to be effective, it must raise awareness about unintended consequences. Hence, counter-trafficking training is not straightforward, but requires good trainers and methods. Often, the effectiveness of training has been undermined by the hiring of too many trainers, some of whom have not pursued sophisticated approaches. Also, often the same institutions, good at writing funding proposals, secured training tenders, but then hired trainers whose training was unsatisfactory.<sup>21</sup>

Capacity building is crucial, too. Jana Arsovska and Stef Janssens, in their chapter, reveal the difficulties faced by states wishing to keep pace with innovative traffickers. Some improvements are straightforward. For instance, many countries require that the accuser faces the accused, which weights heavily upon victim-witnesses. A more systematic use of video technology, as well as prior statements (given outside the presence of the defendant) would

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<sup>17</sup> Telephone interview with Brussels-based trafficking expert, October 2006.

<sup>18</sup> Interview with members of NGOs, Sofia, Bulgaria, July 2006.

<sup>19</sup> Mike Dottridge, “Introduction,” 4.

<sup>20</sup> See also Penny Green and Mike Grewcock, “The War Against Illegal Immigration: State Crime and the Construction of a European Identity,” *Current Issues in Criminal Justice* 14: no.1 (2002): 87–101.

<sup>21</sup> I thank Mike Dottridge for his comments on this point.

ease the psychological burden on those frightened by traffickers.<sup>22</sup> Capacity-building is particularly important for coping with new trends such as Internet child pornography that are difficult and costly to investigate.<sup>23</sup>

While many challenges are of a more technical nature, removing obstacles to better policy implementation requires, to a great extent, political will, without which implementation gaps will not be narrowed. The lack of political will reflects vested interests or ideological biases or both. Trafficked persons have often become “poster children” for promoting the criminalisation or decriminalisation of prostitution, tougher border controls, measures against organised crime, and other issues.<sup>24</sup> A Europol official, deploring the practice by states to deport victims of trafficking to their home countries before trial, says: “There are plenty of recommendations on how to fight human trafficking. But there is political resistance. It is frustrating.”<sup>25</sup> A comprehensive strategy is required to alter, in the words of Phil Williams, the dynamics of human trafficking markets. Whether this strategy can be put in place depends on the generation of political will in various areas.

### Protect Human Rights

Political will determines the protection of the human rights of vulnerable groups, especially migrants, whether trafficked or not (see the chapter of Richard Danziger, Jonathan Martens, and Mariela Guajardo). Decision-makers need to acknowledge the continuum of exploitation that many migrants face, instead of arbitrarily protecting some and punishing others. Given the ascendancy of anti-foreigner political parties in many countries, as well as the tendency of people to use migrants as scapegoats in times of economic crisis, elevating the status of migrants is a formidable challenge.<sup>26</sup> Fewer people might get trafficked if destination countries provided more legal migration opportunities, such as visas for migrants that would fill labour shortages in

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<sup>22</sup> Interview with NGO staff, Zurich, October 2006.

<sup>23</sup> Interview with Bosnian prosecutor, Sarajevo, June 2008.

<sup>24</sup> The term “poster child” is taken from Galma Jahic and James O. Finckenauer, “Representations and Misrepresentations of Human Trafficking,” *Trends in Organized Crime* 8, no.3 (Spring 2005), 24–40, here 33.

<sup>25</sup> Interview, June 2008.

<sup>26</sup> See Jef Huysmans, “The European Union and the Securitization of Migration,” *Journal of Common Market Studies* 38, no.5 (December 2000): 751–777; Liza Schuster, “A Sledgehammer to Crack a Nut: Deportation, Detention and Dispersal in Europe,” *Social Policy & Administration* 39, no.6 (December 2005), 606–621.

areas such as nursing, child care, or agriculture.<sup>27</sup> Moreover, officials need to be more responsive to people's needs. For instance, the "consular sadism" that many migrants face when applying for visas facilitates corruption and helps, first and foremost, dodgy intermediaries, including traffickers.<sup>28</sup>

### Avoid Political Opportunism

Mustering political will is a continuous challenge. Fighting human trafficking is too important to be subjected to political games. Counter-trafficking should be informed by objective needs, not political opportunism. Yet in reality, it often is. In Southeast Europe, international actors, in early to-mid 2000, put much pressure on Balkan states to address trafficking. Counter-trafficking activities received generous funding, especially visible ones that allowed donors and governments in the region to show that they were fighting the problem. Vulnerable groups such as victims of domestic violence received comparatively little attention. By 2008, the situation had become worse, in that even counter-trafficking was under-funded.<sup>29</sup> The topic was no longer high on the agenda, with international donors pushing governments in the region to fund activities themselves, yet with these governments spending their scarce resources on other issues. Human trafficking thus reflects the fads of politics. All too often, politicians (with the help of the media) have used emotive language about human trafficking, but then failed to invest the resources needed to respond adequately to the problem.

### Better Regulate Labour Markets

As a corollary to the protection of vulnerable groups, especially migrants, net destination countries (and those countries with high levels of internal trafficking) should reduce their dependency on cheap, unregulated labour. As emphasized by Richard Danziger, Jonathan Martens, and Mariela Guajardo, all workers should enjoy the same rights. Fighting trafficking is about offering

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<sup>27</sup> See House of Lords and House of Commons, Joint Committee on Human Rights: Human Trafficking, "26<sup>th</sup> Report of Session 2005–2006," Volume 1, HL Paper 245–I, HC 1127–I, 13 October 2006 (London: The Stationery Office), para. 110; Misha Glenny, "Migration Policies of Western European Governments and the Fight Against Organised Crime in SEE," *Southeast European and Black Sea Studies* 4, no.2 (May 2004): 250–256.

<sup>28</sup> The term "consular sadism" is cited from: International Crisis Group, "EU Visas and the Western Balkans," *Europe Report*, no.168, November 29, 2005, 9.

<sup>29</sup> Interviews in Bosnia-Herzegovina and Kosovo, 2008. See also the chapter of Limanowska and Konrad in this book.

better pay and workplace conditions, creating a more transparent and mutually beneficial migration system, the inspection of work sites and, if necessary, the enforcement of labour laws and regulations. This requires co-opting actors into the counter-trafficking security governance system that hitherto have been at the margins, such as labour inspectors and employment agencies.<sup>30</sup>

#### Pay More Attention to All Forms of Trafficking

Counter-trafficking actors have so far largely focused on victims of sex trafficking. Women forced into prostitution have caught the attention of actors that normally share little common ground, yet have united on this one issue (conservative Christian groups and feminist organisations are an example of the rather odd alliances that are the result). Men trafficked into the sex industry or working under slave-like conditions on fields or in factories have not had such a lobby; the same holds true for children forced into begging or for women exploited as domestic workers. There not only is a continuum of exploitation, there is a broad spectrum of exploitation, too. In the words of one NGO worker: “There are so many people who do not receive help because they do not neatly fit into one category.”<sup>31</sup> The UN trafficking protocol treats the term exploitation is a malleable way, not least to allow states flexibility in how they address prostitution.<sup>32</sup> But the fact that the Protocol can, to a certain extent, be interpreted differently is no excuse for not sanctioning obvious human rights violations.

#### Improve Socio-Economic Conditions

It is crucial to muster political will to mitigate the socio-economic root causes of trafficking. For instance, the European Union—one of the main counter-trafficking actors—should more systematically employ development, foreign aid, trade, and other instruments against trafficking. To cite just one example,

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<sup>30</sup> See Beate Andrees, “Addressing Labour Market Dimensions,” in *Challenging Trafficking in Persons: Theoretical Debate & Practical Approaches*, ed. GTZ Sector Project Against Trafficking in Women (Baden-Baden: Nomos, 2005), 141–146.

<sup>31</sup> Interview, Kosovo, August 2006.

<sup>32</sup> H. Richard Friman and Simon Reich, “Human Trafficking and the Balkans,” in *Human Trafficking, Human Security, and the Balkans*, ed. H. Richard Friman and Simon Reich (Pittsburgh: University of Pittsburgh Press, 2007), 1–19, here 9. For a critique of the protocol, see Janice G. Raymond, “The New UN Trafficking Protocol,” *Women’s Studies International Forum* 25, no.5 (September–October 2002): 491–502; Anne Gallagher, “Human Rights and the New UN Protocol on Trafficking and Migrant Smuggling: A Preliminary Analysis,” *Human Rights Quarterly* 23, no.4 (November 2001): 975–1004.

by allowing Moldova to import more wine, the EU would help reduce poverty in Europe's poorest country.<sup>33</sup> While applying coercion may be easier than using "soft" instruments, the latter better address the causes of the problem. It is often argued that prevention is expensive. For sure, significantly reducing trafficking risks hinges on a better distribution of wealth, less discrimination, and other goals that may appear distant. However, freeing people from slave-like conditions is cheap.<sup>34</sup> The same holds true for re-integrating trafficked persons. Coercion may have more public relations value, but it is also more expensive. Even when acknowledging that the poorest are generally not the first to get trafficked, by improving economic prospects, fewer people would be willing to endure exploitative situations. Getting exploited people to testify against their exploiters is difficult not least because some of those exploited may be better off than before—paradoxically, exploitative relationships can be mutually beneficial.<sup>35</sup> By creating viable alternatives to exploitative relationships, donors would make it more difficult for traffickers to find labourers.

### Pay More Attention to Internal Trafficking

Another issue that warrants more attention is internal trafficking. Past counter-trafficking activities have focused on people crossing international borders. Yet in many countries, internal trafficking is seen to be on the rise, partly because recruiting domestic victims allows traffickers to cut costs and to reduce risks emanating from stepped-up law enforcement.<sup>36</sup> Efforts to cope with internal trafficking have been haphazard. Partly, this is due to the conflation between trafficking and irregular migration. Moreover, major counter-trafficking institutions are better geared to deal with cross-border trafficking than with internal trafficking. Practices mirror the UN Trafficking Protocol, which, after

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<sup>33</sup> Telephone interview with an official of the International Fund for Agricultural Development (IFAD), Rome, September 2006. On the weaknesses of EU counter-trafficking policies, see Jacqueline Berman and Cornelius Friesendorf, "Coercive Governance as Crime Control: EU Foreign Policy and the Fight Against Human Trafficking," *European Foreign Affairs Review* 13, no.2 (2008): 189–209; Mirjam Van Reisen and Ana Stefanovic, *Lost Kids, Lost Futures: The European Union's Response to Child Trafficking* (International Federation Terre des Hommes, Geneva, 2004); and Heli Askola, "Violence Against Women, Trafficking, and Migration in the European Union," *European Law Journal* 13 (2007): 204–217.

<sup>34</sup> See Bales, *Understanding Global Slavery*, 1–2.

<sup>35</sup> See Vanessa E. Munro, "Of Rights and Rhetoric: Discourses of Degradation and Exploitation in the Context of Sex Trafficking," *Journal of Law and Society* 35, no.2 (June 2008): 240–264, here 260.

<sup>36</sup> Interviews with law enforcement officials and NGO personnel in several Southeast European countries, 2005–2008.

all, is an addendum to a *transnational* counter-crime convention (it must be noted, though, that the Council of Europe Convention is an improvement since it does not explicitly require transnationality). A more troubling reason for the neglect of internal trafficking is that governments find it more convenient to present trafficking as an imported problem instead of a partially homemade one (see the chapter of Arsovska and Janssens). Political will is needed to adapt institutional structures to new faces of an old problem. As the US Department of State writes, counter-trafficking efforts should focus “on the exploitation and control of a person through force, fraud, or coercion—not on the movement of that person.”<sup>37</sup>

### Improve Prosecution

Surprisingly, the prosecution of traffickers has lagged behind, too, even though this “P” has largely overshadowed protection and prevention. Tough rhetoric notwithstanding, governments often do not provide the financial, human, and technological resources needed to arrest and sentence traffickers (as well as tending to overlook trafficking occurring in sectors other than the sex industry). This is problematic because, as Phil Williams shows, dismantling criminal networks, although not sufficient, is necessary for making progress against trafficking. In late 2008, the British government decided to close an anti-trafficking police squad that reportedly had operated to great effect (after heavy public criticism, the decision was reversed).<sup>38</sup> This example shows that fighting human trafficking is often topped by other concerns.

Law enforcement capacities are scarce in any country. Reallocating resources to counter-trafficking may well benefit drug traffickers or murderers. This is especially because prosecuting human trafficking tends to be more resource-intensive than prosecuting other forms of crime. Whether returns are worth the investments depends, among other factors, on the type of criminal network. Small networks that do not diversify into other criminal activities may not be worth spending much law enforcement time and money on. Still, the gap between professed outrage and feeble implementation should be narrowed—in order to reduce trafficking and also because placating trafficking as a grave

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<sup>37</sup> US Department of State, *Trafficking in Persons Report* (Washington D.C.: US Department of State, June 2008), 19.

<sup>38</sup> See Rachel Williams, “Human Trafficking Police Unit to Close,” *The Guardian*, November 10, 2008, [www.guardian.co.uk/world/2008/nov/10/human-trafficking-police-prostitution](http://www.guardian.co.uk/world/2008/nov/10/human-trafficking-police-prostitution) (accessed February 23, 2009).



threat raises public expectations that, if unfulfilled through successful prosecution, will undermine citizens' belief in the value of such rhetoric.

### Fight Corruption

In many poor and unstable states, low salaries of police, border guard agencies, prosecutors, judges, or prison guards hamper counter-crime efforts. Accepting bribes is often the only way for officials to sustain themselves and their families. Efforts of international donors to improve the technical capacities and know-how of domestic actors and to foster a spirit of non-corruption must be complemented by an increase in salaries. While this approach may clash with the Security Sector Reform objective of fostering local ownership due to a risk of donor dependency, increasing salaries is a necessary stopgap measure to improve crime-fighting. It is costly, but so is crime.

### Balance Efficiency and Legitimacy

Counter-trafficking efforts must be legal. Counter-trafficking efforts should not constitute a full-blown attack on civil liberties, and intelligence-led actors should adhere to the law. The fight against organized crime should reinforce, not undermine, democratic norms. While an image has been created of human trafficking as being dominated by large-scale, sophisticated organised crime groups, especially labour trafficking involves a variety of small-scale profiteers.<sup>39</sup> Yet organised crime groups are indeed responsible for much human trafficking, and intelligence-led strategies are essential for arresting perpetrators, as Fred Schreier, John Picarelli, Jana Arsovska and Stef Janssens, and other contributors to this book have shown. Laws and administrative directives should create the legal basis for special investigative techniques (such as undercover policing and technical surveillance) and asset forfeiture. Putting police cooperation on a firm legal footing is crucial, too. Many police officers face bureaucratic hurdles when collaborating with their (foreign) counterparts, and as a consequence resort to informal cooperation channels. This accelerates law enforcement, but makes prosecution less transparent, raising issues of data and human rights protection. Counter-trafficking networks must therefore balance speed and accountability.

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<sup>39</sup> See Beate Andrees, "Forced Labour and Trafficking in Europe: How People Are Trapped in, Live Through and Come Out" (working paper no.57, February 2008, Geneva, ILO).

## Cut the Link Between Peace Operations and Trafficking

Training peace operations personnel, including private contractors, on counter-trafficking is crucial. Things have improved since the 1990s, when international personnel caused a boom in trafficking especially in the Balkans.<sup>40</sup> But the zero-tolerance message needs constant re-iteration and institutionalization, as Keith J. Allred shows in his chapter. Preventing “internationals” from fuelling crime in crisis zones requires political will by nations contributing personnel to peace operations and the right attitude of individual commanders. The prosecution of wrong-doers is the best indicator for whether zero-tolerance policies are taken seriously. It should no longer happen, as it did, that NATO and the UN are not even informed about whether a violator withdrawn from an operation was tried by the troop-contributing state.<sup>41</sup>

However, zero-tolerance policies have not broken the link between foreign deployment and local prostitution. Observers in Kosovo argue that commanders of some foreign military contingents do not try to prevent their soldiers from visiting prostitutes while on leave in neighbouring countries. Moreover, some commanders were unfamiliar with the problem of trafficking.<sup>42</sup> Hence, there are divergent interpretations of zero-tolerance policies as well as a continuing lack of institutionalized awareness-raising and pre-deployment training. Keith Allred offers valuable advice on how to avoid the exacerbation of trafficking by international personnel. While some measures are controversial, such as the criminalization of patronage, others are straightforward, such as increasing the number of women in peace operations.

This non-comprehensive list underscores that implementation of counter-trafficking policies hinges on political will. Political will is required to mitigate two other problems as well: insufficient cooperation among counter-trafficking actors, and the lack of monitoring and evaluation of counter-trafficking policies and projects.

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<sup>40</sup> See: “Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution,” *Human Rights Watch* 14, no.9 (2002); Sarah E. Mendelson, *Barracks and Brothels: Peacekeepers and Human Trafficking in the Balkans* (Washington D.C.: Center for Strategic and International Studies, 2005); Keith J. Allred, “Peacekeepers and Prostitutes: How Deployed Forces Fuel the Demand for Trafficked Women and New Hope for Stopping It,” *Armed Forces & Society* 33, no.1 (2006): 5–23.

<sup>41</sup> Interview with a senior military officer, NATO School Oberammergau, October 2006.

<sup>42</sup> Interviews with members of international organizations and NGOs, various parts of Kosovo, October–November 2008.

## 2. Cooperation

All chapters in this book stress the importance of cooperation among counter-trafficking actors. Cooperation has improved somewhat, due to innovative structures such as Transnational Referral Mechanisms (see the chapter of Mariyana Radeva, Elisa Trossero, and Martijn Pluim). However, this book reveals significant cooperation problems. Cooperation is more an ideal than empirical reality. This is the case whether it concerns intra-service, inter-service, or international cooperation; or cooperation among “coercive” security sector actors or between those focusing on coercion and those focusing on prevention and protection. Without better cooperation, human trafficking will continue to thrive. In order to move forward, it is crucial to understand the obstacles to better cooperation. Of these, there are many.

Firstly, there are different worldviews and ideologies. Counter-trafficking brings together police officers, border guards, prosecutors, development experts, NGOs, employees of transport companies, hotel receptionists, and many others. Even if everyone shared a concern for human rights, divergent personal and professional backgrounds would impede cooperation. This is a big problem on the national level, and an even bigger one at the international level, where different cultures and languages add to the fuzziness of governance. Even within any one institution, views may clash, with different departments lobbying against trafficking in different ways.<sup>43</sup> An NGO worker says: “There is no overall strategy, only a large number of programmes that are not properly coordinated. Hence, there is no sustainability.”<sup>44</sup>

A panacea to this problem does not exist; it is an inherent feature of, and the price to pay for, non-hierarchical, flexible modes of national and transnational governance. But cooperation would be enhanced if individuals and institutions better understood the perspective of their counterparts and acknowledged their own personal and professional biases. More interaction would foster empathy. To be effective, interaction should include those often left out of the equation, such as trade experts whose decisions have a major impact on migration flows, employment agencies, or labour inspectors. Importantly, the private sector should be better integrated into counter-trafficking initiatives. Governments should, for example, provide more incentives to companies for hiring formerly trafficked persons in order to reduce the risk of re-trafficking.<sup>45</sup> Many mistakes

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<sup>43</sup> Interview with a member of a UN organisation, Geneva, March 2006.

<sup>44</sup> Interview, Sofia, July 2006.

<sup>45</sup> Interview with OSCE representative, Kosovo, August 2006. See also Sebastian Baumeister und Susie Maley, “The Role of the Private Sector in Developing Youth Careers,” in *Challenging Trafficking in*

have been made with re-integration in the past; for instance, too many people have been taught hairdressing and too few IT skills.<sup>46</sup> Traffickers are innovative. So must be those confronting them.

Equally crucial, cooperation arrangements must no longer reflect narrow and self-defeating coercive biases. Limanowska and Konrad show that the dominance of “coercive” security sector actors has been a major flaw in such arrangements. While their analysis focuses on Southeast Europe, their criticism applies to other world regions as well. The legacy of the Palermo Trafficking Protocol, with its emphasis on prosecution and its vagueness on protection and prevention, is ubiquitous. The Protocol is both cause and consequence of coercive practices that may serve states’ narrow interests, yet that are detrimental to the interests of trafficked persons and to counter-trafficking efforts more generally. To repeat the mantra of this book, a shift to a human rights approach is warranted. This approach “places people who have been or might be trafficked at centre-stage and assesses strategies on the basis of their impact on those individuals.”<sup>47</sup>

Bureaucratic complexity is a further obstacle to cooperation. Bureaucracies often work slowly and inefficiently, especially large ones. Talks with EU officials reveal, for instance, that some officials working on organised crime within the Council do not know their counterparts in the Commission.<sup>48</sup> A EU Council official describes the Union’s external crime-fighting machinery as follows: “A few years ago, it was small and chaotic. Now it is big and chaotic.”<sup>49</sup> Rotation of personnel, inefficient information sharing mechanisms, and other factors account for such deficiencies.

Moving towards more flexible networks is a must, in counter-trafficking as in counter-terrorism and other fields where numerous actors pool material resources and know-how. But the effects of networking are ambivalent. Greater effectiveness and efficiency may come at the cost of less transparency, as mentioned above. In addition to informality, the fact that international organisations and NGOs implement projects on behalf of states can lead to a

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*Persons: Theoretical Debate & Practical Approaches*, ed. GTZ Sector Project Against Trafficking in Women (Baden-Baden: Nomos, 2005), 81–85. Trafficked persons do not consent to have their trafficking experience being revealed to an employer or future employer. It is therefore important to find ways of employing victims of trafficking in ways that respect their right to privacy (I thank Mike Dottridge for his comments on this point).

<sup>46</sup> Interview with UN official, Kosovo, August 2006.

<sup>47</sup> Dottridge, “Introduction,” 7.

<sup>48</sup> Interviews, Brussels, January 2007.

<sup>49</sup> Interview, Brussels, January 2007.

mismatch between the intention of donors and the action of implementing agencies, especially in cases of sub-contracting and sub-sub-contracting. Again: the more actors are involved, the more oversight becomes an issue.

There are also less “benign” causes of cooperation problems. Crime-fighters and criminals live in symbiosis: Crime-fighters depend on crime for institutional survival, and criminals benefit from high profits artificially inflated by law enforcement (the so-called crime tax).<sup>50</sup> The fight against trafficking has evolved into a large industry whose participants face a “moral hazard”: Even though they do try to abolish trafficking, actors are also concerned about funding. Consequently, unsubstantiated claims about trafficking have been made. Moreover, actors have engaged in turf battles, failed to devise common strategies and divisions of labour, failed to share data and information, and made insufficient efforts to learn from past mistakes. Duplication of efforts, unhealthy competition, and other inefficiencies have stymied prosecution and have not been in the interests of trafficked persons either.<sup>51</sup> According to one UN official: “It is scandalous how much money has been spent on anti-trafficking, and how little of that money has been used to support trafficked people.”<sup>52</sup> Cooperation problems partly account for this failure. Competition is “terrible”, says an experienced official from an international organisation. An official from one UN agency operating in Bosnia said that her agency was “at war” with another UN agency.<sup>53</sup> The director of one Bulgarian NGO describes the counter-trafficking landscape as “a jungle.”<sup>54</sup>

Better cooperation would lead to more efficient resource allocation. Institutions should emulate the practice of companies that have moved from negative competition toward “co-opetition”, a model of interaction marrying cooperation and positive competition.<sup>55</sup> Trafficked persons would be the most obvious beneficiaries. Yet counter-trafficking actors would benefit as well, through a pooling of material resources and knowledge and the ability to develop specialized capabilities (instead of diversifying into various areas to be

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<sup>50</sup> See Peter Andreas, *Border Games: Policing the U.S.-Mexico Divide* (Ithaca and London: Cornell University Press, 2000).

<sup>51</sup> The pursuit of parochial interests has hampered security governance in various fields. On the problems of international statebuilding efforts, see International Crisis Group, “Bosnia: Reshaping the International Machinery,” *ICG Balkans Report*, no.121, Sarajevo/Brussels (November 29, 2001).

<sup>52</sup> Interview, Geneva, September 2006.

<sup>53</sup> Interview, Sarajevo, August 2006.

<sup>54</sup> Interview, Sofia, July 2006.

<sup>55</sup> See Anne Holohan, *Networks of Democracy: Lessons from Kosovo for Afghanistan, Iraq, and Beyond* (Stanford: Stanford University Press, 2005), 18–19; 32–34.

eligible for funding from various sources). Governments have most leverage for encouraging cooperation. As Barbara Limanowska and Helga Konrad show in their chapter on Southeast Europe, governments have preferred to work with NGOs willing to implement any kind of counter-trafficking activity. This practice, besides increasing competition among NGOs, has deprived experienced NGOs of funding just because their human rights focus made them cumbersome partners for governments. In addition to promoting the protection of human rights, genuine support for NGOs also helps to check corruption, as stressed by Leslie Holmes.

Instead of pouring money into awareness-raising campaigns not based on cutting-edge public relations expertise,<sup>56</sup> or into training programs that duplicate others,<sup>57</sup> donors should make funding conditional upon cooperation. Furthermore, providing funding for longer periods of time would mitigate against the project-driven nature of counter-trafficking activities. Moreover, donors should handle bureaucratic requirements more flexibly. These benefit large institutions who know how to apply for grants, and reduce smaller institutions knowledgeable about local conditions to a subservient role.<sup>58</sup> NGOs in (non-EU member) Balkan states, for example, have had little choice other than to associate with large EU-based NGOs,<sup>59</sup> a practice violating the principle of local ownership. Of similar importance, donors should coordinate their funding priorities, by devising common strategies. Donor countries tend to simply inform each other about their respective priorities, if at all.<sup>60</sup> Regular meetings are needed in which participants agree on divisions of labour. This requires donors as well as recipient countries to strengthen national anti-

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<sup>56</sup> For example, in Kosovo children were shown the film “Lilja 4-ever”. Yet since the context was not always explained, the value of showing this disturbing film is questionable. Interview with NGO staff, Pristina, August 2006. According to the same interviewee, “putting up [anti-trafficking] billboards is a waste of money.” To ensure that their campaigns have a positive effect, campaigners should work with local NGOs, target specific groups, and use peer-to-peer training. Donors should emphasise the message rather than their own role in anti-trafficking projects. Telephone interview with public relations expert who has worked on counter-trafficking campaigns in the Balkans, October 2006. Most importantly, prevention programmes must not be misused for the purpose of preventing people from migrating, as stressed by Richard Danziger, Jonathan Martens, and Mariela Guajardo in their chapter. For insightful criticism of counter-trafficking information campaigns, see Céline Nieuwenhuys and Antoine Pécoud, “Human Trafficking, Information Campaigns, and Strategies of Migration Control,” *American Behavioral Scientist* 50, no.12 (August 2007): 1674–1695.

<sup>57</sup> In Southeast Europe, some police and border guards have participated in several similar training programs offered by different institutions. Interviews, various Balkan countries, 2006.

<sup>58</sup> On the failure of “internationals” to empower domestic actors, see AnnJanette Rosga, “The Traffic in Children: The Funding of Translation and the Translation of Funding,” *PolLAR: Political and Legal Anthropology Review* 28, no.2 (2005): 258–81.

<sup>59</sup> Interview with EU Commission official, Brussels, January 2007.

<sup>60</sup> Interview with ambassador of EU member state, Macedonia, July 2006.

trafficking coordinators. As Limanowska and Konrad show, coordinators often have insufficient political clout and material resources to streamline counter-trafficking initiatives into a coherent strategy.

Corruption is an additional impediment to better cooperation. This book, especially the chapter of Leslie Holmes, has cited evidence showing that corruption fuels trafficking, both in rich and poor countries. The fight against trafficking and corruption thus underscores that Security Sector Reform—the creation of effective and democratic polities—is not only a challenge in post-authoritarian, transition, and war-torn countries, but even in stable democracies. Many security practitioners do not share information and intelligence with their counterparts due to a lack of trust. For instance, the accession of Bulgaria and Romania to the EU in 2007 has made the coordination of Justice and Home Affairs activities even more cumbersome than before. A Council official, asked about the implications of Bulgaria’s and Romania’s EU accession for crime-fighting, says: “Representatives from old EU member countries now exchange information on corridors, not inside the meeting room.”<sup>61</sup>

This example illustrates trade-offs of cooperation. Fighting a complex problem requires the cooption of a large number of actors. To counter new practices such as the recruitment of victims by “lover boys” and the proliferation of Internet child pornography, psychologists, social workers, and police with knowledge of computer forensics are needed. Fighting human trafficking thus forges complex national and international coalitions. Yet the greater the number of individuals and institutions involved, the more trust becomes an issue. And “trust is *the* element that needs to be constantly in production to optimize the networked organization.”<sup>62</sup>

To minimize the risks of cooperation, many security practitioners resort to informal channels or create small groups.<sup>63</sup> Such coping mechanisms enhance the effectiveness and efficiency of crime-fighting, yet, due to their informal and exclusivist nature, raise issues of legitimacy. Counter-trafficking perfectly epitomizes a major problem in contemporary governance: how to reconcile

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<sup>61</sup> Interview, Brussels, January 2007.

<sup>62</sup> Holohan, *Networks of Democracy*, 35 (emphasis in the original).

<sup>63</sup> The United Kingdom, for instance, has forged counter-trafficking networks with officials from a few selected countries that serve as main countries of origin of trafficked persons to the UK. In Scandinavia, counter-trafficking benefits from high levels of homogeneity and trust. Networking among officials from the region is relatively smooth due to deep institutional ties at all levels and in all policy fields, similar laws and traditions, and the small size of the countries that allows officials to quickly get to know their counterparts.

moving towards networked forms of cooperation involving a variety of actors that are decentralized and that complement one another (the “strength of weak ties”<sup>64</sup>) with the need to steer such complex networks towards a common goal.<sup>65</sup> Again, there is no universal recipe for dealing with this challenge. But the chapters of Leslie Holmes, as well as of Jana Arsovska and Stef Janssens, include recommendations for how to fight trafficking-related corruption, an essential element of trust-building and cooperation.

### 3. Research and Evaluation

Counter-trafficking efforts operate in a partial knowledge void. There is a dearth of information on the scope, most prevalent types, loci, and modi operandi of trafficking. This is due to the covert and often transnational nature of trafficking, the social stigma attached to trafficking, the lack of a definition that lends itself to operationalisation, incoherent data collection efforts, and other obstacles.<sup>66</sup> As Vittoria Luda di Cortemiglia, Francesca Bosco, and Anvar Serojitdinov show in the first chapter of this book, valuable efforts to better understand the nature of the problem have been undertaken, yet much remains unknown. Most importantly, it is unclear how big the gap is between the relatively small number of identified victims and the actual number of victims. Also, John Picarelli and Phil Williams underscore the need to better understand the types of organised crime networks involved in human trafficking and better identify the critical nodes that can be attacked.

One assertion inviting more empirical scrutiny is the link between human trafficking and other forms of crime, such as drug trafficking and terrorism. Given that there are good reasons why human traffickers would not want to diversify,<sup>67</sup> this link should not be simply assumed. After all, flawed assumptions may lead states to use sledgehammers instead of more refined tools appropriate for addressing specific types of crime. This book provides

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<sup>64</sup> Mark Granovetter, “The Strength of Weak Ties,” *American Journal of Sociology* 78, no.6 (May 1973): 1360–1380.

<sup>65</sup> See Patrick Kenis and Keith G Provan, “The Control of Public Networks,” *International Public Management Journal* 9, no.3 (2006): 227–247.

<sup>66</sup> See Frank Laczko and Elzbieta Gozdzia, ed., “Data and Research on Human Trafficking: A Global Survey,” offprint, *Special Issue of International Migration* 43: 12 (2005); Bales, *Understanding Global Slavery*, 136–138.

<sup>67</sup> For a discussion, see Rey Koslowski, “Economic Globalization, Human Smuggling, and Global Governance,” in *Global Human Smuggling: Comparative Perspectives*, ed. David Kyle and Rey Koslowski (Baltimore and London: The Johns Hopkins University Press, 2001), 337–358, here 348–349.



some evidence showing that human trafficking and other types of crime merge. More (standardized) primary data collection is needed to better understand the mechanisms of crime.

It is equally important to monitor counter-trafficking efforts and assess their impact. A lack of monitoring and evaluation is due to the lack of primary data, as well as the fact that institutions are weary of criticism. Much money has been spent and many policy tools have been applied, but surprisingly little is known about the effects of counter-trafficking efforts. According to a US government agency, “there is little or no evidence to indicate the extent to which different types of efforts—such as prosecuting traffickers, abolishing prostitution, increasing viable economic opportunities, or sheltering or reintegrating victims—impact the level of trafficking or the extent to which rescued victims are being re-trafficked.”<sup>68</sup> Similarly, the United Nations reports that information gathered on trafficking does not show whether counter-trafficking efforts have reduced human trafficking.<sup>69</sup>

Improvements are necessary on various fronts. The most obvious one is to provide more funding for research on trafficking and counter-trafficking and to enable the production of knowledge that is as objective as possible. Research into clandestine activities is imprecise, difficult, and often dangerous. Yet, without such research, policymakers do not know when, where, and how to act. Most importantly, more reliable estimates on the volume of trafficking are needed to evaluate the impact of counter-trafficking policies and initiatives.<sup>70</sup> According to the UN, member states “lack the ability to say with any precision how many victims of human trafficking there are, where they come from or where they are going.”<sup>71</sup>

It is important that research be impartial and that inconvenient results are not suppressed. Susan Woodward writes that counter-crime efforts in the Balkans are “driven by politics and policy, not by knowledge and research.”<sup>72</sup> The same

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<sup>68</sup> United States Governments Accountability Office (GAO), *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825, (Washington D.C.: GAO, July 18, 2006), 25.

<sup>69</sup> UNODC, *Global Report*, 13.

<sup>70</sup> See United States Governments Accountability Office (GAO), *Human Trafficking: Monitoring and Evaluation of International Projects Are Limited, but Experts Suggest Improvements*, GAO-07-1034 (Washington D.C.: GAO, July 2007).

<sup>71</sup> UNODC, *Global Report*, 69.

<sup>72</sup> Susan L. Woodward, “Enhancing Cooperation Against Transborder Crime in Southeast Europe: Is There an Emerging Epistemic Community?,” in *Fighting Organized Crime in Southeast Europe*, ed. Ekavi Athanassopoulou (London and New York: Routledge, 2005), 7–24, here 9.

holds true for counter-trafficking. One prominent expert on prostitution argues that central claims in the fight against trafficking are “exaggerated, unverifiable, or demonstrably false.”<sup>73</sup> Especially the abolitionist drive during the Presidency of George W. Bush has been severely criticized.<sup>74</sup> Due to ideological bias and opportunistic behaviour, governments try to downplay trafficking problems in their countries, and even actively obstruct information-gathering efforts. Indeed, researchers and activists, as well as security practitioners, face threats from traffickers as well as pressure from governments and international organizations. It is therefore not surprising that many official publications paint a rosy picture of trafficking problems and counter-efforts. The politicization of counter-trafficking research causes problems not only for researchers but also for security practitioners. A Scandinavian police officer complained that after compiling voluminous and detailed information on organized crime for Europol’s Organised Crime Threat Assessment (OCTA), little of the information made its way into the report, presumably for political reasons. As a consequence, the officer was reluctant to provide any information for the subsequent report.<sup>75</sup>

Striving for unbiased research is not the same as depoliticising counter-trafficking. As discussed above, counter-trafficking is very much a political issue, and not amenable to technical solutions. Democratising counter-trafficking is about allowing many people to participate meaningfully in counter-trafficking discourses and practices, whereas a technocratic approach enables few people to decide over the distribution of costs and benefits. However, political action should be informed by sound, unbiased research, in order to take into account all causes and consequences of trafficking and counter-trafficking.

In addition to de-politicising research activities, institutions should make greater efforts to improve and harmonise methodologies for measuring human trafficking. According to the UN, “even similarly situated countries with compatible legal systems are counting different things.”<sup>76</sup> Moreover, the

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<sup>73</sup> Ronald Weitzer, “The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade,” *Politics & Society* 35: 3 (September 2007), 447–474, here 458. See also David A. Feingold, “Think Again: Human Trafficking,” *Foreign Policy* (September/October 2005): 26–32.

<sup>74</sup> See Gretchen Soderlund, “Running From the Rescuers: New U.S. Crusades Against Sex Trafficking and the Rhetoric of Abolition,” *NWSA Journal* 17, no.3 (Fall 2005): 64–87; Jacqueline Berman, “The Left, the Right, and the Prostitute: The Making of U.S. Antitrafficking in Persons Policy,” *Tulane Journal of International and Comparative Law* 14 (2006): 269–293.

<sup>75</sup> I thank Benjamin S. Buckland for sharing this information with me, which was based on a talk with the police officer in fall 2008.

<sup>76</sup> UNODC *Global Report*, 11.

methodologies upon which estimates are based are based are often dubious.<sup>77</sup> Once figures have been published, they tend to assume a life on their own, being continuously re-cited, even as doubts over their accuracy mount.<sup>78</sup> Flawed methodologies thus contribute to skewed perceptions of the problem and to flawed efforts to counter it.

Another shortcoming is the frequent failure of counter-trafficking institutions to learn. A lack of institutional learning affects not only counter-trafficking.<sup>79</sup> One symptom of deficient institutional learning is the failure to document lessons learned. Without storing information on past projects and making this information available to members of the institution and, depending on the sensitivity of the information, outsiders, an institution is unable to constantly adapt to a dynamic environment.<sup>80</sup> Too many counter-trafficking projects are initiated without prior study of past projects, leading to the wheel being reinvented or, worse, to mistakes being repeated.<sup>81</sup>

To make counter-trafficking policies and projects more effective, efficient, and legitimate, it is crucial to assess their consequences. Of systematic assessment there are astonishingly few. To the extent that institutions do evaluate the consequences of their activities, they prefer to use output and outcome indicators. These lent themselves to quantification (seminars organized, billboards put up, officials trained, reports produced, or, as mentioned by Jana Arsovska and Stef Janssens, police investigations conducted). Hardly any efforts are made to study the *impact* of counter-trafficking activities on

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<sup>77</sup> On the problems of Europol's Organised Crime Threat Assessment, see Petrus C. van Duyne, "OCTA 2006: The Unfulfilled Promise," *Trends in Organized Crime* 10, no.3 (September 2007): 120–128. Similarly, it is not clear how the US has produced its widely-cited figure on the global volume of trafficking.

<sup>78</sup> In another context, see Francisco E. Thoumi, "Can the United Nations Support 'Objective' and Unhampered Illicit Drug Policy Research? A Testimony of a UN Funded Researcher," *Crime, Law & Social Change* 38, no.2 (2002): 161–183.

<sup>79</sup> See Michael Kenney, *From Pablo to Osama: Trafficking and Terrorist Networks, Government Bureaucracies, and Competitive Adaptation* (University Park, Pennsylvania: Pennsylvania State University Press, 2007).

<sup>80</sup> Information technology holds great potential to facilitate institutional learning. See Holohan, *Networks of Democracy*, part III.

<sup>81</sup> In this, there is a parallel to police reform efforts. On the latter, see Gordon Peake and Otwin Marenin, "Their Reports Are Not Read and Their Recommendations Are Resisted: The Challenge for the Global Police Policy Community," *Police Practice and Research* 9, no.1 (March 2008): 59–69.

trafficked persons, other vulnerable groups, the size and structure of the trafficking industry, and society at large.<sup>82</sup>

No doubt, such assessments are methodologically tricky. The size and structure of the trafficking industry depends on numerous conditions (only one of which is counter-trafficking efforts) interacting in complex ways. As with efforts against drugs, terrorism, and other illicit activities, isolating the effects of these efforts from changes in development, demography, or gender is challenging.<sup>83</sup> Yet there are indicators showing whether policies have protected people, reduced trafficking, or caused “collateral damage.” Studying the effects of counter-trafficking policies in a non-biased, open-minded manner again requires political will. Institutions tend to perceive assessments as threats since such assessments may reveal that programs have not worked or that they were harmful. Yet in the medium and long run, institutions, and society at large, benefit from impact assessments that, after all, help avoid pouring good money after bad.

This book offers some answers for how to improve counter-trafficking. Of equal importance, however, it shows that there are no magic pills against trafficking, raising questions without purporting to offer answers. Challenging common assumptions is essential for avoiding mistakes; innovation is about thinking outside the box. Below is a brief discussion of some of the issues that evaluators may consider.

The most obvious issue is the impact of tighter border controls on trafficking and migration. Reinforcing borders helps politicians score political points. Most security practitioners and trafficking experts argue that border controls make migrants reliant on the services of smugglers and traffickers. Yet there are no conclusive answers regarding the impact of border controls on migration and on migrants.<sup>84</sup> They may reduce overall migration, by preventing those unable or unwilling to resort to illicit channels to leave their country, and by deterring others contemplating a change of location. Tighter border controls may also have a neutral effect on the number of people migrating to a country

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<sup>82</sup> For an innovative approach for measuring the effects of counter-trafficking efforts, see International Organization for Migration, *Handbook on Performance Indicators for Counter-Trafficking Projects* (Geneva: IOM, 2008).

<sup>83</sup> For a discussion of the causal impact of drug policies, see Cornelius Friesendorf, *US Foreign Policy and the War on Drugs: Displacing the Cocaine and Heroin Industry* (London and New York: Routledge, 2007), Chapter 1; on the effects of nation-building efforts, see James Dobbins, Michele A. Poole, Austin Long, Benjamin Runkle, *After the War: Nation-Building from FDR to George W. Bush* (Santa Monica, CA: RAND Corporation, 2008).

<sup>84</sup> On different effects of border controls, see Koslowski, “Economic Globalization,” 350–351.

without valid papers.<sup>85</sup> Or, more stringent controls may indeed push people into the arms of migrant smugglers and traffickers who are also traffickers. However, while the more sophisticated criminals are able to translate increased operational risks (resulting from stepped-up law enforcement) into profit, less sophisticated groups will be caught. And whether smart criminals are able to maintain or increase their revenues depends on the willingness and ability of migrants to pay higher smuggling fees or to incur higher smuggling debts, as well as on the preparedness of criminals to increase levels of exploitation and extortion to offset higher operational costs. More empirical research is needed to study these various and often paradoxical effects.<sup>86</sup>

In the meantime, one should not invest much hope in migration control as a major lever against irregular migration. Instead, net destination countries should reduce demand for cheap, unregulated labour, raise workplace protections for all workers, and ensure sufficient opportunities for legal economic migration. Not much is known about the effects of migration controls, but enough is known to say that they are not a panacea against trafficking. The only way to achieve near perfect control over the people leaving and entering a country is to erect Berlin-style walls (i.e., to go far beyond what the US has been doing at its border with Mexico, or what the EU has done at the Schengen border). This is not politically feasible, given that the benefits of globalisation are valued more highly than their downsides. Counter-trafficking thus exemplifies the paradox of control efforts running parallel to the increased and desired transnational exchange of people, goods, capital, and services.<sup>87</sup>

Research should also illuminate the potentially adverse consequences of privatised migration control (carrier sanctions, and so forth) on the rights of migrants. To the extent that these innovative measures seem to prevent some migrants from being trafficked, yet prevent persecuted people from fleeing, the costs would outweigh the benefits.

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<sup>85</sup> See, for instance, Rob Taylor, "Australia Government Sees No Illegal Immigrant Influx," *AlertNet*, November 25, 2008, <http://www.alertnet.org/thenews/newsdesk/SYD378178.htm> (accessed January 15, 2008).

<sup>86</sup> For a discussion, see Rey Koslowski, "Economic Globalization," 337–358. Valuable research on the impact of stricter border controls include Khalid Koser, "Asylum Policies, Trafficking and Vulnerability," special issue 1, *International Migration* 38, no.3 (2000): 91–111.

<sup>87</sup> Peter Andreas, "Transnational Crime and Economic Globalization," in *Transnational Organized Crime and International Security: Business as Usual?*, ed. Mats Berdal and Mónica Serrano (Boulder, CO.: Lynne Rienner, 2002), 37–52.

Related to this point, more attention should be paid to the consequences of granting more rights to trafficked persons. Many governments reason that providing more rights (especially the right for victims to stay in the country of destination) would lead migrants to falsely claim the status of trafficked person to avoid deportation. The United Kingdom initially did not want to ratify the 2005 Council of Europe Convention since it feared that individuals wanting to stay in Britain would claim the rights enshrined in the Convention.<sup>88</sup> The case of Italy, which couples services to trafficked persons with the obligation to participate in social integration programmes, suggests that this alleged effect is exaggerated.<sup>89</sup> The alleged dilemma facing governments could well be an artificial one, providing an excuse to governments for not affording protection. Yet given the scarcity of research, it is difficult to assess the validity of the claim that circumscribing rights prevents abuse.

Another promising area of research pertains to smugglers and traffickers. As John Picarelli shows, the link between trafficking and organised crime is a complicated one. Criminologists, anthropologists, political scientists, and others should pay more attention to traffickers and trafficking groups and their cultural embeddedness.<sup>90</sup> Research could reveal, for example, whether the popular adage holds true that traffickers are sophisticated and states are not. Overestimating traffickers' ability to evade law enforcers is risky because state agencies, especially those lacking institutional and material capacity, may refrain from going after the traffickers. It would also be interesting to study more closely how traffickers respond to law enforcement pressure. Common wisdom holds that policing is good for victims. Yet is this true, given that police pressure can increase traffickers' operational costs and thus lead them to subject victims to ever worse forms of coercion and exploitation? Little is known, too, about how traffickers as well as migrants respond to awareness-raising campaigns. According to network theorists, criminalised actors and

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<sup>88</sup> See Buckland, "Neither Seen Nor Heard."

<sup>89</sup> Interview with trafficking expert seconded to the EU Commission, Brussels, January 2007. For a critical perspective on Italy's policy, see Isabel Crowhurst, "The Provision of Protection and Settlement Services for Migrant Women Trafficked for Sexual Purposes: The Case of Italy," in *Trafficking and the Global Sex Industry*, ed. Karen Beeks and Delila Amir (Lanham, MD: Lexington Books, 2006), 217–228.

<sup>90</sup> Valuable works include Rebecca Surtees, "Traffickers and Trafficking in Southern and Eastern Europe," *European Journal of Criminology* 5, no.1 (2008): 39–68; Jana Arsovska, "Understanding a 'Culture of Violence and Crime': The Kanun of Lek Dukagjini and the Rise of the Albanian Sexual-Slavery Rackets," *European Journal of Crime, Criminal Law and Criminal Justice* 14, no.2 (2006): 161–184.

their “licit” opponents engage in a “battle of the story.”<sup>91</sup> Understanding the enemy means understanding the discourse of traffickers, i.e., their strategies to win the confidence of people they are planning to exploit. Furthermore, more light needs to be shed on how relations between smuggled persons and smugglers around the issues of payment and debts relate to trafficking. The common claim that all smuggled migrants who have to repay large debts to a creditor are in debt bondage or are trafficked deserves empirical scrutiny.

The most controversial issue surrounding trafficking pertains to prostitution. Some scholars have analysed the effects of different prostitution regimes on trafficking.<sup>92</sup> However, the debate over prostitution is informed more by emotions than rational cost-benefit analyses. The Swedish model that criminalises demand for commercial sexual services has become increasingly popular even outside of Sweden. But important countries of destination continue to favour the legalisation of prostitution (although not the demand for services from trafficked persons), arguing that criminalisation pushes the industry underground. There are other arguments against criminalising demand, too, such as the fact that NGOs and police often receive tip-offs about exploitative conditions from clients of prostitutes, who would no longer contact anyone if threatened by sanctions for having bought sex.<sup>93</sup> Most contributors to this volume have stayed clear from this politically charged debate. More (non-biased) research is needed on the effects of different prostitution regimes.

#### **4. Institutionalizing Better Implementation, Networking, and Evaluation**

Implementation, networking, and evaluation would be improved through institution-building. Institutions help actors move from zero-sum solutions (whereby the gain of one actor is the loss of another) to absolute gains (whereby all actors cooperate in order to improve the lot of everyone).<sup>94</sup> In

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<sup>91</sup> John Arquilla and David Ronfeldt, “The Advent of Netwar (Revisited),” in *Networks and Netwars: The Future of Terror, Crime, and Militancy*, ed. John Arquilla and David Ronfeldt (Santa Monica, CA: RAND Corporation, 2001), 1–25, here p. 20.

<sup>92</sup> See, for instance, Ministry of Justice and the Police of Norway, *Purchasing Sexual Services in Sweden and the Netherlands: Legal Regulation and Experiences*, (report by a Working Group on the legal regulation of the purchase of sexual services, October 8, 2004); Julie Bindel and Liz Kelly, *A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden* (London: Child and Woman Abuse Studies Union, London Metropolitan University, 2003).

<sup>93</sup> Interview with NGO staff, Zurich, October 2006.

<sup>94</sup> See Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, NJ: Princeton University Press, 1984); Kenneth A. Oye, ed., *Cooperation Under Anarchy* (Princeton, NJ: Princeton University Press, 1986).

policy areas where governments clearly dominate (such as arms control), institutions mitigate cooperation problems by facilitating trust and information-sharing. The same effect can be obtained with regard to networks comprising state, para-state, and non-state actors. Indeed, coordination problems here are even greater due to the large number and the diversity of actors.

Institutions may have executive competencies. At the most extreme, an institution would sanction actors violating counter-trafficking standards. In other policy fields, states have created strong monitoring and compliance-enforcing mechanisms (one of the most impressive examples is the dispute settlement procedure of the World Trade Organization). Applied to counter-trafficking, this would be a maximalist approach, and a politically unfeasible one. Neither governments nor international organisations or NGOs want to be subjugated to external rule—the fear of losing autonomy tops concerns over competition and duplication. Even at a national level there are few coordination mechanisms with teeth, as Barbara Limanowska and Helga Konrad show in their chapter. Internationally, concerns about state sovereignty exacerbate concerns of states and institutions about any loss of autonomy. Widespread resentment against the US practice of putting countries into different tiers and threatening them with sanctions depending on their perceived counter-trafficking performance is a clear sign in this regard.

A more minimalist approach would be to create a clearing house that collects and disseminates data and information on the scope and types of trafficking in different countries and regions; changes in trafficking routes and methods; factors that make individuals and groups vulnerable; profiles of traffickers; international conventions, soft laws, national laws, and national action plans; lists and web links to counter-trafficking training material; the phone numbers of counter-trafficking hotlines; specific counter-trafficking initiatives and points of contact;<sup>95</sup> and assessments of counter-trafficking projects.<sup>96</sup> To strengthen small, local organisations (now often left out of information loops) a clearinghouse could also publish project tenders. Best use should be made of the Internet. Visual aids such as interactive maps showing migration patterns,

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<sup>95</sup> For lists of points of contacts, see, among other sources, Barbara Limanowska, *Trafficking in Human Beings in South Eastern Europe*; International Organization for Migration, *Networking to Fight Human Trafficking in Europe*, Programme Report, (Brussels: IOM, February 2008), 33–41. However, lists of contacts are quickly outdated. Online updates would be more efficient.

<sup>96</sup> The Trafficking in Persons Report issued annually by the US Department of State continues to be the prime source of information on trafficking and counter-trafficking. However, the practice whereby the US ranks countries' counter-trafficking performance has been widely criticized, on the ground that the US violates standards, too, and that the report reflects other US policy priorities. See Dottridge, "Introduction," 18–20.



smuggling and trafficking hot spots, and routes help decision-makers to comprehending the dynamic nature of the problem.

Now, institutions often inadvertently work on similar projects. Moreover, their staff, as well as concerned citizens, are forced to keep up with current trafficking and counter-trafficking trends, or to track training material by consulting a variety of disparate sources. There is too much information, as institutions produce vast numbers of reports, many of which are dull to read because they praise the efforts of the institutions issuing the report. What applies to rule of law efforts more generally applies to counter-trafficking strategies as well:

Many experts are loath to admit that they do not know something about their area of expertise because it could affect a decision to hire them again. ... Reports are written primarily by people who are paid by those who receive the reports. The writer's job is to provide information in such a way as to meet the client's expectations. One of those expectations is implementation success that will justify ongoing new funding. ... Thus, there are very few reports detailing mistakes or failures. Where they exist, implementers know how to describe them as successes.<sup>97</sup>

Incentive structures following the laws of the market lead to the production of biased material. At the same time, there is too little information: Critical material is often not shared, or it disappears within a sea of information. To obtain material, individuals frequently rely on personal contacts. Yet maintaining personal networks is time-consuming, as network nodes and links constantly change. Moreover, networks are not necessarily democratic since they often privilege those with money and influence (and also good IT infrastructure). There is also a risk of not being able to retrieve information due, for example, to the absence of electronic archives; and without the storage of information, learning becomes impossible.<sup>98</sup> A clearing house would aggregate material, classify it to make it easily useable, and include technical features that allow readers to post comments.

Staff would need to constantly update contact information and classify new data and information coming in. A pilot project could focus on one region only,

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<sup>97</sup> Wade Channell, "Lessons Not Learned About Legal Reform," in *Promoting the Rule of Law Abroad: In Search of Knowledge*, ed. Thomas Carothers (Washington D.C.: Carnegie Endowment for International Peace, 2006), 137–160, here 151 and 154.

<sup>98</sup> See Organisation for Economic Co-Operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice* (Paris: OECD, 2007), 243.

and then extend its geographic reach.<sup>99</sup> For publishing data, information, and analyses, push and pull methods can be combined: Institutions can send material to the clearing house (push method), and its staff could ask partner institutions for material or, alternatively, simply download information from partner websites.<sup>100</sup> Citizens might also help with data collection. The web-based Ushahidi service, for instance, allows ordinary people to document human rights violations using mobile phones or digital cameras and upload this data to the web.<sup>101</sup> Applying this practice to counter-trafficking raises data protection and security issues. But improved technology and a clearing house staff that would screen incoming data would minimize risks. It is likely that a clearing house will develop a dynamic of its own: Once it offers a critical mass of data, information, and analysis, institutions will want to contribute material to promote themselves, allowing the clearing house to grow.

Importantly, the institution should be independent. Its staff should be able to decide what information to publish and how. Arguably, even biased and badly written reports should be published since they tell important stories about the authors and sponsoring institutions. Computers are dumb. Even though content management systems enable the classification of material in a way that allows users to easily sift through vast quantities of material, it still takes human beings to do the classification. And one person or institution, even if knowledgeable about trafficking, should not have the power to censor the publication of material. Instead, the *informed public* should decide whether reports on trafficking and counter-trafficking are of high quality, and use them as yardsticks for holding institutions accountable.

A clearing house would thus facilitate public discourse on trafficking and counter-trafficking. As it is, counter-trafficking reflects asymmetric relations of power (for instance, Ministries of Interior tend to be more powerful than human rights NGOs, which explains the law enforcement bias of counter-trafficking efforts). Public policies should not reflect power, but good arguments and deliberation. By creating a level information field and by

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<sup>99</sup> A valuable project in this regard is the Trafficking in Persons Clearinghouse of the Good Shepard Social Justice Network, focusing on Australia and the Asia Pacific region. See <http://www.goodshepherd.com.au/justice/clearinghouse/> (accessed June 17, 2009). Another noteworthy initiative is the website [www.humantrafficking.org](http://www.humantrafficking.org), which focuses on the Asia-Pacific region as well and which offers access to news reporting on human trafficking.

<sup>100</sup> Downloading from partner institutions' websites is a cost-efficient method used by the Zurich-based International Relations and Security Network ISN. See <http://www.isn.ethz.ch> (accessed June 17, 2009).

<sup>101</sup> See [www.ushahidi.com](http://www.ushahidi.com) (accessed February 10, 2009). I thank Chris Pallaris for telling me about this website.

institutionalising feedback mechanisms, a clearing house would subject counter-trafficking actors to greater public scrutiny and allow the better arguments to win. In the past, even if actors documented problems and mistakes, they rarely shared such lessons with other institutions. A clearing house would facilitate the sharing of lessons learned, for instance by commissioning or conducting independent evaluations of counter-trafficking programmes and projects. By highlighting achievements *and* shortcomings, a clearing house would promote reputational control—one of the main mechanisms for controlling large, complex policy networks. Reputational control presumes public knowledge of how an actor behaves towards others. Under this condition, actors “have an incentive to behave well toward each other even if they are only occasionally linked and do not necessarily share the same beliefs.”<sup>102</sup> By informing the taxpayer and counter-trafficking institutions about the amount of money spent on which project and to what effect, a clearing house would put pressure on institutions to strive for better results (ideally in terms of impact and not only of output and of outcome).

Since it compels transparency and allows donors to know whether their investments are going to good use, most institutions would perceive a strong clearing house as a risk. It may reveal, for instance, that there are several hotlines and awareness-raising projects in the same country or even the same city. Or, reports may reveal that counter-crime projects have exacerbated human rights violations. To reduce reputational risks, assessments do not need to be made public, or not in total (also, no sources and methods of counter-trafficking operations should be revealed, so as not to make the lives of criminals easier). However, confidentiality and censorship should not be taken too far. One of the main tasks of a strong, independent institution, possibly headed by an international Special Rapporteur, would be to point out the extent to which states fail to honour their anti-trafficking commitments. An element of “naming and shaming” is inevitable for promoting the implementation of human-rights based counter-trafficking strategies and for ensuring better policy coordination.

Instead of eschewing criticism, both donors and implementers should appreciate opportunities for improving their performance and learn from the past. To this end, they should, to quote Fred Schreier in this book, “deemphasise data ownership”. For institutions, the risks of greater scrutiny and transparency would be outweighed by the advantage of saving time and money. Institutions would better know what others are doing, which

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<sup>102</sup> Kenis and Provan, “The Control of Public Networks,” 236.

programmes have worked best, and where the risk of duplication is greatest. A clearing house would also accelerate the harmonization of data gathering methods, technical standards, and vocabularies. The problem of different data sets, as well as donors supporting different data collection methods,<sup>103</sup> has still not been solved.<sup>104</sup> By making methods and data collection projects public, and by suggesting common standards, a clearing house would work to the benefit not only of taxpayers and victims of trafficking, but also of counter-trafficking actors themselves.

The clearing house would need a regular budget whose size does not constantly change with the whims of donors. Not much money would be required since the main focus would be to create and maintain a user-friendly website that would offer counter-trafficking actors and the public data, information, and analyses—costs would be small in comparison to the waste caused by non-transparency and duplication. It is generally difficult to secure and maintain funding for clearing houses, even if costs are not exorbitant. The risk of running out of money can be reduced by numerous donor committing funding, with each spending only a little.<sup>105</sup>

States, international organisations, and NGOs would be wary of creating, and participating in, a strong, independent institution. For instance, entrenched interests and concerns about autonomy stand in the way of building a meaningful system of measurement on the current definition of trafficking, and of allowing any one actor to impose common standards on what is being measured and on how to measure it.<sup>106</sup> As a consequence, it will be difficult to eliminate the risk of gathering information that institutions say is about “trafficking” but that is based on divergent methodologies—maximalist solutions, even if desirable, are not politically feasible. A second-best solution would be a clearing house that becomes stronger over time. While it might never be given the right to *impose* counter-trafficking strategies or methodologies, it would *propose* standards that more and more actors would then adopt. Only a strong institution would stand the chance of improving implementation, cooperation, and evaluation. To create such an institution, more public pressure, and much time, is needed.

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<sup>103</sup> This was the case in Kosovo in 2007. Interview with NGO staff, Pristina, December 2007.

<sup>104</sup> See, however, Federal Ministry of the Interior of Austria and International Organization for Migration, *Guidelines for the Collection of Data on Trafficking Human Beings, Including Comparable Indicators* (Vienna: Ministry of the Interior and IOM, February 2009).

<sup>105</sup> I thank Albrecht Schnabel for his comments on this point.

<sup>106</sup> I thank Mike Dottridge for his comments on this paragraph.

### **Conclusion: Counter-Trafficking and the Security Sector**

The underlying assumption of this book is that security sector responses to human trafficking, especially coercive ones, are not sufficient for reducing trafficking. Whether trafficking will increase or decrease hinges on political will to better address problematic aspects of globalisation, such as crime and poverty, as well as on wars and natural disasters, and on many other contingent conditions. The counter-trafficking security sector, even if including state social service providers, international organisations, NGOs, the media, and private businesses, has little bearing on most of these conditions.

However, the security sector has a major, necessary role to play. This book suggests ways for improving security sector strategies against trafficking. Yet the chapter authors also reveal shortcomings of implementation, cooperation, and evaluation. Only by better translating rhetorical commitments into practice, by improving the interplay between coercive and non-coercive strategies, and by better understanding the nature of the problem will progress be made against human trafficking.



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