

Why Is It So Difficult to Fight Human Trafficking?

Written by Mariya Grozdanova

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MARIYA GROZDANOVA, JUL 31 2016

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In recent years, human trafficking for the purpose of sexual or labour exploitation became an issue on the top of the political agenda of a great number of countries in the international system of states. While students all around the world learn with a great enthusiasm about the role of the Civil War (1865) in ending slavery in America and the Slavery Convention of the League of Nations (1926) that banned this inhumane practice internationally, slavery in its cruelest form is very much alive today.[1] The whole idea of human beings treated as property that can be bought, sold or exploited for economic gains cannot be recognized as a shameful part of the evolutionary history of humankind and today there are more people being deprived from their liberty and basic human rights than ever before.[2] In fact, despite its clandestine nature and scarcity of systematic empirical research resulting in varying estimates, cross-border and internal trafficking in persons for the purposes of servitude in the sex or labor industries is considered to affect 20.9 to 35.8 million people worldwide[3] while generating incomes of \$31.6 billion illicit dollars annually.[4]

The stories of Seba, a 22-year-old woman from Mali taken by a French family when she was a child to perpetually and coarsely work as a domestic servant for no pay under the threat of violence [5] and the one of Tetiana who, under the poisonous influence of poverty, was lured by tempting offer to work as au pair in Italy taking 10 times her Ukrainian salary, but ended up as prostitute in Istanbul, Turkey while beaten, raped, and held in inhumane conditions with few chances to escape [6], are far from being exceptional. Unfortunately, this is a global problem touching almost every country from Africa and South Asia to Latin America and Eastern Europe and people of poor socio-economic background are being targeted and forced into servitude through violence or deception. Despite the fragmented nature of the anti-trafficking regime[7] and the emergence of a complex anti-trafficking security governance system, consisting of approaches designed to prosecute traffickers, protect victims, and prevent trafficking, or the so-called '3P' paradigm acting as a policy framework, the world proved unprepared to deal with one of the greatest humanitarian problems of the 21st century.[8]

Therefore, as there has been little agreement among scholars on the reasons why human trafficking became a crime so difficult to fight, this study would try to shed light on this issue by arguing that along with (1) problems with the legal definition of trafficking and scarcity of comprehensive data about the scope of the problem that are the basis for further action, there are also (2) inadequate measures to prosecute traffickers, protect victims, and prevent trafficking. To do so, the study will firstly put the topic in its empirical context and examine some of the activities taken to counter human trafficking while focusing on the 2003 Palermo Protocol and identifying some of its weaknesses. Consequently, it will critically evaluate the difficulties that the international community face in countering human trafficking following the 3P paradigm and will make its final remarks and suggestions for improvements and further research. It is worth noting that while many studies focus on a particular region and form of human trafficking, this study would concentrate on trafficking for sex or labour purposes by taking a more general approach, illustrated by the usage of empirically-based examples aimed at demonstrating the global dimensions of the problem. Nonetheless, it is worth noting that this study recognizes as limitations the analytical exclusion of prevention in countries of transit and destination and the fact that the three governance approaches examined in the second part of this study represent ideal-types complementing and overlapping with each other.

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Human Trafficking and Counter-Efforts: Legal and Institutional Framework

Early international legislative developments such as the 1949 United Nations (UN) Convention on the Suppression of Trafficking in Women and Exploitation of Prostitution of Others and the 1959 (UN) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery became the building blocks of the international anti-slavery movement.^[9] Nonetheless, the great population movements in the 80s and the 90s opened a demand side for illegal channels of migration, thus creating new international dynamics and making people aspiring a better life vulnerable to the sieges of the flourishing organized crime. The recognition that the problem of trafficking in persons has increased^[10] triggered considerable international attention and resulted in the 2003 UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.^[11] The Palermo Protocol, as it became known, supplemented the 2000 (UN) Convention against Transnational Organized Crime (TOC) and outlined the first normative definition of the crime. Having in mind the overall number of the UN member states, it could be argued that the Protocol received a universal recognition as of December 2015 it has been ratified by 169 parties that by the means of cooperation are obligated to prevent, prosecute trafficking in persons and assist victims with full respect to their human rights.^[12]

Despite the protracted debates during the 'Vienna process'^[13], states agreed that under Article 3 (a) human trafficking shall mean the *activity* of '...recruitment, transportation, transfer, harboring or receipt of persons, by *means* [Italic added] of the threat or use of force or another 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* [Italic added] of exploitation ...'.^[14] As further recognized by the document, the idea of consent is irrelevant when there are elements of exploitation and thus consensual migration cannot be used as a defense to the offence. Nonetheless, many countries such as the US consider that if a person agree to being trafficked, this can be used as a barrier for the prosecution of the trafficker.^[15] In this sense, international organizations (IOs) often find their hands tied as debates over the voluntary/involuntary acting prostitutes, for example, are still on national agendas. Therefore, the establishment of a clear definition of 'deception' and 'coercion' is fundamental in order for governments to adhere to the legal positions of the Palermo Protocol without space for maneuvering. Indeed, while in legal terms migrant smuggling and human trafficking represent separate offences^[16], it is a mistake to consider that there are not interrelated as in practice it is too often that the former descends into the latter. Additionally, despite that the Palermo Protocol does not make such a distinction, some countries consider international passage a requirement in their trafficking definitions, meaning that internal trafficking is not recognized as a criminal offence.^[17]

In this sense, despite that the Protocol encourages states to uphold and enforce the trafficking definition, its broad wording created international disagreements and made it sensitive to the interpretation of domestic legislatures, creating their own definitions. This impedes cooperation among origin, transit, and destination countries as for example extradition treaties require the crime to be common to both jurisdictions which is hardly achievable when different states' recognition of what constitutes a trafficking crime varies significantly.^[18] While it is identifiable that there is lack of common definition serving as a legal basis for any further action implying for lack of legally binding implementation mechanism and weak monitoring, there are also problems with the Protocol's criminal law orientation towards the suppression and criminalization of the supply side of trafficking rather than human rights orientation towards the protection of victims.^[19]

Another problem that stems largely from the lack of a common definition is the lack of comprehensive data on the scope of the problem. While this could be a result of the clandestine nature of this illicit activity that remains under-reported, under-detected and thus under-prosecuted, official criminal justice statistics on trafficking proved to be uncomprehensive due to differences in data gathering methodology.^[20] For instance, human trafficking has been called an undocumented crime with 'guesstimates' which was reinforced by the unsuccessful attempt of the EU to evaluate the extent of trafficking in 27 countries, each giving self-reported data based on their own methodology and understanding of the problem.^[21] In this sense, unless we have one single definition of human trafficking and harmonization of laws and practices, it is highly unlikely that accurate numbers will be provided and that attention and resources will be allocated adequately and to the right places in order to tackle the problem successfully.

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Nonetheless, it is important that in the changed post-Cold War ideological and institutional dynamics actors were able to recognize the functional need for a complex security governance system, addressing the various causes and consequences of human trafficking.[22] As a result, a great variety of public and private actors became actively involved in the formulation and implementation of anti-trafficking binding policy decisions and intensified their cooperation considerably. Along with governments, implementing domestic anti-trafficking laws such as the 2000 US Trafficking Victims Protection Act (TVPA)[23], IOs and international governmental organizations (IGOs) such as NATO[24], OSCE[25], and the Council of Europe[26] adopted conventions, policies, and enhanced collaboration. Moreover, *nongovernmental organizations (NGOs)* and *private businesses* proved an essential part of the puzzle since respectively serving as a watchdog and providing support to victims and contributing to a more stable economy. In this sense, contemporary anti-trafficking measures are eloquent for a paradigmatic shift from government to security governance having at its heart the approaches to prosecute traffickers, protect victims, and prevent trafficking.[27]

Difficulties in Countering Human Trafficking: The '3P' Paradigm

To begin with, prosecution of traffickers is a fundamental governance approach that is related to some activities such as the adoption of unambiguous anti-trafficking laws, the arrest of traffickers, the freezing of their assets, and the training of police officers, lawyers, and judges. While governments are the primary actors, IGOs such as the International Organization for Migration (IOM) are highly involved in training judicial and law enforcement officials, followed by NGOs having a watchdog function and employing 'naming and shaming' strategies. Nonetheless, it has been identified that 'the culture of police agencies and the perceptions of police officials about human trafficking do not support the identification of a broad range of human trafficking cases'.[28] For instance, trafficked women and men are usually seen as breaking prostitution or migration laws rather than as victims of trafficking, which makes them unwilling to bear witness against traffickers. [29] In this sense, authorities take non-discriminatory approach despite that, at least theoretically, the Palermo Protocol stresses the importance of law enforcement measures strictly focused against traffickers.[30] Moreover, victims are afraid to testify due to lenient sentences as evidenced by the national legislations of notable anti-trafficking pioneers such as the US and the UK and inappropriate behavior on the behalf of policemen who refer victims to shelter only if they testify.[31] These fears are further nurtured by the fact that traffickers are not being arrested or convicted due to red tape and corruption.[32] For example, in 2008 the former president of Cambodia avoided prosecution after receiving \$30,000 in order to release a brothel owner imprisoned for trafficking.

As police authorities usually lack the training required or even the manpower and technology to attack sophisticated organized crime networks, there are struggles with the identification and investigation of human trafficking offenses.[33] Due to budgetary restrictions a Bosnian senior police official, for example, stated that his four inspectors responsible for combating organized crime had to use one computer that was broken.[34] Along with this, police officials are uncertain about what constitutes the crime itself and they are often unable to distinguish between exploitive labor practices and poor working conditions, prostitution, and human trafficking.[35] The idea that human trafficking is primarily sex trafficking is impeding any real development in countering human trafficking for labor purposes which according to the International Labor Organization is the prevalent form of exploitation worldwide.[36] After all, when one is uncertain about the essence of the crime, its identification and prioritization become mission impossible. Indeed, the distinct nature of human trafficking is rarely recognized and police officers conduct first interviews inappropriately by putting pressure on victims or witnesses to give too much information. In this sense, traditional investigative practices designed for tackling other crimes and the reactive rather than proactive approach are often obscuring police from prosecuting traffickers.[37]

Nonetheless, this is not an easy task at least because of emergence of decentralized 'dark networks' difficult to follow and break in the realities of globalization^[38] which also impedes the creation of a universal profile of traffickers and victims. Moreover, even when police authorities are proactive and develop intelligence, organize undercover operations and police raids to save victims, traffickers may become aware that they are monitored and adapt to the new environment by switching from brothels to private buildings and from transnational to internal trafficking. [39]

Secondly, protection for potential or identified victims and satisfaction of their basic needs such as shelter, food, and

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clothing to legal and psychological assistance is needed in order to preserve them harmless. Along with governments, the involvement of IGOs such as IOM that are leading in the efforts of returning and reintegrating trafficking victims, NGOs 'working on the ground', and transport and hospitality businesses required to tightened their control, is essential.[40] While in recent years, some bilateral agreements proved effective in returning victims across borders, it is not always reasonable to send them 'home', presuming they have one, especially in cases of armed conflict and political unrest.[41] If the person does not have a legal status, he or she is more likely to be exploited again and revenged for disobedience. In this sense, due to issues of sovereignty that are still on the agenda, victim protection and support is left to the will of the state and is not entitled as a legally binding posture in the Palermo Protocol.

Moreover, along with the fear of deportation to their countries of origin, trafficking victims often find themselves in a situation where their desire to witness against traffickers is blunted by the insufficient protection and incentives that witness programs in countries such as Bangladesh, India, Nepal and Sri Lanka offer and the corruptive practices eroding the boundaries between state agencies and traffickers.[42] In this sense, it seems less reasonable that victims are afraid to testify as neither the state, nor NGOs that cannot refuse to give evidence in court, proved to be reliable partners to allay their fears of reprisals by traffickers.

The creation of short-term donor policies including the allocation of resources to the building of shelters for trafficked women, such as the one built in Laos in 2004, proved ineffective to detect and respond to the root causes of trafficking such as poverty and domestic violence which are one of the major reasons for women to undertake risky migration decisions. [43] Moreover, as Limanowska noticed, many governments give short-term support to 'willing contractor' NGOs that they can control, thus limiting their already limited operational scope and making the allocation of resources biased and unbalanced. [44] In this sense, a vicious cycle is created due to the willingness of governments to prioritize short-term solutions rather than long-term strategies which are going to be arguably less noticeable and cherished by the electorate.

Another problem proves out to be the lack of reintegration programs and for example in the countries of Southeast Europe that proved to be countries of origin, transit and more recently of destination, there is not enough funding to assist victims with medical help, financial support, professional training and advises on how to avoid trafficking reoccurring. [45] In fact, this could be also understood more widely in terms of the unwillingness of IOs to cooperate among themselves due to an extreme competition for funding, among NGOs protecting trafficking victims that lack funding to organize regular meetings and agree on common strategies[46] or between the security sector and NGOs who still do not trust each other and are thus inadequate to exchange information and cooperate. [47] In this sense, problems of effective networking are making every step of the protection process even harder.

Finally, the security governance approach focusing on prevention in countries of origin proved inadequate to address the supply side of trafficking despite governments', IOs', NGOs', and businesses' efforts to warn about suspicious job offers, target high-risk groups, inform them about their rights and migration procedures. On the one hand, the effectiveness of awareness-raising campaigns in countries of origin developed with the purpose to inform citizens about the nature of trafficking is at best contested. For instance, due to their strong language and shocking content, some people perceived them as a tool to reduce migration in wealthy EU countries or even made families prevent their daughters to go outside as an Albanian case showed.[48] On the top of this, there is weak cooperation between countries in documenting and sharing experience about anti-trafficking campaigns' effectiveness which is perhaps why 'prevention strategies have failed to integrate into policies'. [49]

Nonetheless, these issues arguably pale in comparison with the inadequate addressing of the socio-economic root cause of trafficking such as unemployment, poverty, lack of access to medical services and education that are major factors for perilous migrations. In fact, there are insufficient development-oriented prevention programs due to lack of patron interest on the behalf of IOs and the businesses.[50] However, even if there are, agencies promoting gender equality and social support should be better equipped to identify labor market needs and to include anti-trafficking components within their activities.[51] It should be recognized that the occasional financial assistance that trafficking victims receive during various development initiatives is far from being a panacea as once the resource is exhausted, they are going to found themselves in the same position of vulnerability. Therefore, prevention of trafficking in

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countries of origin is not prioritized and this has a direct negative impact on the distribution of efforts and resources.

Conclusions

In summary, this study has examined the reasons why human trafficking became a crime so difficult to fight by critically evaluating the fragile legal definitional basis provided by the Palermo Protocol and assessing the effectiveness of the anti-trafficking governance system's three approaches designed to prosecute traffickers, protect victims, and prevent trafficking in countries of origin. While the anti-trafficking security governance system evolved considerably and various mechanisms were created to combat this horrific crime, the transition from government to governance appeared to be not as smooth as we would like it to be. Being foundational for further action, the lack of common definition of trafficking as well as shortage of reliable data about the scope of the crime obscure any real development. Furthermore, prevention in countries of origin has been largely neglected which is barely acceptable having in mind the vital role of preventive measures for reducing the supply side of trafficking and thus undermine the efforts of traffickers. Similarly, protection of trafficking victims proved to be far from perfect and remains politically deprioritized and ill-funded. Finally, prosecution of traffickers is heavily mutilated by cultural and organizational blinders. Therefore, this study suggests that a more balanced and networked anti-trafficking efforts emerge and different actors recognize that success in one area will contribute to success in another as they are all highly interlinked, thus replacing institutional inertia, competition and lack of trust with cooperation, concerted action, and exchange of information among and between stakeholders. Interagency cooperation mechanisms against human trafficking are poorly developed while, for example, cooperation between security authorities and NGOs that provide support and protection to victims can enlighten the way leading directly to the traffickers.[52] Last but not least, the demand side in countries of destination is an under-researched issue that deserves the attention of academics and policy-makers as after all we should not forget that trafficking is a supply-demand illicit business process.

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Footnotes

[1] Despite the recognition that in practical terms human trafficking is the movement of one person for the purpose of enslavement and slavery is the exploitation that happens once they arrive, as a legal matter in many parts of the world trafficking means enslavement and there is no need for cross-border movement. In this sense, the two terms are going to be used by this study interchangeably. See Free the Slaves, 'Slavery questions & Answers', online available at: <http://www.freetheslaves.net/about-slavery/faqs-glossary/>, [Accessed on January 15th, 2016].

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