

Global Human Trafficking and the UN Convention against Transnational Organised Crime

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Trafficking in human beings is one of the fastest growing criminal businesses in the world. The US State Department's Office of Trafficking in Persons estimates that over one million women and children are trafficked around the world each year, generally for the purposes of domestic servitude or sexual exploitation.¹ The International Labour Organization's (ILO) Global Report 2005² posts similar figures, estimating that 600,000 to 800,000 people, of whom 50% are children and 80% female, are trafficked internationally every year generating an estimated profit of US\$31,654 million for criminal organisations worldwide. Despite the practice having reached a level comparable to the illicit arms and drugs trades, public awareness remains remarkably low. First, this paper first provides a definition of human trafficking and separates it from other similar but distinct concepts. Second, this paper assesses the responses in international law. Third, the paper discusses the make-up of criminal organisations and the broader socio-economic problems behind trafficking. Finally, the paper concludes by analysing the national trafficking laws of the United States to provide a contrast to international approaches, and discusses whether the international framework is effective for combating Trafficking across states.

Definition

What is Trafficking?

Harold Hongju Koh, former US Assistant Secretary of State for Democracy, Human Rights and Labour, in testimony before the US Committee on International Relations, described trafficking as 'the very antithesis of the Universal Declaration of Human Rights.'³ Though trafficking is universally condemned, a clear understanding of what it means may be lacking and various definitions have been offered. The

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¹ US Department of State, *Pressing Forward to stop Trafficking in Women and Children* 2 [2000].

² *A Global Alliance against Forced Labour* International Labour Conference 93rd Session 2005.

³ *The Global Problem of Trafficking in Persons: Breaking the Vicious Cycle on Trafficking of Women and Children in the International Sex Trade* Before the House of Commons on International Relations, 106th Cong. 2 (1999). See also L Potts, 'Global Trafficking in Human Beings: Assessing the success of the United Nations Protocol to Prevent Trafficking in Persons' 35 *Geo Wash Int L Rev* 227 (2003).

United Nations Economic and Social Council (ECOSOC) had used the following definition:

‘...Trafficking in Persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons:

(i) by threat or use of violence, abduction, force, fraud, deception, or coercion (including the abuse of authority), or debt bondage for the purpose of:

(ii) placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i).⁴

Other definitions however seem to align themselves to different criteria. According to the International Organization for Migration (IOM), trafficking in migrants can be said to exist if the following conditions are met:

‘...an international border is crossed; departure, transit, entry and/or stay of a migrant is illegal; an intermediary - the trafficker - is involved in the movement of the migrant providing services such as supplying counterfeit identity documents, official or unofficial transportation and introduction into the illegal labour market in the destination country; the trafficker profits from such activities and that the transaction is voluntary, other than in cases of trafficking women for the purposes of sexual exploitation, on the basis that the migrant may be willing to be trafficked to secure their long term well being.’⁵

Clearly, even within the UN system, definitions can vary radically. The IOM makes little reference to the idea that a trafficked migrant is held *in forced labour in slavery-like conditions* after transportation. It also removes *coercion* as a necessary ingredient in trafficking and asserts that trafficking can be voluntary when the migrant is willing to be transported. This line of reasoning leads to an argument which holds that, instead of being classified as ‘victims’ those being trafficked should be regarded as ‘customers’ who consent to their illegal movement across borders and, much in the same way

⁴ *Integration of the Human Rights of Women and the Gender Perspective* Report of the Special Rapporteur on violence against Women UNESCOR Comm. on Hum. Rts, 56th Sess, Agenda Item 8, 12 E/CN.4/2000/68 (2000).

⁵ A Schloenhardt, ‘The Business of Migration: Organised Crime and Illegal Migration in Australia and the Asia-Pacific Region’ 21 *Adel L Rev* 82 (1999) 82.

as a contract is created, offer consideration in the form of payment. For the people involved, there is by definition, no element of coercion when first contact with recruiters is established. Nevertheless, it is also widely agreed that migrants generally seek the services of traffickers because that is their only available avenue out of intolerable conditions in their home countries.

Trafficking is usually associated with contravention of an individual's will; for example, by deception or forceful abduction. This can sometimes be contrasted with migrant smuggling, where people are assumed to want illegal transportation across one or more state borders. Some go as far as to say that, in having effectively entered into business transactions with traffickers, the migrants become accomplices to the crime. While theoretically logical, this sort of categorisation seems to contradict human experience and begs the question whether any law based on these definitions would be fit for purpose. Migrants often consent to one set of promises but find that, in practice, their circumstances develop unexpectedly. The term 'migrant smuggling' is frequently, but incorrectly, used interchangeably with 'human trafficking.' It is only by separating these distinct concepts that we can accurately attempt to identify 'victims' and 'criminals,' and how any legal response should be fashioned. Following the introduction of the United Nations Convention against Transnational Organised Crime (UNTOC) together with its ancillary Protocols against trafficking in persons, and against migrant smuggling by land, sea and air, people smuggling and trafficking in human beings are now recognized as separate, internationally agreed, criminal offences and as such has been defined by the UN.⁶ Trafficking in human beings is defined as:

‘...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.’⁷

The smuggling of people is defined as:

⁶ B Iselin and M Adams, *Distinguishing between Human Trafficking and People Smuggling* UN Office on Drugs and Crime, Regional Centre for East Asia and the Pacific, Bangkok (2003).

⁷ A 3 (a) of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) (entered into force on 25 December 2003).

‘...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...’⁸

The question of consent was one of the most widely debated, when attempting to provide a definition for trafficking in the UN Protocol. The general conclusion was that a trafficked person can, and indeed often does, consent to their illegal movement. However, if that consent was procured by one of the ‘improper means’ listed above, it is nullified. For example, if persons consent to their illegal movement and then find themselves in an exploitative or coercive situation, their original consent is nullified by the deception. No person can consent to being enslaved or exploited in slave-like conditions and no migrant working in such conditions can therefore be said to be aiding and abetting this crime. This has now become clearly entrenched in Article 3 (b) of the UN Trafficking Protocol:

‘...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.’

Commonly, smuggled migrants are seen as complicit in the crime because they give their consent to being smuggled across the border. However smugglers often fail to deliver what is promised as transportation routes are repeatedly modified in appalling conditions. An important issue overlooked by many is that consent in this context can be of two types. A migrant can consent to being moved across a border by any means necessary (often the only choice for those fleeing persecution) *or* through safe and clearly defined routes and the transportation promised at the outset. In the case of the latter, migrants do not consent to being kept in squalid conditions for unreasonable periods of time but often find that that is exactly what happens.

The perception that migrant smuggling is a victimless crime, although immigration laws have been broken, seems weak. Smuggled migrants can be subject to inhuman and degrading treatment and despite being left to their own devices at arrival can often be held in debt bondage. Smugglers have been known to take advantage of those being moved by extorting more money from them or failing to deliver the service in a safe manner. While the question of consent runs between the two, the concepts of migrant

⁸ Article 3 of the UN Protocol against the Smuggling of Migrants by Land, Sea and Air (2000) (entered into force on 28 January 2004).

smuggling and trafficking in persons differ in other ways. The key differences are detailed as follows:

The Intention of Traffickers

The intent behind any movement is an important element in distinguishing between human trafficking and migrant smuggling. For human traffickers the purpose of moving people is to exploit them once they have arrived at their destination. The intent *ab initio* of the trafficker is to make profit from delivering their victims into exploitation.⁹ For migrant smugglers the purpose of movement is to take people across a national border. While extortion and exploitation can take place en route, the key intent is to move the person in continuance of a mutual agreement.

Recruitment

Human traffickers usually approach their victims after finding people who fit a certain profile. Traffickers often initiate contact with these people in order to mislead or coerce them into moving with false promises of lucrative job opportunities. For example, in 2004 traffickers from Cyprus were able to recruit trafficked Belarusian women as prostitutes after offering them jobs as waitresses through local employment agencies.¹⁰ People smugglers, rather than luring their victims themselves, are often approached by people who are willing to pay to be taken out of the country. The Snakeheads of China are a good example of migrant smugglers who build up a good business reputation on successful movements of migrants.

International and Domestic Destinations

Human trafficking can take place internationally or domestically within the victim's country of residence. The destination is usually to the precise location of exploitation, for example a factory or brothel. Migrant smuggling can only take place internationally as its entire purpose is to transfer people from their country to another, where they have no lawful right of residence. Many feel that the exclusion of domestic trafficking from the international definition makes it incomplete. However, this is done in accordance with a founding principle of the UN Charter that 'nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state...'¹¹

Profit

When we consider human trafficking, it is critical to consider that most profit is generated from the ongoing exploitation of the person being

⁹ *Iselin and Adams* (n 6) 4.

¹⁰ Chapter 4 of the US Department of State, *Trafficking in Persons Report* (2004) 1.

¹¹ Article 2 para [7] of the UN Charter (1945).

trafficked. It is the *raison d'être* for the trafficking.¹² Profits accrued are kept by employers whereas costs such as those for food, accommodation or even abortions, are borne by the victims in the form of increased debt. Migrant smugglers make their profit from payments made to them by 'customers' wanting transportation across a border. Prices are negotiated by taking into account transportation, forgery and bribery costs, though these are often changed during the journey.

The Use of Violence

Human trafficking is classified as a violent crime, as victims typically need to be restrained and forced into compliance, at least from their arrival onwards, if not from the outset. The level and types of violence used render trafficking one of the world's most serious crimes. People smuggling is classified as a migration offence as it is not usually involved with violence. However, violence has been used when victims default on payments, or simply to make an example of any that compromise the cross border movement.

The Role of the Victim Post Arrival

Upon arrival, a trafficked person will be put to work and they will remain indefinitely. Trafficked victims will be deprived of their liberty and effectively incarcerated at the site of exploitation. In contrast, an illegal migrant, once smuggled, is largely left alone to disappear into the new population or make an appeal for asylum. The smuggler may offer additional provisions, such as safe houses but these are not necessarily expected. Only victims of trafficking are awarded victim status under international law. However, because of a lack of understanding on the differences between the two, most trafficked victims will at the point of detection be labelled illegal migrants, to be detained and eventually deported. UNTOC and its supplementary Protocols have outlined criminal justice responses to the problem of detection and treatment of trafficked and smuggled migrants. These recommendations have, as yet, only been implemented in a handful of national legal systems but, in the face of growing public awareness, it is hoped more will follow in the near future. The Convention has introduced several requirements regarding many aspects of transnational crime. The following section analyses this legislation and assesses its potential to tackle trafficking effectively across the globe.

¹² *Iselin and Adams* (n 6) 7.

International Law Responses

The UN Convention against Transnational Organised Crime

The call for an international convention against transnational organised crime arose out of the 1994 United Nations World Ministerial Conference on Organised Crime held in Naples, Italy. It expressed the ‘urgent need for more effective international mechanisms to assist states and to facilitate the implementation of joint strategies for the prevention of and to combat organised transnational crime, and the further need to strengthen the role of the UN as a focal point in that field.’¹³ In 1998 the UN General Assembly, in Resolution 53/111 created an intergovernmental *ad hoc* committee consisting of non-UN and UN member states as well as non-governmental organisations to address the matter.¹⁴ UNTOC and its supplementary Protocols were approved by the General Assembly in Palermo, Italy in 2000 with 124 Member States signing the Treaty.¹⁵ Eighty signed the related Protocol on trafficking and 70 signed the Protocol on the smuggling of migrants.¹⁶ The aims of the Convention are two-fold; first, to eliminate differences between national state laws and, second, to set standards for municipal systems at the levels necessary to combat trafficking. This is outlined in Article 1 of the Convention which states:

‘...the purpose of this Convention is to promote cooperation to prevent and combat transnational organised crime more effectively.’

The Protocols

The attached Protocols also have their own aims. Article 3 of the Smuggling Protocol seeks to ‘criminalise migrant smuggling and promote cooperation among states in actions against people smuggling.’ Article 1 of the Trafficking Protocol similarly seeks ‘to prevent and combat trafficking in persons, paying particular attention to the protection of women and children and to promote and facilitate cooperation among state parties in order to achieve this.’ The drafters clearly recognised that state cooperation was vital and that all states would have to enact anti-trafficking laws in order to prevent the creation of safe havens for traffickers. However, cooperation alone would be insufficient and the Convention outlined a number of corresponding strategies. The Protocol against trafficking advocated *the three P approach*. This contains provisions requiring states 1) to prosecute offenders through the criminalisation of trafficking conduct, 2) to protect

¹³ ‘The World Ministerial Conference on Organised Transnational Crime, Italy, 21-23 Nov 1994’ 24/25 *UN Crime Prevention and Criminal Justice Newsletter* 18.

¹⁴ UN General Assembly, A/Res/53/111 (1999) para [10].

¹⁵ ‘More than 120 Sign New UN Convention on Transnational Organised Crime as High Level meeting concludes in Palermo’ *UN Press Release* Dec 15 2000 as quoted in *Potts* (n 3) 236.

¹⁶ *Ibid.* at 236.

adequately the victims of such offences and 3) to prevent further actions through information sharing and cooperation.

Article 5 (1) of the Trafficking Protocol aims to use legislation as a tool to create new laws expressly criminalising trafficking in persons, especially women and children, to ensure that offenders are prosecuted. Article 11 also requires states to aim to adopt measures such as stricter border controls and identity checks. To implement a more coherent transnational enforcement system in nations of trafficking origin, transit and arrival, states agree to exchange information they have acquired about potential offenders. These are listed in Article 10 of the Trafficking and include:

- 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 organized 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.¹⁷

In addition to the efforts against perpetrators, there are also provisions calling for the protection of victims. Through Articles 6 (1) and (2) the Trafficking Protocol obliges states to inform victims about potential court proceedings against offenders and to ensure victims' privacy. Article 6 (3) provides for the physical, psychological and social recovery of victims, through appropriate housing, counselling, medical and educational opportunities. Article 6 (6) enables victims to seek compensation for damages, including fines or forfeited proceeds as well as restitution from perpetrators. Article 7 allows states in appropriate cases to consider adopting immigration laws permitting victims to remain on their territory, permanently or temporarily. Article 8 requires nations to accept and assist, without undue delay, the repatriation of trafficking victims who are nationals or at least residents of that state. Some of the more long sighted provisions of the Protocol are those designed to combat trafficking through preventative measures. Article 9 of the Protocol recommends that states adopt anti-trafficking social policies which include information campaigns,

¹⁷ Article 10 (1) of the *UN Trafficking Protocol* (n 7).

educational programmes for schools and social and economic initiatives to collectively combat trafficking in persons.

The Smuggling Protocol takes up a similar approach aiming to criminalise people smuggling and share state information, as well as to allow specific measures to stop the smuggling of migrants by sea. To eliminate safe havens for migrant smugglers Article 6 of the Protocol obliges nations to legislate to criminalise such behaviour. Actions which may potentially amount to this are listed in Article 6 (1) as:

- a) The smuggling of migrants;
- b) When committed for the purpose of enabling the smuggling of migrants:
 - (i) producing a fraudulent travel or identity document;
 - (ii) procuring, providing or possessing such a document.¹⁸

Through Article 6 (2) each state is also required to adopt measures to establish as criminal offences; acting as an accomplice to an offence established above, or organising or directing others to commit such offences. It is important to point out that illegal migrants who have been smuggled are not liable to criminal prosecution ‘for the fact of having been the object of conduct set forth in Article 6.’¹⁹ Thus the illegal migrants may not be regarded as accomplices to the crime, despite often having provided direct financing for their movement across borders. This is done on the basis that no moral blame should be attributed to victims of such crime since their original agreement is often vitiated.

Smuggling by sea is a common but highly dangerous method of migrant smuggling and is therefore awarded specific attention by the Protocol, in accordance with the International Law of the Sea. Article 8 (1) obliges states, when requested, to help bring to a halt any vessel from the requesting state which is suspected of being used for the smuggling of migrants. Similarly Article 8 (2) requires states to confirm registry of a vessel as that of the flag state. In such circumstances the flag state may authorise the requesting state, *inter alia*:

- a) To board the vessel;
- b) To search the vessel; and

¹⁸ Article 6 of the *Smuggling Protocol* (2000) (n 8).

¹⁹ *Ibid.* Article 5.

- c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorised by the flag State.²⁰

We can begin to appreciate the value of these common standards, if we examine how easily national statutes have been able to vary between one another. A good example is provided by states in the Asia-Pacific region, through which approximately 200,000-225,000 women and children - almost one third of the global trafficking trade - are trafficked annually.²¹ The immigration laws of Thailand, Malaysia, China and the Philippines criminalise the bringing in of people not lawfully authorised to enter the country,²² while Singaporean, Taiwanese and Cambodian provisions focus on the 'aiding and abetting' of a non-citizen's illegal immigration.²³ Similarly the immigration laws of Malaysia, Cambodia and Thailand concerning the harbouring of illegal migrants make it an offence to harbour any person not lawfully entitled to reside in the country, while the offence in Hong Kong criminalises 'any person who *assists* an unauthorised entrant to remain in Hong Kong unlawfully.'²⁴ Additionally, there are few regional agreements attempting to limit these differences through the sharing of information.

The Smuggling Protocol assists States in facilitating these processes with Article 10 (1) which holds:

'...state parties, in particular those with common borders or located on routes along which migrants are smuggled, shall... exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information...'²⁵

Matters to be shared can include typical routes and means of transportation, the identity and methods of known criminal groups and the altering, reproducing, acquiring or otherwise misusing travel and identity documents. In light of stricter measures to combat fraudulent documentation, border controls have also been tightened by Article 11 of the Smuggling Protocol. The emphasis on document fraud is evident in most states, showing an understanding of how trafficking is linked to wider international crime. If we look once again to our Asia-Pacific example, only Thailand, the

²⁰ *Ibid.* Article 8.

²¹ A Derks, 'Combating Trafficking in South East Asia' *IOM Research Series* (2000) 5.

²² A Schloenhardt, 'Trafficking in Migrants in the Asia-Pacific: National, Regional and International Responses' *Singapore J Int'l and Comp L* 696 (2001) 714.

²³ *Ibid.* at 715.

²⁴ Section 37 DA of the Immigration Ordinance 1972 (Hong Kong) quoted in *Schloenhardt* (n 22).

²⁵ Article 10 of the *Smuggling Protocol* (n 8).

Philippines, and Papua New Guinea have failed to implement laws to combat document fraud in the context of immigration. Other States have assembled their fraudulent document laws to take into account the activities of organised criminal groups, with whom they are often associated. For example, Vietnam imposes greater penalties if forgery 'is committed in an organised manner.'²⁶

The laws regarding document fraud are necessarily technical and it is important for law enforcement to be able to keep pace with developments. The Smuggling Protocol, in Article 14, addresses the training that should be given to relevant officials on how to deal with illegal migration. This includes training on how to detect fraudulent documents and gathering intelligence, as well as treating migrants with respect for their human rights. Article 14 (3) building on nascent global cooperation asks that:

'...states...with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6...'²⁷

The Smuggling Protocol does not however, include measures for the protection of victims and there are no provisions to ensure that such persons have the opportunity to appeal for asylum, without being penalised for entering states illegally.²⁸ Both Protocols contain savings clauses stating the obligations of states under international law such as the principle of *non-refoulement* introduced in the 1951 Convention Relating to the Status of Refugees.²⁹

We can see in light of this that classification as a victim of trafficking or as a smuggled migrant, has significant impact on treatment under international law. Smuggled migrants are afforded basic protections, particularly the right to life and the right not to be subjected to inhuman or degrading treatment under Article 16 of the Smuggling Protocol but not the relatively broader range of protections given to trafficking victims in Articles 6 and 7 of the Trafficking Protocol. It is questionable that such a substantial difference in the social and legal rights awarded to victims should be based on a very blurry *de facto* distinction.

The lack of protection awarded to victims is apparent when victims are used to assist in criminal investigations against offenders. Often when

²⁶ Art 266 (2) of the Penal Code 2000 (Vietnam) quoted in *Schloenhardt* (n 22).

²⁷ Article 14 of the *Smuggling Protocol* (n 8).

²⁸ European Council on Refugees and Exiles background paper, '*An overview of proposals addressing migrant smuggling and trafficking in persons*' (2001) 3.

²⁹ This principle, prohibiting the repatriation of refugees to countries where their freedom is threatened on grounds of race, religion, nationality, social group or political partisanship is now considered by the office of the UN High Commissioner for Refugees as one of customary international law. See Conclusion No. 25, Executive Committee, UNHCR (1982).

traffickers are caught and prosecuted, their cases fall apart because of poor witness protection, or victims' fears of deportation.³⁰ Smuggled migrants are afraid of retaliation by offenders, recrimination within their families or villages or the stigma of being labelled a prostitute.³¹ It is not clear why victims are not afforded the necessary protection to enable them to provide information against the offender. An exploited victim of trafficking may conceivably have consented to their illegal movement across borders until it was vitiated by being subjected to some form of exploitation. However, exploitation does not apply to all migrants who are smuggled which leads to separate categories of trafficked victim and smuggled migrant. We can therefore see quite clearly that the distinction based on consent is a specious one.

Worryingly, several of the new measures aiming to tighten border controls may have the adverse effect of limiting the right to free movement especially for those who find themselves undocumented in war-torn or other unstable environments, leaving illegal methods of transnational movement as their only recourse. It is well known that persons in need of protection will often take great risks to cross a border. It is for these reasons that NGOs are urging a greater focus on the socio-political root causes of trafficking.³²

There is general consensus that greater bilateral and multilateral cooperation is needed to tackle the global character of trafficking. But according to many state officials including many of those present at the Convention signing ceremony, this strategy must address the great economic divide between developed and underdeveloped states that makes so many vulnerable to trafficking and transnational crime.³³ President Chissano of Mozambique remarked that:

‘...combating transnational crime can only be successful and effective if we bring together our efforts and resources. The richest nations must support unconditionally the most disadvantaged nations by providing them access to financial and material means, to modern technologies and know-how.’³⁴

Some western states have supported this plea. The Secretary of State of Norway commented on the wider interests of all nations to ensure that developing states were more able to protect their territories from organised

³⁰ U.S Dept of State, *Trafficking in Persons Report* (2003) 9 quoted in S Nel, ‘Victims of Human Trafficking: Are they adequately protected in the United States?’ *Chi.-Kent J. International & Comparative Law* 3 (2005) 10.

³¹ *Ibid.* at 10.

³² *European Council on Refugees and Exiles* (n 28) 2.

³³ UN Press Release, ‘*Aspects of UN Convention against Transnational Organised Crime*’ UN Doc. L/T/4356 (2000).

³⁴ *UN Press Release Dec 15 2000* (n 15) 247.

crime.³⁵ The Protocol on smuggling supports this but, as we have seen, obliges states only to *consider* providing technical assistance. Alternatively it may have been prudent to make funds available to non-state parties such as UNICRI, the United Nations Interregional Crime and Justice Research Institute, who undertake specific projects in this area.

As the Trafficking Protocol recognises that women and children are predominantly more vulnerable to being trafficked than men, Mary Robinson, UN High Commissioner for Human Rights, has suggested the Protocol should contain an individual section for children to address their specific needs. These were highlighted by cases such as that in Maryland in the US, where four residents of Montgomery county were arrested for bringing two teenage girls from Cameroon to the US and forcing them to work as domestic servants without pay. Their young age, lack of local knowledge and fear of repercussions against their families caused the girls to conclude that escape was impossible.³⁶ Most States however have dismissed this as they are already obliged 'to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form' under the Convention on the Rights of the Child.³⁷ There may be concern that such amendments will create unnecessary legal duplication of the existing legal framework.

The Role of Destination State Demand and Organised Crime The Role of Organised Criminal Groups

Illegal migration today has to be seen in the light of changing conditions and structures in the global economic arena. A general increase in the population has led to a concomitant increase in unemployment in developing states while economic disparities between nations have widened. This has galvanised people to move abroad in search of a better standard of living or to escape war or persecution.³⁸ In response to this increasing movement, states began to restrict access to their immigration and asylum systems. This led migrants to look for other means of entry into destination states, usually through professional smugglers, working as part of organised criminal groups. The restrictive immigration policies, coupled with the increase in migration globally and the relatively small risks of detection, create an illegal market, and an opportunity for criminal organisations to provide services illegally.

While there are a number of academic definitions of organised crime, we may find useful the broadly recognised definition provided by US criminologist, Howard Abadinsky:

³⁵ UN Press Release Dec 15 2000 (n 15) 33.

³⁶ Phuong Ly, 'Couples Allegedly Held Two In Servitude' *Washington Post* (2000) B1.

³⁷ Article 35 of the UN Convention on the Rights of the Child (1989).

³⁸ *Schloenhardt* (n 5) 84.

‘organised crime is a non-ideological enterprise involving a number of persons in close social interaction, organised on a [structured] basis with [different] levels/ranks for the purpose of securing profit and power by engaging in illegal and legal activities.’

There is some doubt as to whether migrant smuggling, at least, is quite so hierarchically organised. For example Zhang and Chin argue that ‘most alien smugglers are otherwise ordinary citizens whose familial networks and fortuitous social contacts enable them to pool resources to transport humans.’³⁹ In reality, international criminal organisations are arranged in a number of different ways. Small flexibly organised groups can exist, usually comprising amateurs who do not operate internationally, unless it is within a specific region. There are also highly professionalised networks with defined hierarchical structures. These groups typically include an ‘arranger’ responsible for overseeing entire operations, a ‘recruiter’ with responsibility for finding and gathering potential migrants who can often double up as a ‘debt collector’ responsible for collecting money from migrants once they arrive at their destination. A ‘transporter’ responsible for moving migrants across borders, corrupt public officials who allow themselves to be bribed to provide fraudulent travel documents or enforcement authorities who turn a blind eye. For example, Indian brothel landlords attempting to traffic Nepalese women into India, reportedly pay local law enforcement officials to remain silent.⁴⁰ An ‘informer’ who gathers intelligence about borders and transit procedures of states en route to the destination, and a group of enforcers responsible for maintaining order among migrants and employees alike. Finally, money launderers who try to give a legitimate appearance to the proceeds of their illegal activity, for example, by reinvesting the money in legitimate enterprises.⁴¹ With this structure in place, organisations can ‘systematically exploit the discrepancies between different jurisdictions and legal systems and quickly find loopholes in law enforcement, border control and legislation in different countries.’⁴² Organised criminal groups are defined in Article 2 (a) of the Convention as:

‘...a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in

³⁹ Zhang and Chin, ‘Enter the Dragon: Inside Chinese Human Smuggling Organisations’ 40 *Criminology* 737 (2002) 1.

⁴⁰ J Chuang, ‘Redirecting the Debate over Trafficking in Women: Definitions, Paradigms and Contexts’ 11 *Harvard Human Rights Journal* 65 (1998).

⁴¹ For a more detailed version of this list consult *Schloenhardt* (n 5) 93.

⁴² A Schloenhardt, ‘Trafficking in Migrants in the Asia-Pacific: National, Regional and International Responses’ *Singapore Journal Int’l and Comp L* 696 (2001) 700.

accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.’

The Convention itself introduces a variety of measures to tackle the problem of crime at this organisational level. Article 5 (1) (i), reflecting the varied concepts of organised crime, discusses the offence of ‘conspiracy’ for the purpose of financial or other benefit while paragraph (ii) discusses liability for participation in a criminal group. The Convention leaves the approach to this to individual states but in doing so fails to perform one of its most fundamental tasks; it cannot bridge the gap between national discrepancies in this definition. Because there is no international ‘organised crime’ offence, traffickers may still be free to exploit loopholes.

The problem is further exacerbated by the fact that individual nations can have not only separate laws, but entirely separate concepts of organised crime. For example, out of the jurisdictions previously examined, only Taiwan, Hong Kong, Macau and the Philippines have legislated directly against criminal organisations. Of these, Hong Kong and the Philippines employ largely procedural provisions to facilitate seizures and court prosecutions while Taiwan and Macau focus on the offence of membership in a criminal organisation. However the Convention’s leavening influence is perhaps better illustrated by remembering that, prior to this, many affected states in South East Asia had no legal concepts of conspiracy, or participation in organised criminal activity at all. This meant that some of those involved could never be prosecuted and possibly not even extradited.

Article 31 aims to prevent organised crime by limiting the corruption of businesses and public officials by, for example, requiring states to monitor the expenditure of public authorities and disqualifying business directors, who have been convicted of offences involving organised crime. In addition, it advocates the implementation of public awareness campaigns similar to the Torture and Smuggling Protocols.

Article 16 tackles the loopholes that exist between legal systems, by attempting to provide for extradition to the greatest possible extent, even in the absence of more specific bilateral and multilateral agreements. It is subject to the following exceptions:

- i) states may refuse to extradite if there is no official extradition Treaty between them and the requesting country.
- ii) states may refuse to extradite if they have reason to believe those extradited will be persecuted on grounds of religion, race, sex or political affiliations.

- iii) states may refuse to extradite their own nationals but in such cases must bring proceedings in municipal courts. Essentially they are obligated to ‘extradite or prosecute (*aut dedere aut judicare*).’⁴³

Article 21 allows states to ‘consider the possibility of’ transferring criminal proceedings to one another when parties from numerous jurisdictions become involved.⁴⁴ Article 18 is arguably one of the Convention’s most welcome provisions, as it facilitates pragmatic mechanisms by which signatories may offer each other mutual assistance in investigations, prosecutions and judicial proceedings in relation to organised crime. Article 30 also allows states to provide financial and material assistance by offering voluntary altruistic donations or by offering a portion of the confiscated proceeds to less developed states. Article 19 focuses on technical features by promoting cooperation in law enforcement and information sharing.

In the pursuance of implementation, it was originally envisaged that states would provide biannual reports showing their progress. However, in view of fierce resistance a lower requirement of having conferences to review implementation was adopted. This could mean that, despite the principled intentions of the Convention, the suggestion that it can be so loosely implemented may overshadow its promise. Critics have argued that:

‘...state parties have too great a freedom to modify the requirements of the convention and not implement unwanted provisions into domestic law. Too few mechanisms exist at the international level to ensure cooperation and compliance by States, thus creating safe havens for criminal organisations.’⁴⁵

The significance of this depends on exactly what type of role we expect the Convention to play. Is the aim to provide a universal body of law, a model law of sorts, with sufficiently precise standards to allow all states to have the same law, or to provide a framework of minimum standards and default cooperation procedures, in order to more closely harmonise different national systems and make cooperation easier? The Trafficking Protocol’s preamble admits the need for a comprehensive approach but claims that, in the absence of a universal instrument which addresses all aspects of trafficking in persons, an instrument addressing trafficking ‘[would] be *useful*

⁴³ Article 16 (14) of the UN Convention against Transnational Organised Crime (UNTOC) (2000).

⁴⁴ The language used in this article seems especially weak when contrasted with other international instruments such as the European Convention on the Transfer of Proceedings in Criminal Matters, under which States may not refuse the acceptance of transfer of proceedings requests except in specific cases.

⁴⁵ *Schloenhardt* (n 42) 742.

in preventing and combating that crime.⁴⁶ This suggests that such an outlook may also be true of the Convention as a whole. On this reading it would be difficult to criticise the Convention for lack of precision in aligning state laws, as it does not admit to having that function. Commentators point out that the Convention is the result, not of contemporary and detailed knowledge of organised universal crime but a compromise between various conflicting political influences, that may have overrepresented the more powerful nations. Provisions also require a substantial amount of financial resources which smaller states may struggle to acquire.

The Convention paves the way for effective measures to stop international trafficking and smuggling of persons based on international cooperation. By applying greater controls on international criminal organisations, they may be stopped, not for trafficking offences directly but for lack of transparency in business undertakings or illegal financing for example. By suppressing the organisation itself, automatically the illegal activities, in which it is involved, are also suppressed. Nevertheless, significant challenges remain.

The Question of Migrant Demand

We know that there are both emigration ‘push’ and immigration ‘pull’ factors behind human trafficking and smuggling. However, it is worth considering whether high demand from host states, for certain types of work, plays an indirect role in luring migrants, especially when demand is aimed specifically at migrant workers. This possibility will be considered in the context of the sex industry and domestic work – two common destinations for trafficked persons. In these lines of work customers tend to place a great deal of emphasis, not just on the quality of work but also their appearance, age, race and gender. It is therefore conceivable that in certain industries consumer demand may be closely linked to the phenomenon of human trafficking.⁴⁷

An international survey identified that customers in various countries feel there is a link between a client’s social status and the ethnic identity of the sex worker whose services they purchase. This is made clear by one interviewee who claimed ‘poorer men have to go to migrant workers because they are cheaper.’⁴⁸ This does not however, mean that prostitutes who are nationals of a country are always preferred to migrants. Most

⁴⁶ M Iníguez de Heredia, ‘People Trafficking: Conceptual issues with the United Nations Trafficking Protocol’ *Human Rights Review* (2006) 6.

⁴⁷ B Anderson and J O’Connell Davidson, ‘Is Trafficking in Human Beings Demand Driven?’ *IOM Migration Research Series* (2003) 12. See also D Hughes, ‘The ‘Natasha’ Trade – The Transnational Shadow Market of Trafficking in Women’ *Journal of International Affairs* (2000).

⁴⁸ *Ibid.* quote of Thai Government Official at 21.

interviewees in Asian states placed white European migrant workers at the top of their hierarchy.

Private employment in households for domestic work is often dependant on the race of the worker. This is mainly due to stereotypes that migrant workers are more disciplined and professional as well as ‘cheap and obedient.’ As domestic work falls into the private sector, employers are not bound by long term contractual obligations and can act as they wish. Migrant workers are seen as valued because employers believe they are less likely to quit without notice, either because of immigration status or because they have nowhere else to go.⁴⁹

Employers also favoured the separateness of migrant workers as they made any social gaps between employers and employees ‘unbridgeable,’ so that there was no need for employers to feel guilty about issues like class distinction. The evidence therefore suggests that in this area at least, demand for migrant workers specifically is high. Migrants are exploited because they have no alternative options to exercise, low economic status and a lack of support networks. Consumption patterns seem to establish themselves at young ages and be based on social considerations, for example to keep up one’s status as a ‘busy professional’ or ‘good mother and wife.’⁵⁰

It is difficult to see exactly how international law against trafficking, exploitation and criminal organisations deals with these types of social considerations at the root of the matter. Besides better regulating these markets we must, more pressingly, address issues of migrants vulnerability through social measures involving education and enforcement.

Developed State Responses: A US Case Study

We have seen how the different laws of South East Asia have led to irregular anti-trafficking frameworks. However, many of the countries examined often have limited financial capabilities or other competing political agendas, while the concept of organised crime linked to trafficking is relatively new. South East Asian countries also have the notable problem of existing in a region densely populated with states of differing legal and political persuasions. In order for anti-trafficking mechanisms to work they have to be similar or identical across territories. The Convention may be helpful in facilitating this process. States in more developed regions tend to suffer less from such problems. The United States, for example, is encroached only by borders on two sides and has far greater financial capacity to adopt effective anti-trafficking provisions. Nevertheless, it can be seen from the figures above that the United States experiences almost as much trafficking activity as a State of destination, as some parts of the Asia-

⁴⁹ *Ibid.* at 30.

⁵⁰ *Ibid.* at 41.

Pacific do as states of origin and transit. Does the US therefore have as much to gain from the UNTOC?

The US Interpretation

Modern US anti-trafficking law is drawn from the Trafficking Victims Protection Act (TVPA) 2000, a division of the Victims of Trafficking and Violence Protection Act, reauthorized most recently in 2005. This contains provisions with regard to prosecution of offenders, protection of victims and prevention of trafficking. Under the first branch, sentencing has been increased, and new forced labour, sex trafficking and document withholding offences have been created. Under the second branch an innovative ‘T-Visa’ is now available; a non-immigrant visa category providing three years’ temporary residence and employment authorisation. After three years a recipient may apply for permanent residence. The US is currently the only country which allows the possibility of permanent residence to trafficking victims. The eligibility requirements for a T-Visa would be met providing the applicant is:

- i) a victim of a severe form of trafficking;
- ii) has complied with any reasonable request for assistance from local, state or federal law enforcement in the investigation of the offence;
- iii) is physically present in the US, the Mariana Islands or Samoa; and
- iv) would suffer extreme hardship involving unusual or severe harm if removed.⁵¹

During any investigation, undocumented trafficking victims may live and work lawfully under the policy of ‘continued presence.’⁵² Additionally, a U-Visa is available to entrants for those who are either victims of trafficking themselves or possess information necessary for an investigation or prosecution.

The prevention branch aims to fund public awareness efforts as well as social programmes internally and overseas. For example in 2004, the Department of Health and Human Services (HHS) launched the ‘Rescue and Restore Victims of Human Trafficking’ awareness campaign. The campaign has functioned primarily as an education and media tool but critics are sceptical as to whether it is reaching victims directly, arguing that

⁵¹ Section 101 (a) (15) of the Trafficking Victims Protection Act (2000).

⁵² *Ibid.* Section 107 (c) (3).

specific grassroots campaigns should replace more general efforts. Only local initiatives are likely to penetrate through to trafficked persons 'such as non-English newspapers and radio and distributing inconspicuous items containing a hotline number, such as brocade lipstick cases and matchbooks distributed in New York Chinatowns and prayer cards distributed among Hispanic populations.'⁵³ According to the HHS hotline, the number of calls currently received each month from actual trafficked persons is 'very, very small.'⁵⁴

The main concern however, is that the approach taken by the legislation has conceptualised trafficking as a law enforcement problem and fails to adequately implement a human rights element into its model. Under the TVPA, assistance is only afforded to those trafficked persons willing to assist law enforcement and the stringent application requirements mean that a large number of victims become ineligible for support. For example in an El Paso case one out of seventy-five persons revealed the details of her trafficking; all those who remained silent were deported.⁵⁵

In 1999, the US estimated that approximately 45,000 to 50,000 women and children were trafficked annually into the country.⁵⁶ The study further revealed that there were several purposes behind it including prostitution, domestic servitude, construction, manufacturing and agriculture.⁵⁷ Six years later following implementation of the TVPA, the estimate was revised to between 14,500 and 17,500 people.⁵⁸ Officially, the US has identified and awarded T-Visas to only 675 people since 2000, despite 5000 being available annually. The significant difference in numbers can be explained by the narrowly defined group in which victims now find themselves. 'They are people who have received a T-Visa, a form of immigration relief conditioned upon assistance to law enforcement, who have been deemed to meet the TVPA definition of victim trafficking.'⁵⁹ The following persons therefore will not be included; those who are US citizens, those who require no immigration relief or who apply for and receive a different form of assistance, those who fail to come forward to report to or assist law enforcement, those who on the basis of their interviews with law enforcement officials are deemed inappropriate witnesses, those who are released by law enforcement because they are not the best witnesses in a group coming forward collectively and those who fail to meet the evidentiary requirements of the T-Visa.

⁵³ Women's Commission for Refugee Women and Children, *The U.S. Response to Human Trafficking: An Unbalanced Approach* (2007) 17.

⁵⁴ Interview with Gil Ortiz, Covenant House Nyneline and Human Trafficking Hotline quoted in *The U.S. Response to Human Trafficking* (2007) 18.

⁵⁵ *U.S. Response to Human Trafficking* (n 53) 23.

⁵⁶ *Ibid.* at 10.

⁵⁷ *Ibid.* at 10.

⁵⁸ US Department of State, *Trafficking in Persons Report 6* (2006).

⁵⁹ *US Response to Human Trafficking* (n 53) 12.

This reflects the broader debate about the widely varying global estimates on numbers of trafficking victims, which is the consequence of differing interpretations of what it means to be trafficked. For example, groups such as the Human Rights Caucus, who consider sex work as legitimate labour, generate smaller numbers than those such as the Coalition Against Trafficking in Women, who consider prostitution as an abuse of women's rights regardless of consent and therefore regard all women brought to another country as prostitutes to have been trafficked. Indeed Outshoorn notes that 'the way in which prostitution is defined, for example as a criminal problem, a human rights problem, an economic problem, or a public health problem determines how it will be controlled.'⁶⁰ The same can be said for trafficking.

The Office of Refugee Resettlement has confirmed 'a small fraction, 3.9% of victims found will yield individuals who receive a visa.'⁶¹ One theory to explain this is that the nature of law enforcement requires the provision of detailed accounts of trafficking, which are simply unattainable when victims have not been allowed counselling and basic services. Early interviews 'result in the exacerbation of trauma symptoms such as anxiety and the sense of danger, memory problems and disjointed accounts that create credibility concerns.'⁶² As a result law enforcement is unable to determine if a victim is trafficked and the individual is deported. A victim is more likely to be responsive if they do not feel coerced.

Additionally, the Department of Justice (DOJ) reports show that over the past five years 75% of trafficking prosecutions have only been related to sex trafficking.⁶³ This is because providers of services and benefits are cautious about advising victims to report their experiences if they were trafficked for other purposes such as labour. Should their case be turned away, no benefits would be awarded and they could face deportation proceedings. Thus the risks of reporting may, in some instances, outweigh the potential benefits. Some go as far as to remark:

'...just as a trafficker believes a person is only valued for her labour, the law enforcement approach treats a trafficked person

⁶⁰ Outshoorn, 'Introduction: Prostitution' in P Coontz and C Griebel, 'International Approaches to Human Trafficking: the Call for a Gender-Sensitive Perspective in International Law' *Women's Health Journal* 4/2004, 50.

⁶¹ Presentation by A Darrell & Company, at the US Department of Health and Human Services Conference of Survivors of Sex Trafficking, Washington D.C., 'Trafficking Victim Outreach Grant: the Results (2006).

⁶² Interview with Judy Okawa, The Center for Traumatic Stress Studies, quoted in 'The US approach to Human Trafficking' 23.

⁶³ U.S Department of Justice, Attorney General's Annual Report to Congress on US Government Activities to Combat Trafficking in Persons (2006) quoted in *US Response to Human Trafficking* (n 53) 15.

as only valued for her information. Without the information, there is no reason to help.⁶⁴

The US presents its legislation as an example to the rest of the world and has laid out plans to assist other states in building their anti-trafficking policies. The Department of Justice annual report sets minimum standards for foreign governments who wish to receive US assistance. These are:

- a) To prohibit trafficking and punish acts of trafficking;
- b) To prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault, for the knowing commission of trafficking in some of its most reprehensible forms;
- c) To prescribe punishment that is sufficiently stringent to deter and that adequately reflects the offence's heinous nature for the knowing commission of any act of trafficking; and
- d) To make serious and sustained efforts to eliminate trafficking.⁶⁵

The DOJ Report categorises countries into three tiers according to their compliance with these standards. Those ranked lowest face the possibility of being sanctioned. By doing this the US is perpetuating a flawed approach largely centred around criminalisation at the expense of human rights protections.

Shortcomings of the Law Enforcement Model

Far from benefiting from the International Convention, the US model helps us identify its main weaknesses. The UN Convention and its Protocols, while ostensibly an extensive attempt to alleviate trafficking, still encounter significant difficulties because of their understanding of the problem as one of law enforcement. This is true regardless of whether the Convention's true function is to act as a model law or to create procedural harmonisation between states. The Articles in the Trafficking Protocol focusing on criminalisation have been structured with the strongest use of language, for example, 'all states shall adopt' suggesting that it imposes obligations on states rather than mere encouragement. The Articles dealing with protection use relatively weaker language. They require states to protect victim confidentiality *in appropriate cases* and *to the extent possible* under its domestic laws. It encourages state Parties to *consider* implementing a range of victim

⁶⁴ *Ibid.* at 22.

⁶⁵ S Nel, 'Victims of Human Trafficking: Are they adequately protected in the United States?' *Chi.-Kent J. International & Comparative Law* 3 (2005) 22.

recovery programs. It urges states *to endeavour* to address the physical safety of victims and *to consider* adopting measures to allow victims to reside in their territories temporarily or permanently.

The weakness of the language is partly attributable to the fact that the Trafficking Protocol was negotiated under the auspices of the UN Crime Commission, a body authorised to deal with law enforcement rather than human rights.⁶⁶ A human rights approach is favourable because of its capacity, among other things, to provide durable and lasting solutions that go beyond the ‘myopic prevention techniques’ of law enforcement.⁶⁷ The focus of the Protocol results in a supply side approach that places primary responsibility on law enforcement and border control. It disregards the demand side of the problem or the factors of economic and social inequality between developing and developed nations, which create the endless supply of people into the trafficking market. It is a criticism that has been noticed by Coontz and Griebel, who remarks:

‘...the Protocol’s failure to give even minimal attention to the... demand aspects of trafficking is troubling. For example, the idea of sanctioning the clients of prostitution and thus taking a stab at demand is a difficult legal area to address internationally when the criminal target varies...in different national prostitution laws. Nonetheless, wholesale pardoning of the clientele is untenable for achieving the Protocol’s long-term goal of eradicating trafficking. ...The total neglect of the issue of demand in the Protocol suggests that the UN instrument lacks a viable remedy for the deep-rooted causes of trafficking.’⁶⁸

The Protocol’s substantive make-up goes some way in displaying whose interests it is geared towards protecting. The structure of the legislation suggests it is balancing the interests of individual victims, with the collective interest in suppressing organised crime, and the interests of destination states to control their borders.

However, it is difficult to determine whether this balancing act can be effectively achieved especially given its current emphasis on criminalisation. Neo-realist political theory may in this case be correct in observing that, first and foremost, states act to ensure their own survival. The success of the Trafficking Protocol has so far been due to the fact that trafficking has

⁶⁶ A Jordan, ‘International Human Rights Law Group’ in *The Annotated Guide to the Complete UN Trafficking Protocol* (2002).

⁶⁷ J Chuang, ‘The Role of International Law in Countering Human Trafficking’ *American Society of International Law Webinar* (2006) 28.

⁶⁸ P Coontz and C Griebel, ‘International Approaches to Human Trafficking: the Call for a Gender-Sensitive Perspective in International Law’ *Women’s Health Journal* 4/2004, 56.

‘been addressed as an activity that threatens state authority and its borders rather than as a human rights concern.’⁶⁹

There is further evidence that the Convention may not be quite as forthright in practice as it is in theory. In November 2000, UN police in Bosnia raided and closed three brothels suspected of housing trafficked prostitutes. Surprisingly, six of the officers were later forced to resign for their failure to include local police in the operation and threatening the stability of UN diplomatic efforts in Bosnia, despite indications from a UN report that there was ‘compelling evidence of complicity by the local police’ in the sex trade.⁷⁰

People trafficking is the result of deep-rooted global inequality, the effects of which have reached into society, politics and even values and cultures. It is within this broader context that trafficking should be understood. Globalisation has, to some extent, facilitated the movement of persons through improvements in transportation and communication, the development of international tourism allowing the distribution of information about life abroad and even the spread of transnational crime. Poverty, war and a chronic lack of opportunities lead vulnerable people to consider the possibility of emigrating and ‘trying their luck’ elsewhere, either themselves or through their children. Recruiters become difficult to identify because of corrupt officials and because, in most cases, contrary to commonly held belief, they are acquaintances or ‘friends’ of victims.⁷¹ Stories of success circulate around local districts inspiring others to take up similar action.⁷² In response stringent migration controls are enforced, while there is significant demand for exploitable labour from destination states. These multifaceted root causes are subtle and require equally complex, diligent and gradual remedies to be tackled effectively.

To its credit, the Trafficking Protocol has attempted to deal with trafficking holistically, referring to the causes, such as poverty and inequality, which are at the source of the problem and incorporating measures to deal with prevention and post-trafficking protection. It has also provided a universal and up-to-date definition of trafficking which should in time allow states to produce anti-trafficking instruments on the basis of similar premises. But, crucially, all of these measures have been taken without effectively binding states’ responsibilities meaning that ultimately its promise has been compromised. The Protocols in the framework of the Convention have at the very least provided an important step forward, but it

⁶⁹ *M Iníñiguez de Heredia* (n 46) 10.

⁷⁰ C Lynch, ‘Six UN Officers in Bosnia Resign After Unauthorised Raid’ *Washington Post* (2000) A20.

⁷¹ *Coontz* (n 68) 52 (noting typical examples such as ‘a friends uncle’).

⁷² F Laczko and M Gramegna, ‘Developing Better indicators of Human Trafficking’ *Brown Journal of World Affairs* (2003) 189.

is regrettably difficult to imagine them as the comprehensive and indispensable instruments they may once have promised to be.

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