

Project Trafficking: Global Unity in Addressing a Universal Challenge?

Marina Kaneti

Published online: 20 January 2011
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Abstract Trafficking in persons is often referred to as a global problem that can only be resolved through collaborative action involving the entire global community. Since the early 2000s, the United Nations (UN) has spearheaded efforts to lead the global anti-trafficking campaign and advocate for the humane treatment of trafficked persons. This paper examines the effects of various legal documents and advocacy campaigns to argue that, for the present moment, the UN-led anti-trafficking collaboration fails on both counts—end trafficking and provide protection and support to trafficked persons. It further argues that the global anti-trafficking unity is maintained at the expense of solving the actual problem: identifying someone to blame and criminalize takes precedence over resolving socio-economic conditions, which are often at the root cause of trafficking. An extreme emphasis on criminality and morality, while well aligned with states’ anti-immigration objectives and public outcries against illegal migration and prostitution, also leads to further ostracization of those in need of protection and options for reintegration.

Introduction

There is no debate on the need to end trafficking in persons.¹ In a rare voice of unanimity, businessmen, human rights activists, Hollywood stars, academics, and politicians of all stripes denounce it as a modern-day slavery and a crime against humanity. It is seen as a universal challenge² that cuts across sovereign borders and impacts human beings both individually—as men, women, or children, coerced into

¹Throughout the paper, I use trafficking in persons and trafficking interchangeably.

²References to “universal” and “global” are taken at face value and follow language utilized in UN Protocols, international legal instruments, and publications on trafficking from the UN, US, and the EU.

M. Kaneti (✉)

Department of Politics, New School for Social Research, 6 East 16th Street, 7th Floor, New York, NY 10003, USA
e-mail: marina.kaneti@gmail.com

bonded labor, forced prostitution, organ removal, etc.; and as part of collectivities—as families, townships, businesses, or sovereign states. As the rhetoric goes, the social, political, and economic impact of trafficking spans the globe and hence, requires a global response uniting the efforts of states and non-state entities alike. The two mottos of the global unity are “think global, act local” and “end the crime that shames us all.”

There is no debate on the need to end trafficking in persons; but is there a consensus on how “think global, act local” is to be enacted? What lies beyond the ratification of international anti-trafficking documents and calls for unanimous collective action? Is this a unity borne out of recognition of a common objective that trumps self-interests? Has humanity moved past politics and power plays in addressing a common challenge? Or is this a unity rooted in adversarial politics; a collectivity that is enacted on the basis of exclusion and as means of furnishing particular interests?

This paper argues that ending trafficking in persons remains a political issue that serves various interests and power plays, particularly on the international level. Rather than transposing states’ self-interests and delivering on the vision of a global unity that tackles a problem of both individual and collective concern, trafficking in persons becomes a powerful resource for reclaiming state sovereignty. Moreover, the UN-led global unity against trafficking is a collectivity built on both misrepresentation and adversarial exclusion. In either of these two forms, the intent to end trafficking or aid trafficked persons is lost in debates and actions purporting to preservation of sovereign autonomy and non-interference in domestic socio-economic and cultural affairs.³

The rest of the paper is structured in five parts. First, it provides a brief overview of trafficking and highlights aspects of the UN-engendered efforts at building a global coalition to end trafficking and establish joint efforts at aiding trafficked persons. The next four sections explore issues of misrepresentation and exclusion as generative outcomes of the global unity against trafficking.⁴ In the end it concludes.

Global Challenge in the New Millennium: Trafficking in Persons and the UN-Led Response

Although trafficking in persons is a centuries-old phenomenon, it has primarily been recognized as a universal problem following its increased occurrence in the 1990s.⁵ Today, despite significant statistical variations, it is generally acknowledged that 161

³ My argument builds on theories on global/cosmopolitan unity, the political, friend–enemy relations, and the internal enemy, as developed in the writings of Kant, Schmitt, Arendt, Habermas, Douzinas, and Abizadeh. As the main focus is on coordination and mechanisms of the UN-led and select countries’ anti-trafficking efforts, the paper does not attempt at theoretical exploration of the question of cosmopolitan unity.

⁴ This paper only attempts at mapping a thematic field, which merits additional exploration. The empirical evidence is suggestive rather than all-inclusive.

⁵ For the most part, early 20th century Geneva Conventions (1904 and 1909) and League of Nations (1921) agreements pertain to White slavery only—i.e., although they seek to address human trafficking, the outreach is not universal, but rather, limited to a specific race. Similarly, there is an explicit emphasis on prostitution; thus, the problem of coercive labor exploitation, child slavery, or organ removal is not part of the agreements. See <http://treaties.un.org/Pages/Treaties.aspx?id=7&subid=A&lang=en>. I am grateful to Tonya Putnam for alerting me to this distinction.

countries are affected⁶ by trafficking in persons; the annual profit generated by criminal networks is estimated at USD 32 billion; and since the 1990s, there are 27 million trafficked persons globally (Polaris Project 2010).⁷ Researchers argue that the increase of trafficking since the 1990s could be attributed to a combination of factors, including the collapse of the Soviet bloc and the ensuing opening of state borders, challenges to economic and political transition in Eastern Europe and Russia, and the financial crises in East Asia (UNODC 2008). At the same time, the “root causes” of trafficking have much in common with most forms of migration: poverty, lack of access to education and employment, discrimination, and political instability (UNODC 2008).

Three international legal documents directly impact efforts to end human trafficking worldwide and assist trafficked persons—the United Nations Millennium Declaration, the Convention Against Organized Crime,⁸ and the supplemental Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the UN Protocol). Arguably, all three documents, and the UN Protocol in particular, testify to the joint recognition and commitment to the need to both end trafficking and assist recovery and reintegration of trafficked persons. As stipulated by the Convention Against Organized Crime, member states⁹ that ratify the document:

commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities (UNTOC 2000).

In less than 10 years, all three legal documents have boosted both worldwide awareness on trafficking and on-going anti-trafficking dialogue and efforts. The legal documents attest to states’ official commitment to end trafficking and aid trafficked persons. There are 147 countries¹⁰ that are signatories to the UN Convention Against Organized Crime and 117 countries that are signatories¹¹ to

⁶ This includes origin, transit, and destination countries. See UNODC, Global Report on TIP, 2009 http://www.unodc.org/documents/human-trafficking/Global_Report_on_TIP.pdf

⁷ There are no commonly accepted statistics on trafficking. The Human Trafficking Statistics, Polaris Project, www.polarisproject.org, cited here compiles data from UN, US, IOM, ILO, etc.

⁸ According to the UN website, the United Nations Convention against Transnational Organized Crime (UNTOC), adopted by General Assembly resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organized crime. Three supplemental Protocols target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. See <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

⁹ The term “member state” is used by the UN to indicate that the country is a member of the organization. Unless specified, I use “state” and “member state” interchangeably and with the assumption that all states in question are members of the UN.

¹⁰ Out of 192 UN-recognized states and territories

¹¹ Significantly, the latter is also endorsed by the members of the Non-Aligned Nations (NAM). See for example summary of 63rd GA meetings <http://www.un.org/ga/president/63/statements/closinghumantrafficking130509.shtml> and statement on NAM position at <http://www.info.gov.za/speeches/2009/09072310151001.htm>

the UN Protocol.¹² As a follow up to treaty ratification, the UN has spearheaded two additional initiatives that aim at a truly global, multi-stakeholder engagement. In 2007, it launched the UN Global Initiative to Fight Trafficking (UN.GIFT) that, according to its website, aims at expanding anti-trafficking efforts to include members of the business community, civil society, and celebrities. This is in addition to collaboration with local governments, as well as coordination of regional and global anti-trafficking forums.¹³ A separate initiative, led by the UN General Assembly since 2008, aims at adoption of a Global Plan of Action (GPA) against trafficking. The latter is intended to align and further integrate all states' efforts to end trafficking.

Both the UN.GIFT and the GPA are significant follow-up steps for at least two reasons. They attest to the fact that international legal consensus is important, yet only part of a larger process. Both the UN.GIFT and the GPA thus speak to the need to mobilize efforts beyond ratification of international legal instruments. Consequently, for further enactment of a vision for global unity against trafficking, the UN.GIFT covers global outreach and advocacy, and the GPA promotes development of a common framework for regulation, enforcement, and accountability.

Coincidentally, various international and national public awareness campaigns¹⁴ express the need to end trafficking in bellicose terms, invoking the image of a war effort and a well-pronounced intent to eliminate a common threat. As identical rhetoric embellishes both national and worldwide forums, it could be argued that both locally and internationally the endorsement to end trafficking is equated with a global war against a common challenge. In yet another notable sign of collectivity, the call to action comes from politicians, and movie stars, and businessmen alike: the entire global community is mobilized to “combat,” “eliminate,” and “eradicate” “the barbaric crime of trafficking” (Desyllas 2007, p. 65; 63rd UNGA 2009). In conclusion, the UN vision for global unity to end trafficking thus becomes a two-step process—first, a commitment to an overarching international treaty—the UN Crime Convention and supplemental UN Protocol; and second, a development of a joint framework for action that enacts the aforementioned commitment. Its common purpose is a war-like effort to eliminate the threat of trafficking.

Notably, the UN Protocol serves as the conceptual base of the anti-trafficking global collaborative unity. However, as I will argue in the following sections, it is the language of the UN Protocol that provides the initial impetus for an anti-trafficking global unity constructed on the joint basis of misrepresentation and exclusion. Further, the UN Protocol makes an allowance for states to develop their own perception of who to protect, what type of criminal to prosecute, and, ultimately, how to deliver on their commitment to fight the war against trafficking. I first turn to the question of definitions and highlight some of the consequences from the lack of uniform consensus on the terminology of trafficking. Then, I explore the joint effects of misrepresentation and exclusion as explicated through a process of criminalization and creation of “otherness.”

¹² See Crime Convention ratification status at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en and Trafficking Protocol ratification status at <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html>

¹³ See <http://www.ungift.org/ungift/en/about/index.html>

¹⁴ See www.ungift.org for list of campaigns and activities

Defining Trafficking in Persons

Whether considered as an observable phenomenon or in its legal definition, the term “trafficking in persons” resembles a Pandora’s box: once opened, this term gives life to a multitude of misunderstandings, preferences, and rationalities, with issues of legality, morality, rights, fear, violence, coercion, agency, and hope, competing for attention and disproportionately affecting respective anti-trafficking actions and implementation strategies.

The Protocol provides a definition of trafficking in persons¹⁵ as well as guidelines on prevention, protection, and partnership amongst states. Nevertheless, its language is ambiguous and allows for various interpretations by national governments (Desyllas 2007, pp. 63–4). In addition, the Protocol’s emphasis on issues of legality and criminality (persecuting and penalizing the criminal) rather than individual rights (i.e., a support-the-victims approach) allows states to use a moral lens in developing national policies addressing only specific aspects of trafficking, such as sexual exploitation (Desyllas 2007, pp. 63–4). Furthermore, many countries, including the US and members of the EU, have adopted independent definitions of trafficking in persons altogether. The lack of consensus on a uniform definition translates into complications in synchronizing various aspects of the purported collaborative action against trafficking; particularly, alignment of legislation for prosecution of criminals or identification and protection of trafficked persons.

The lack of consensus on a common definition leads to misrepresentation on yet another level: lack of uniform conceptualization of what the term “trafficking” is meant to signify and who qualifies as a trafficked person. As a stand-alone concept, “trafficking in persons” gives no clear indication on how to separate the trafficked from other types of (irregular) migrants (Askola 2007, p. 41). For example, as the US legal interpretation of the term implies, “trafficking” needs to involve both migration from one sovereign territory to another (i.e., illegal crossing of an international border) and provable coercion. The latter stipulation—coercion—seeks to distinguish between “smuggling” and “trafficking” where smuggling is based on the person’s consent (and payment) to gain illegal entry into another country; by contrast, a trafficked person is allegedly duped to believe that the entry as well as job opportunities provided in a foreign country are legally arranged. The former stipulation—“sovereign border crossing”—implies that “trafficking” cannot account for any illegal, coercive, and violent exploitation of persons that happens within the country.¹⁶ The point here is that as a term with a variety of conditionalities attached, “trafficking” does not correctly reflect the observable phenomenon of illegal, violent

¹⁵ The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 3 (a) states that “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. See <http://www2.ohchr.org/english/law/protocoltraffic.htm>

¹⁶ A classic example, particularly affecting workers in sweatshops, restaurants, or households, would be a person who gains legal entry on a tourist visa and only later is coerced into illegal forms of labor.

exploitation of human beings, or the types of coercive transfer and subjugation prior to the act of exploitation.¹⁷

The aforementioned conditionalities in defining trafficking are exacerbated by yet another nuance of the UN Protocol. Because the latter is a supplemental part to the UN Convention on Crime, its primary emphasis is on criminality and illegality (Gallagher 2006; Shigekane 2007). Consequently, both the UN Protocol and sovereign states' national legislation, such as the United States' anti-trafficking legislation (TVPA),¹⁸ weigh in disproportionately on the criminal aspect of trafficking and craft corresponding law enforcement legislation. To state it differently, trafficking is viewed primarily in the framework of criminality and (illegal) migration; there is little emphasis on human rights—either in terms of prevention or support to trafficked persons. For example, a legal instrument such as the TVPA, adopted as part of the commitment to the UN Protocol, could be seen as a tool for curbing (illegal) (im)migration, rather than a tool to aid prevention of violent exploitation or protection and social reintegration of trafficked persons (Chapkis 2003; Gallagher 2006; Wyler et al. 2009).

To summarize, while the UN is hesitant to impose a universal definition of trafficking, sovereign states take advantage of their international commitment to execute an alternative agenda—develop legislation that criminalizes the crossing of international borders. One further consequence of the legal language merits exploration: namely, how does the lack of commonly accepted definitions—of trafficking, criminals, or trafficked persons themselves—reverberates in the war-like hype to end trafficking? In other words, if there is a war effort, in the worldwide anti-trafficking rhetoric, who is the enemy to be defeated?

Defining the Enemy

A cursory review of global awareness campaigns of the past few years shows that they, as well as the majority of publications and reports on the subject, follow an almost identical layout and commonly rely on graphic narratives of the crime of trafficking. From the GA address by the UN Secretary General to the International Organization on Migration TV ad and Emma Thompson's harrowing exhibit—the story of trafficking is a story of sexual exploitation, and the image of trafficking is a sexually exploited woman.¹⁹ The public image of trafficking is the negative spectacle of desperation, helplessness, and

¹⁷ This could be the case with child soldiers who are kidnapped and turned into mass killers, but have not necessarily been transferred across sovereign borders.

¹⁸ Trafficking and Violence Protection Act of 2000 (P.L. 106–386), further reauthorized as Trafficking Victims Protection Reauthorization Act of 2005 (TVPA of 2005) that President Bush signed into law on January 10, 2006 (P.L. 109–164), authorized appropriations for FY2006 and FY2007. The 110th Congress passed The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110–457, signed into law on December 23, 2008). The act, among other provisions, authorizes appropriations for FY2008 through FY2011 (see Attorney General's Report 2009 and Wyler et al. 2009).

¹⁹ See for example Emma Thompson (<http://www.youtube.com/watch?v=VFBznfVdtpc>; <http://www.youtube.com/watch?v=sHDhEBFxfLw&feature=related>) and Julia Ormond (<http://www.youtube.com/watch?v=CAUGPdLqVsg>), TV campaigns (<http://www.youtube.com/watch?v=fqF85g7Wzew>) and movie trailers (<http://www.youtube.com/watch?v=6GkF04qVeZ4&feature=related>), trafficking-related documents and reports from the UN (<http://www.ungift.org/ungift/knowledge/publications.html>), and other international organizations (as well as the US 2009 TIP report—<http://www.state.gov/g/tip/rls/tiprpt/2009/>) contain a profusion of images of young girls and women exploited for sex

abuse of a lonely female. Notably, this is drastically different from Western media portrayals of other transnational crimes: drug trafficking, arms smuggling, and terrorism are rarely, if ever, associated with female images, and never carry sexual overtones. Certainly, the intention of narratives and displays associated with trafficking in persons is not to criminalize women, but rather to inform the public and bring awareness to their plight (especially given the fact that nearly two thirds of all trafficked persons are women and girls). Nevertheless, it could also be argued that consistently drawing on the spectacle of women and girls sold into prostitution could generate a reverse effect, particularly when no other imagery is provided and very few other stories are narrated. Consequently, the primary object of attention is no longer the elusive trafficker; or, if at all a target, the trafficker is simply grouped together with the trafficked in their common illegality.

Whether or not women sold into prostitution become the image of trafficking, it could be argued that one of the main consequences of equating trafficking with sexual exploitation of women is that it negatively impacts the debate, public opinion, and legislation associated with trafficking. As a result, the discourse and actions related to trafficking—its legal, criminal, and public opinion variations—are disproportionately focused on the (il)legality of prostitution.²⁰ The following are examples from advocacy discourses, public opinion polls, and legislative measures and their effect in formulating anti-trafficking responses. Importantly, these examples also speak to the fact that once localized, the fight against trafficking adopts different dimensions, and there is no consensus on how trafficking should be addressed, if at all.

Advocacy Misrepresentation and the Feminist Discourse

Due to the disproportionate attention drawn to women forced into sexual exploitation, many advocacy and feminist groups structure their agenda around the issue of prostitution. The agenda itself is often framed in the discourse of rights and ranges anywhere from the right to sexual security and freedom from prostitution to the right to work and choose prostitution as an option (Askola 2007, p. 146). Such variance in the rights' debate, however, often produces conflicting messages, which not only diminish the impact of advocacy groups, but also disproportionately narrows the focus of anti-trafficking work and, at most, reduces it to legislation associated with prostitution.²¹

An example of an often-cited juxtaposition between feminist groups is on the advocacy work of the Coalition Against Trafficking in Women (CATW) and the Global Alliance Against Traffic in Women (GAATW). The CATW considers prostitution as exploitation regardless of consent and works with the understanding that due to both structural factors underpinning prostitution and global migration patterns, many, if not

²⁰ This is particularly relevant in the United States where prostitution is illegal. The trafficking–prostitution tensions are allegedly present in the EU as well where only citizens of the EU are allowed to obtain permits to practice prostitution (personal interview with refugee coordinator in Brussels).

²¹ One alternative strategy for the NGO anti-trafficking community would be to align their work with NGOs, which work local empowerment, i.e., develop a strategy that looks at addressing “root causes” at a very micro-level, rather than engaging in moral battles and seeking legislative solutions at the top.

all, women who have migrated and are involved in prostitution have been exploited to some degree and qualify as “victims of trafficking.” GAATW, on the other hand, draws a distinction between coercion and choice, and although it advocates humane treatment of both groups, considers only women who have undergone violence and coercion as “victims of trafficking.” The controversy in the two approaches highlights the vast polemic around agency, choice, and freedom as well as the appropriate actions for prevention and protection (Askola 2007, pp. 33–4; 146–7). A summary of the work of select EU advocacy groups best characterizes the point:

feminist discussions on sexuality, which seek to challenge the dominant perceptions, easily become ‘trivialized’ when they meet and use the discourse of rights; the discussion then degenerates into a ‘line-drawing debate’ that reduces complex lines of reasoning about broader reform into competing arguments... feminist demand to address prostitution were reduced to demanding legislation or criminalization, even though it was clear that more was needed (Askola 2007, pp. 146–7).

Public Opinion: Who is to Blame?

Based on available data sources—*anecdotal evidence, review of historical trends, research opinion polls, and media*²²—it can be argued that the general public does associate trafficking primarily with sexual exploitation of women and girls.²³ Further, the public—whether in origin or destination countries—generally assumes that it is the women and girls who bear primary responsibility for their plight. In a recent public opinion survey in Russia, for example, respondents indicated that trafficked women (a) bear direct responsibility for being trafficked and (b) have either been duped into being trafficked or have themselves wanted to migrate (Buckley 2009, pp. 222–3). In other words, there is an assumption that girls and women are fully capable of rational choices, that they have unlimited options to choose the type of life they want, and that they have been either pro-active, willing, or naïve enough to take a risk to travel abroad. This also indicates that in the eyes of the general public, trafficked women have consented, and thus have not been coerced into being exploited. What is also notable is that the “root causes” of trafficking, particularly the lack of socio-economic opportunities at home, are not seen as justifiable reason for people to attempt to change their circumstances and their lives (Buckley 2009, pp. 222–3).

In addition to the image associated with agency—“it was their choice”—in “destination countries” such as the US and parts of Western Europe, the image of

²² As previously mentioned, further empirical research is required to support the representativeness of these claims

²³ Public opinion on trafficking has not yet been the subject of extensive research (Buckley 2009, p. 214). Similarly, no studies measure the impact or make direct co-relation between the public image of trafficking and public opinion. There is also the argument that the US government-constructed media portrayal of the affected women as third-world victims perpetuates a stereotype of sex-workers as passive and exploited victims (Desyllas 2007, p. 65). Global scale UN-led public awareness campaigns have only occurred in the past 2–3 years; and thus, the long-term impact on public opinion is yet to be established.

trafficked women also has racial and alien dimensions, and invokes a discourse on “the other.” The historical evolution of public perception in the US, for example, shows that in the nineteenth century, the trafficked woman (sex slave) is a “white woman, victim of the animal lusts of the dark races”; by the twenty-first century, the trafficked woman has become a “passive, un-emancipated woman from the developing world” who is at the same time overly sexual, deviant, and promiscuous (Desyllas 2007, p. 61). At the same time, it is notable that although the image has changed in terms of race, the association of women with sexual promiscuity has remained unchanged.

Like the polemics amongst advocacy groups, it could be argued that public opinion also oscillates in the sphere of consent vs. coercion, rational choice, and the nature of trafficked women. Certainly, public awareness campaigns have sought to change this perception and have elaborated repeatedly on various aspects of coercion and deceit and on the limited options that all trafficked persons are subjected to. For the moment, however, neither the discourse, nor the public image of trafficking have allowed for a widespread understanding of the complexity of the problem. At the same time, the face of trafficking continues to be the image of a (dark-skinned, exotic-looking) girl or woman²⁴ who is blamed for her own promiscuity and/or lack of common sense.²⁵ In a perverse twist, rather than compassion, the narrative of sexual exploitation could end up reinforcing a historically ingrained view of the animal lusts of women.²⁶

Law Enforcement: Pick a Criminal

The aforementioned nuances—the emphasis on morality and choice, the coercion–consent polemic, and the nature of the work involved—are reflected in the legal framework on trafficking as well. The Protocol itself is ambiguous enough to allow nation-states to use a moral lens and draft national legislation by focusing primarily on sexuality as criminality (Desyllas 2007, pp. 63–4). The US, for example, only defines “severe forms of trafficking” and focuses exclusively on transnational movement of persons. In addition, there are such rigid criteria for proving the extent of coercion and the lack of consent that trafficked persons are de facto considered criminals and not entitled to any protection until they can prove their innocence. Further, both the US and the EU stipulate that granting temporary legal status to trafficked persons²⁷ is contingent upon “cooperation with the competent authorities” (Kaufmann and Hemingway 2009, pp. 23–4). Inability or unwillingness to collaborate with the authorities precludes the option for protection and entitlements and most often leads to immediate deportation. Arguably these policies: (a) assuming guilt until proven innocent and (b) no protection and rights without

²⁴ See for example cover photos on UN reports: <http://www.ungift.org/ungift/knowledge/publications.html>

²⁵ The IOM TV ad on trafficking similarly creates the impression that any “sweet talk” on going abroad to earn money can easily be identified as such; it is a question of common sense—the warning signs are all out there, “in the air.” See <http://www.youtube.com/watch?v=fqF85g7Wzew>

²⁶ The impact of public opinion on the possibilities for a contentious collective action (Tarrow) with which to challenge current legislative framework and anti-trafficking strategies merits further investigation.

²⁷ Respectively referred to as T-visa in the US and Residence Permit in the EU

collaboration, place trafficked persons at the very bottom of the criminal chain. Incidentally, even the 1950 Geneva Convention on Prisoners of War provides for more humane treatment of captives and prisoners than US and EU policies toward trafficked persons developed more than half a century later.²⁸

Identifying and Protecting the Other

Who provides for the rights of those considered criminals, (illegal) migrants, or prostitutes? Conversely, are these “others” entitled to universal human rights; under what conditions? As the previous two sections sought to explicate, the lack of universally applicable definitions in the UN documents complicates understanding of both the subject (trafficking) and object (criminal) of the original intent (end trafficking, protect trafficked persons). Simultaneously, identification, categorization, and treatment (protection, prosecution, or reintegration) of both the trafficked and traffickers become the exclusive domain of sovereign states. Access to rights and fair treatment thus also becomes contingent upon legalization and clearance by the state, not upon adherence to human rights. One grave danger is that the aforementioned emphasis on criminality leads to state-imposed identification and rights contingent upon categorization as “other” (be that of a bonded laborer, victim, prostitute, or modern-day slave); not upon recognition of universal belonging to humanity. In other words, the universal notion of the right to have rights is trumped by the particular need to determine who provides for those rights.²⁹

The US anti-trafficking legislation (TVPA) underscores this dilemma as it directly speaks to (im)migration/legalization and protection–rights–empowerment as two divergent ideas at the opposite spectrum of treatment afforded to human beings. First, the protection–rights dichotomy becomes framed predominantly as a question of legalization where only a degree of legality affords social rights. As explicated in the previous section, the degree of legality is delivered and confirmed by a state-authorized body. Consequently, any notions of protection based on universalist ideals are trumped by structural reality: rights are contingent upon and restrained by acquisition of a legal status within a sovereign state territory. Notably, neither the territorial presence of the trafficked person nor the universalist American creed that

²⁸ For example, Article 17 of the Geneva Convention on Prisoners of War stipulates: “Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information” and “No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.” Also, Article 14: “Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires” (Geneva Convention relative to the Treatment of Prisoners of War, 75 U.N.T.S. 135, 1950). In comparison with the US today, eligibility to even apply for (not be granted) a residency status requires that a trafficked person show proof that s/he “has complied with any reasonable request for assistance to law enforcement in the investigation or prosecution of acts of trafficking” (Wyler 2009, p. 19).

²⁹ This follows an argument elaborated by Andreas Kalyvas, *Cosmopolitanism and Its Discontents*, Lectures 2010, TCDS Institute.

belonging is a matter of will can challenge the sovereign decision of belonging and rights (Spiro 2003, p. 1504).

Second, the emphasis on immigration conflates protection–rights with protection–identity. In other words, TVPA allows human trafficking to be viewed as a specific type of illegal migration where immigration laws become “instruments to supply and refine the parameters of both discipline and coercion” of those with illegal identity (De Genova 2002).³⁰ Consequently, the “productivity of the law” not only structures various types of illegality related to delinquency, deviance, prostitution, criminality, and terrorism, but also dictates the experiences of those who seek to attain citizenship and protection (De Genova 2002). In the case of trafficking, the US has sought to craft a complex public image and national policy, which recognizes the phenomenon for its “otherness.” As previously mentioned, mass media campaigns and publications promote the image and relate the narratives of third-world looking (sexually exploited) women and men. Although raised in a different context, Fassin correctly observes that it is the state and civil society that are responsible for the production of illegality where “the illegitimate status of undocumented foreigners nurtures the negative perception of immigrants in general, and reciprocally, racism provides ideological basis for restricting the legitimacy of transnational movements” (Fassin 2001, p. 5).

Perversely, the emphasis on the “otherness” of trafficked persons has additional negative repercussions affecting vulnerable US citizens subjected to trafficking. While there are increasing reports of domestically trafficked and exploited persons,³¹ according to law, US citizens are not eligible for protection services afforded to trafficked persons under the TVPA (Attorney General’s Report 2009; Wyler et al. 2009). Arguably, such protection is not afforded because it is only non-citizens who can fall prey to traffickers and become subject to exploitation. Such argumentation, albeit extreme, is underscored by the fact that, in many states and counties in the US, local enforcement agents and service providers are only aware of human trafficking as a phenomenon involving illegal foreign migrants, primarily exploited for sex (Attorney General’s Report 2009; Newton et al. 2008). Similarly, as there is no international border crossing, there is no challenge to state sovereignty; consequently, domestically exploited and abused persons cannot be treated on equal footing with those identified as trafficked, and only the latter pose a threat to the state. The identity of the trafficked person thus remains one of an alien, illegal, racialized body; and because s/he is a threat to the state prior to becoming a human being in need of aid and support, protection and rights are accorded on the premise of guilty until proven innocent.

Incidentally, the point on collaboration with criminal investigations has been interpreted as breach of human rights not only because such collaboration could enhance effects of trauma and mental disorder, but also because it could lead to retaliation from criminal networks (Wyler et al. 2009). As early as 2002, the UN High Commissioner for Human Rights recommended that access to physical and

³⁰ Similarly, Bassel (2008) invokes Althusser and speaks of an ideology of immigration. Immigration interpellates individuals—it ‘recognizes’ them and provides them with a social and juridical identity that constitutes them as subjects.

³¹ See for example a recent CNN story: <http://www.cnn.com/video/data/2.0/video/crime/2009/12/01/callege.atlanta.sex.trafficking.cnn.html>

psychological care and shelter should not be contingent on the trafficked persons' willingness to cooperate in criminal proceedings (Shigekane 2007). Nevertheless, even after the 2008 amendments to the TVPA, the UN High Commissioner's recommendation has yet to be followed (Attorney General's Report 2009).

The abovementioned example underscores the fact that neither the UN Protocol nor the US TVPA diminishes the ability of any nation-state to articulate the point on who can be entitled to protection and services. The commitment to provision of protection and rights (up to the point of continued presence in a territory) are entirely dependent on formal legal status accorded by a nation-state and contingent upon a specific commitment by the claimant himself (i.e., a guarantee for collaboration on criminal investigations). A more appropriate analysis of the tension between protection (universal, human rights design) and rights (nation-state, legal status) comes from examination of the linkage between liberal values and citizenship (Spiro 2003; Joppke 2007). In the United States, anti-immigration sentiments, particularly notions of supporting aliens' criminal and illegal activities, significantly influence a community's perceptions (and a politician's reelection chances). Thus, access to rights can only be afforded to the ones on the "inside," belonging to the community (Joppke 2007). If citizenship as a legal status has become increasingly liberalized over the past few decades,³² it is even more important that the ones labeled illegal and deemed non-qualified be excluded on all grounds (Spiro 2003; Joppke 2007; De Genova 2007).

Arguably, a way for the state to ease the tension between universal values and liberal democratic priorities is to seek ways to invoke public empathy by portraying trafficked persons as vulnerable, disoriented, modern-day slaves.³³ Where normative understanding of universal human rights holds no ground, compassion for the suffering bodies of alien specimens provides an outlet for legitimizing their existence. To this end, public awareness accounts of human trafficking paint with bold strokes stories of suffering, abuse, and repeated (sexual) exploitation. Invoking Arendt and Agamben, Fassin comments on a similar phenomenon as "the recognition of the human being through its pathology: only a suffering body, abused and victimized, could be legitimized in the name of common humanity. The biopolitics of otherness thus becomes 'an extreme reduction of the social to the biological: the body appears to be the ultimate refuge of a common humanity'" (Fassin 2001, p. 5).

In conclusion, excessive focus on otherness (prostitution, slavery, illegal migration, third-world women and children) has turned the problem of trafficking upside down with issues of morality and choice, coercion, and consent as the primary culprits to be addressed. Advocacy groups end up debating on prostitution rather than alerting society to socio-economic conditions that force people to leave their communities and search for a better life. Activists, media, and Hollywood stars rush to make movies and retell the story of trafficked girls, not realizing that this further reaffirms a negative image of the immoral, irrational, and alien that should be

³² A point made by Sassen (2006), Spiro (2003), Joppke (2007).

³³ See for example the work of Kevin Bales. Notably, he assigns a significant degree of agency to his research subjects; nevertheless, he chooses to retain their codification as modern-day slaves, e.g., http://www.ted.com/talks/lang/eng/kevin_bales_how_to_combat_modern_slavery.html.

banned from society. The law assumes that a trafficked person is a criminal until proven otherwise and places conditions on temporary protection and support: a phenomenon now commonly recognized as re-victimization of victims in the hands of state authority. When it comes to trafficking in persons, hope for enactment of the universal right to have rights is subsumed by fear from the particular (state-defined) other.

As presented, the problem at hand is not protection (humane treatment of trafficked persons) or prevention (ensuring enabling socio-economic conditions in addition to awareness to the risks of migration), but a perverse form of prosecution of trafficked persons as criminals until proven innocent. The perpetual focus on treatment and mistreatment of those labeled as “victims” shifts the attention of activists, lawyers, and politicians away from the complexity of trafficking and the variety of factors that continuously generate such a vast pool of people that fall prey to traffickers. The so-called “root causes” of trafficking remain a non-issue in much legislation. Even the focus on prevention only informs on the dangers of trafficking rather than providing alternatives to living conditions and socio-economic impediments that most would-be-trafficked persons want to change.³⁴

Utilizing Otherness: Destroying the Enemy, Preserving the Nation-State

The degradation of trafficked persons to “others”: third-world victims, slaves, illegal aliens, and prostitutes, as well as the expedited deportation procedures, would imply that they are easy to dispose of, eliminate, and obliterate. Seemingly, trafficked persons also have no value because there are not even clear estimates of their numbers.³⁵ If anything, they are an economic burden when accounting for prosecution, protection, or deportation expenses. Arguably, the entire problem of trafficking could disappear into oblivion along with the expulsion of the trafficked people—as the UNODC Global Report on Trafficking states, “without a sense of magnitude of the problem, it is impossible to prioritize human trafficking as an issue relative to other local and transnational threats.”

Yet, it could also be argued that the primary reason why trafficked people are not obliterated from the international discourse is because they serve as evidence of the existence of criminals and transnational criminal networks.³⁶ The purported transnational criminal networks present a direct affront to the Weberian notion of

³⁴ Generally, the UN Protocol calls for combating trafficking by focusing on prevention, protection, and prosecution. Recently, given the extreme emphasis on criminal legislation and prosecution, there have been calls from advocacy groups and UN entities for a rights-based approach, particularly in relation to the treatment of victims. Also recently the UN SG called for “mainstreaming trafficking,” i.e., integrating work on trafficking into the framework of poverty reduction, gender, education, health (see http://www.youtube.com/watch?v=Fo_zjKEQfFs and SG Background note, p. 18). This latest call, however, relates primarily to the work conducted by international organizations and not nation-states.

³⁵ This point was previously highlighted in the paper. It is also stated in many reports pertaining to trafficking, for example see UNODC Global Report on Trafficking 2009, p. 12.

³⁶ Thus, it is also not coincidental that protection and right to residence in a destination country are contingent upon the trafficked person’s collaboration with enforcement authorities and identification of criminals.

state authority, whereas the state's "monopoly of physical violence as a means of rule within a territory" is challenged on multiple levels. For example, traffickers' illicit collaboration with state institutions (border authority and police patrol in particular) challenges state's structural authority; also, the ability to continuously move people across space (land, water, and air) and at any given time also challenges territories and national boundaries. Traffickers similarly challenge other expressions of absolute sovereignty, such as matters of emigration, naturalization, nationality, and expulsion³⁷—states are forced to redraw legislation, accommodate and potentially naturalize persons who have entered the country illegally, re-enforce borders, and lose track and control of emigration and migration flows. One testimony to the limits of state authority in terms of territorial and border control, for example, is that trafficked persons from East Asia are detected in more than 20 countries in regions throughout the world, including Europe, the Americas, the Middle East, Central Asia, and Africa (UNODC 2009, p. 11).

The direct affront to the state compounded with the lack of clear definition of the criminal allows for expansion of the image of the criminalized. The trafficked person is no longer solely a symbol of victimization and/or individual failure (prostitution, naïveté, lack of judgment, inability to protect one's self). The image of the trafficked person also comes to represent the violation of state integrity: it is the product and the consequence of a direct offense against state authority and supremacy. The compounded illegalities in the image of the trafficked persons are, hence, used as a wager to protect territorial integrity, secure sovereign authority, and boost legal and executive powers. In the end, rather than being obliterated and forgotten, the trafficked persons become symbols of the crime and used as a bargain chip in securing state sovereignty (via means of international assistance). For nation-states themselves, maintaining the image of the exploited and powerless victim showcases the affront on the state and provides justification to increase administrative authority and police presence, as well as secure and protect sovereign borders and territory. Consequently, the unanimity of global action against trafficking becomes a united effort for preservation of sovereignty and focuses on boosting police authority and criminal justice system oversight. As an attempt to deliver on this demand, the 63rd President of the UN General Assembly declared:

While many countries have laws against human trafficking, the dark truth is that very few have good records for combating it, for enforcing these laws. This must change. Today's dialogue will be successful if we identify the tools and strategies to enable us, as governments, as non-governmental organizations and as individuals, to press for legislation and the enforcement of that legislation.³⁸

In fact, the UN Protocol, the UN.GIFT, and the GPA also reflect the aforementioned statement's sentiment. For example, states failing to collect data on trafficking can request additional assistance in order to boost their monitoring and policing activities.³⁹

³⁷ This follows Arendt's discussion on migrants and the nation-state in *Origins of Totalitarianism* (1976), chapter 9.

³⁸ See <http://www.un.org/ga/president/63/statements/humantrafficking130509.shtml>

³⁹ See for example UN.GIFT <http://www.ungift.org/ungift/en/initiatives/parliamentarians.html> and <http://www.ungift.org/ungift/knowledge/publications.html>

Hence, states are eager to manifest publicly their incapacities and wager these to request additional funds from international institutions. In a perverse twist, lack of data and, even more so, the lack of means to collect data, is both (a) instrumentalized by the state as a way of accessing (international donor) funding and (b) used as a justification for the inability of the state to act on its international commitments and protect its population, until the funding becomes available. Generating data and statistics, irrespective of the corresponding values and rankings, becomes part of the state-maintenance process.

Safeguarding the image of the trafficked for the purposes of solidifying state autonomy is an unjustifiable twist in the mechanism of enhancing global anti-trafficking efforts. Coincidentally, it is unclear to what extent building the institutional capacity of a state, and particularly, its legal and police arm, translates into socio-economic opportunities for disadvantaged groups or provides means for protection and reintegration of trafficked persons. In either case, the root causes of the problem of trafficking, particularly socio-economic inequalities and lack of opportunities, remain unaddressed. Ultimately, the global unity against trafficking does not serve to resolve of a global problem, but rather, it delivers on the self-interests of individual nation-states.

Conclusion

Over 200 years ago, Immanuel Kant wrote of a world where sovereign states, driven “by means of their mutual self-interest,” would enlighten to the need to collaborate and would willingly subject themselves to “coercive laws, thereby producing a condition of peace within which the laws can be enforced” (Kant 1970, pp. 113–4). Today, has mutual self-interest and the need to jointly resolve the challenge of trafficking driven states and non-state actors towards a Kantian world of global (cosmopolitan) collaboration? This paper sought to answer this question by examining global collaboration mechanisms and strategies pertaining to current worldwide efforts to end trafficking in persons. It further sought to identify the effects of these mechanisms, particularly as related to the objective of ending trafficking. The main argument developed was that the UN-led operationalization of global unity to end trafficking, i.e., ensuring its maintenance and strategic action, thus far precludes the execution on its main goal. In other words, the global unity to end trafficking operates under a framework that presently does not target eradication of trafficking in persons. This is caused primarily by the UN’s inability to directly impose regulatory and enforcement mechanisms on sovereign nation-states, which then leads to a narrow focus on issues of morality and (il)legality; and disproportionate emphasis on developing or boosting states’ judiciary and law enforcement arms. In other words, there is no enactment of universal values, or what Sassen envisions as a world in which “human rights regime subjects the state to scrutiny when it comes to treatment of individuals within its territory” (2006, p. 309). To the contrary, within the international and national legal framework, the nation-state still has absolute authority to determine the legal status of a subject on its territory. Coincidentally, the global unity itself is maintained at the expense of solving the actual problem: identifying someone to blame and criminalize takes

precedence over resolving socio-economic conditions that force people away from their communities. At the same time, the root causes of trafficking are rarely substantively addressed either in national public debates, policy action recommendations, or legislative priorities.

As a multifaceted problem, trafficking also evades effective coordination because the overarching UN-led global unity is based on vague definitions and the presumption that nation-states would abandon self-interest for the sake of addressing the problem in its entirety. Although more empirical evidence is needed, even the few examples cited show that states' interpretations of the Protocol and subsequent plans of action are not developed as means to support a global collaborative framework, but rather to deliver on particular national objectives. Even the GPA, if implemented, will focus primarily on facilitating venues for collaborative dialogue and action between states and, to this end, will mainly seek to boost the capabilities of certain state structures.

Ratification of international treaties and rhetoric on global commitment alone do not deliver solutions to global problems. Neither could there be solutions to problems such as trafficking in persons if the purported global community seeks to identify and expunge a common enemy from its own midst. Alternatively, it might be worth pondering the global–local dimensions of trafficking in persons, particularly, the fact that, although universal in its effect, trafficking in persons originates at a specific locality and under specific conditions. As various victims' accounts suggest, trafficking usually begins with one person seeking a better life and another person offering a solution: for the most part, this is not a phenomenon that involves a mass round up and transfer of people at a given time, as was the case with slavery for hundreds of years. As such, an alternative, community-led framework of action, which starts with provision of socio-economic opportunities on the local level and to specific individuals, might prove more effective in addressing the problem of trafficking in persons than UN-funded strategies that seek to increase police control and state legal authority.

Acknowledgments I am grateful to Andreas Kalyvas and Tonya Putnam for their extensive feedback on earlier versions of this paper. I also thank Camila Vergara, Ben Nienass, Amanda Zadorian, and Matthew Hoye, the discussants and panelists at the 2010 MPSA meeting and the two anonymous reviewers for their most useful comments.

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