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Contested Definitions of Human Trafficking

Introduction

There is now a plethora of state bodies, non-governmental organisations, specialised networks of counter-trafficking agencies, United Nations and other international organisations that have produced a number of multi-lateral agreements, international and regional conventions and declarations against trafficking,[1] research reports, conference papers, action plans, good practice guidelines and technical assistance toolkits. For example, the United Nations launched a Global Initiative to Fight Human Trafficking in 2007 to promote 'a global, multi-stakeholder strategy' to tackle 'a crime that shames us all'; the initiative boasted a range of collaborative partners from government and non-governmental organisations, transnational corporations, to celebrity-led networks of goodwill ambassadors.[2]

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[1]These include, for example, the West African ECOWAS (Economic Community of West African States) Declaration and Action Plan on Human Trafficking 2001; the SAARC (South Asian Association for Regional Cooperation) Convention 2002; the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children 2004; the Bali Process; and the Council of Europe Convention on Action against Trafficking in Human Beings 2005.

[2]Launched in March 2007 by the United Nations Office on Drugs and Crime (UNODC) with a substantial grant made on behalf of the United Arab Emirates, UN.GIFT (www.ungift.org) aims 'to raise awareness, broaden the knowledge base of global trafficking, and promote technical assistance' (accessed 15 December 2009).

Much of this information-work and scholarly research on trafficking is underpinned by the assumption that human trafficking is a phenomenon whose 'truth' can be uncovered – who are the traffickers and victims? How big is the problem? Exactly what type of exploitation is involved?

In practice, the answers to such questions are far from straightforward. Human trafficking is an imprecise and highly contested term (Salt and Hogarth, 2000).[3] There are multiple, sometimes oppositional, and shifting understandings of trafficking. As different 'claims makers' (Cohen, 1995) construct raw events into information, make empirical and moral claims, some forms of exploitation may become more obscure, be deemed less politically significant, or less morally offensive than others in the trafficking debate. Definitional struggles about human trafficking tend to be dominated by state officials and other powerful groups, generally with very little input from trafficked victims themselves. Further, the proliferation of information-work on human trafficking has been shaped by global media and information flows: witness, for example, the high-profile UN Global Initiative to Fight Human Trafficking and its use of the global media in an increasingly message-dense public arena.[4] So what are the different ways of framing and talking about the nature, causes and consequences of human trafficking? In what ways are they influenced by wider assumptions and processes? And how have these conceptualisations of the problem shaped the contemporary responses to trafficking?

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[3]Salt and Hogarth (2000), for example, identified over 20 definitions of the concept of trafficking in their review of the literature.

[4]UN.GIFT hired a global media relations company to design a major campaign during the Vienna Forum to Fight Human Trafficking, co-ordinating daily media briefings, drafting news releases, placing comment pieces in global publications in order 'to peg the issue of human trafficking, and the work of the UN and its partners to tackle it, at the top of the international news agenda'. It was claimed that 'over 1,000 articles on human trafficking and UN.GIFT were published by media in Africa, Asia, Europe, North America and South America during the week of the Vienna Forum in February 2008 across a range of print, wire and online media platforms.'

Creating a knowledge-base for human trafficking

Much of the existing knowledge-base for the global problem of human trafficking is premised on the estimated volume of trafficking, apprehension records, government organisation or NGO case records, research case studies on known cases of trafficking and trafficked victims. The International Organisation for Migration (IOM), for example, has developed a Counter-Trafficking Module Database, 'the largest global database', which includes information on almost 7,000 known trafficking victims from 50 source countries and 78 destination countries (www.iom.int). Yet, data produced by state bodies, non-governmental or religious organisations, international agencies and independent researchers on trafficking are beset with ambiguities and limitations.

Despite continuous media reports and mainstream policy statements that human trafficking is widespread and on the rise, there remains an absence of reliable statistical data. As Sanghera (2005) noted, there is no sound methodology to estimate the number of people trafficked, and the merit of existing estimates and reported figures remain disputed. There has been a wide range of estimates of the size of the human trafficking problem by organisations worldwide. This is illustrated here in a datasheet compiled by the UNESCO Trafficking Project (Figure 1.1).

As UNESCO noted in the introduction to its Trafficking Project, divergent and often contradictory trafficking estimates may 'take on a life of their own, gaining acceptance through repetition, often with little inquiry into their derivations' (www.unescobkk.org). One of the most oft-quoted figures of trafficking came from the US Government. Based on CIA-derived estimates, the State Department's Trafficking in Persons (TIP) report estimated that '700,000 to 2 million women and children are trafficked globally each year' in 2002 but inexplicably revised the figures to '600,000 to 800,000 victims of all types of trafficking' in 2005. Domestic numbers of trafficked victims are also highly fluctuating: in 2002, the State Department's TIP report claimed that 45,000–50,000 persons are trafficked into the USA annually, but the number was revised to 18,000–20,000 a year later; in 2004, the report cut the figure to 14,500–17,500 per year. These figures have generated much critique and scepticism. The US Government Accountability Office, for example, has expressed concerns that the
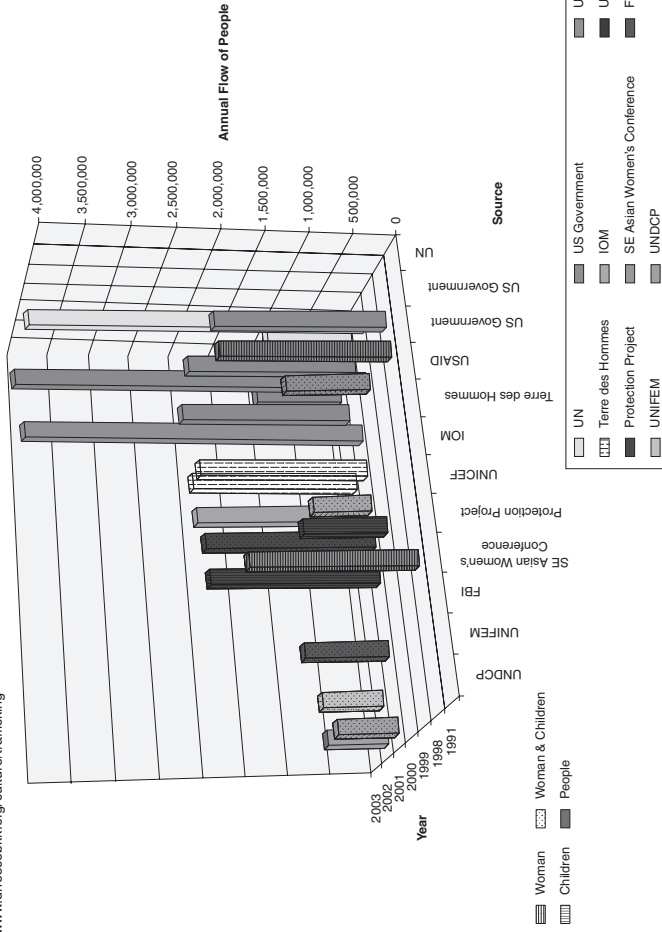
Figure 1.1 UNESCO Trafficking Statistics Project datasheet

Source: http://www.unescobkk.org/fileadmin/user_upload/culture/Trafficking/project/Graph_Worldwide_Sept_2004.pdf.

accuracy of the trafficking figures provided by the US Government and other international organisations is 'questionable' because of weak and unclear methodologies; limited reliability, availability and comparability of country-level data; and a discrepancy between the numbers of observed and estimated victims of human trafficking (US Government Accountability Office, 2006).

Criminologists have long noted the socially constructed and skewed nature of official crime statistics; official statistics are the product of police work and crime control priorities and suffer from the problem of the 'hidden figure of crime'. In addition, there are particular problems associated with collecting and interpreting various types of trafficking data (Salt, 2000; Lee, J., 2005; Di Nicola, 2007). Trafficking estimates tend to suffer from a lack of standard definition of trafficking offence and victim. Many countries lack specific counter-trafficking legislation, clear structures for victim identification and referral, or their laws may only define human trafficking in particular contexts (e.g., sex trafficking, cross-border trafficking) and not others (e.g., trafficking for labour exploitation, internal trafficking).

The general lack of methodological transparency has meant that the empirical basis of figures on official apprehensions, victim identification and the dismantling of supposed smuggling and trafficking networks is not verifiable. Data related to different forms of unauthorised migration may be lumped together to produce an aggregate figure, as border control authorities do not always distinguish between trafficking, smuggling and irregular migration. Trafficking victims may be misidentified by law enforcement agencies as illegal migrants, who are deported immediately without referral to assistance agencies or shelter homes. Alternatively, their numbers may be grossly inflated when large proportions of migrant sex workers or those caught up in police raids are assumed to be 'sex slaves' controlled by traffickers and pimps.[5] The identification of traffickers is also far from straightforward. Criminal cases relating to suspected traffickers may not be registered or else registered as 'procuring' or 'living off the avails of prostitution'.

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[5]For a journalistic discussion of the moral panic over sex trafficking in the UK, see Davies (2009).

Our existing knowledge-base for human trafficking is heavily shaped by institutional exigencies and research access. As Laczko and Gramegna (2003) pointed out, research data are often based on the various trafficking definitions used by each individual agency and only cover known cases who have received certain types of assistance (e.g., persons participating in voluntary assisted return programmes or those accommodated in shelters for trafficked victims). The result is a vicious circle: less is known about human trafficking in particular regions or for particular purposes such as forced labour and servile marriages; their problem remains under-reported or redefined as something else, thereby making our knowledge and understanding of trafficking partial and skewed. In this regard, Kelly (2005a: 237) suggests that 'a wider framing might change what we think we know about the prevalence and patterns involved [in trafficking]'. Finally, enforcement agencies may be tempted to manipulate trafficking figures to boost their efforts in combating illegal immigration, to argue for more resources, or to obscure failures. Similarly, researchers and NGOs may make unsubstantiated or biased claims about the scale of trafficking or the 'truth' about victims' experiences, especially when researchers hold entrenched views about sex trafficking or when a significant amount of institutional funding is at stake.

What is human trafficking?

There are six key conceptual approaches commonly used to make sense of human trafficking: (1) as a modern form of slavery; (2) as an exemplar of the globalisation of crime; (3) as a problem of transnational organised crime; (4) as synonymous with prostitution; (5) as a migration problem; and (6) as a human rights challenge. These approaches may coexist, overlap and change over time, or they may contradict each other. Significantly, interventions are inseparable from conceptualisations of the problem. Trafficking will be approached differently depending on whether it is considered a problem of illegal migration, prostitution, or organised crime. Different interventions will be developed, and trafficked

persons will be dealt with differently, depending on whether they are considered illegal migrants, prostitutes, victims of trickery or of ignorance, or the abused bearers of human rights.

Slavery

First, human trafficking has been conceptualised as a modern form of 'slavery' (Miers, 2003; Ould, 2004; Bales, 2005; Smith, 2007). When the UK commemorated the bicentenary of the 1807 Abolition of the Slave Trade Act, human trafficking was held up as one of the 'many guises [of slavery] around the world' (Blair, 2006). While old forms of slavery condoned and regulated by states – with kidnapping, auction blocks and chattel slaves forced to work in chains – may be rare today, scholars have argued that modern practices of human trafficking contain an element of extreme and direct physical or psychological coercion that gives a person control over another's life akin to slavery.

According to Kevin Bales, new slavery refers to 'the complete control of a person for economic exploitation by violence or the threat of violence' (2000: 462). To Bales, new slavery is not marked by legal ownership of one human being by another or permanent enslavement; instead, it is marked by temporary ownership, low purchase cost, high profits, debt bondage and forced labour (Bales, 2000; 2005). In short, new slavery is part of an illicit, unregulated economic realm in which people are treated as 'completely disposable tools for making money' (Bales, 1999: 4).

A number of institutions and conventions associated with the United Nations and regional bodies (e.g., the Organisation for Security and Cooperation in Europe, the Council of Europe, the North Atlantic Treaty Organisation) regard trafficking and slavery as fundamentally linked human rights violations because both involve the severe exploitation of an individual. The UN Office of the High Commissioner for Human Rights explicitly stated that the term 'slavery' encompassed the 'traffic in persons' (OHCHR, 1991). The International Criminal Court's Rome Statute instructs that enslavement involves 'the exercise of any or all of the powers attaching to the right of ownership over a person',

including 'the exercise of such power in the course of trafficking in persons, in particular women and children'.[6]

Scholars who insist on the value of using the term 'slavery' argue that it alerts us to the 'underlying and essential elements' of 'manifested violence and its threat, absolute control, economic exploitation' (Bales, 2000) and that it 'guarantees a wider audience' in the fight against present injustice (Anker, 2004). Indeed, governments and NGOs alike have often made use of powerful images and testimonies of women and girls who are enslaved and subjected to rape, beatings and torture in their information and awareness campaigns. Others, however, remind us of the need to avoid the sensationalism surrounding images of 'sex slaves' and are critical of the moralising agenda which is reminiscent of the 'white slave panic' at the end of the nineteenth century (see below) (Doezema, 2000; Anderson, 2004; O'Connell Davidson, 2006). Finally, legal commentators on decisions in the European Court of Human Rights and the International Criminal Tribunal for the Former Yugoslavia have noted the complexity and substantial variability in trafficking scenarios and warned against making a blanket claim on slavery: 'whether a particular phenomenon constituted a form of enslavement would depend on a range of factors, including the level of control displayed, the measures taken to prevent escape, the use of force or coercion, any evidence of abuse, and so on' (Munro, 2008: 248).

Globalisation

Second, human trafficking has been seen as an exemplar of the globalisation of crime. Much has been written about the criminogenic effects of globalisation. The social, cultural and technological conditions of globalisation (in particular, increases in the extent of global networks, the intensity of worldwide interconnectedness, the velocity of global flows of people and ideas) have arguably created 'new and favourable contexts for crime' (Findlay, 2008). One strand of the

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[6]Under Articles 7.1 and 7.2 of the Rome Statute of the International Criminal Court, 1998, UN Doc. A/CONF.183/9, 17 July 1998, enslavement has also been defined as a 'crime against humanity'.

globalisation of crime thesis is encapsulated by what Passas (2000) has termed 'global anomie', which is most apparent in the socio-economic milieu in Russia and many of the former Eastern bloc societies. To Passas, globalisation and its associated de-regulation of capital, trade and business under neo-liberalism have produced systemic strains and asymmetries:

> As needs and normative models are 'harmonized', people become conscious of economic and power asymmetries, and directly experience their impact. Globalization and neoliberalism heightened this awareness, further widened the asymmetries … In the end, most people realize that the attainment of their lofty goals and lifestyles is beyond reach, if they are to use legitimate means. The success in spreading neoliberalism has brought about a series of failures: more poverty, bigger economic asymmetries, ecosystem deterioration, slower and unsustainable growth patterns. At the time that societies most needed the shield of the state to cushion these effects, welfare programs, safety nets, and other assistance to the poor … forcibly declined or disappeared. Thus, global neoliberalism systematically causes relative deprivation as well as absolute immiseration of masses of people. (ibid.: 24)

A second strand of the globalisation of crime thesis focuses on the increased opportunities for crime and operational capabilities of organised crime groups especially through developing 'a nearly indecipherable web of nodes and illicit relations' in criminal activities (Shelley et al., 2003). Traditional organised criminal actors and groups have arguably adapted to the pressures and opportunities of globalisation to generate new illicit flows of people, money and goods (including sex trafficking, money laundering, trade in toxic waste and endangered species):

> [W]ith increasing globalization, national criminal gangs are now operating outside their traditional jurisdictions. Not only do mafia groups work in association with other criminal organisations, but they also set up their own operations in other countries. For example, the Russian mafia traffics women from Germany … Another case of nationals working in foreign lands is the recent [Chinese] Triad activity in Canada … The instances of organised crime's operation and collusive activities are numerous and varied. (Shannon, 1999: 129)

Manuel Castells (1998) applied the imagery of transnational networks to the field of organised crime, whereby criminal organisations are said to be able to link up with each other, setting up their operations transnationally, taking advantage of economic globalisation and new communication and transportation technologies. The global criminal economy of trafficking (of drugs, arms, and people, including organs) has arguably expanded its realm to 'an extraordinary diversity of operations', making it an 'increasingly diversified, and interconnected, global industry'. Although such views have been influential among policy-makers, critics of Castells' approach and the associated discourse about transnational organised crime are sceptical of the overstated influence of omnipotent criminal syndicates, their supposed structural logic of organisation, and their unified purpose (Friman and Andreas, 1999; van Schendel and Abraham, 2005).

Transnational organised crime

Third, human trafficking has been conceptualised within a framework of transnational organised crime. The role of criminally sophisticated, transnational organised crime groups as the main beneficiaries and driving force behind the highly profitable trade of human smuggling and trafficking has been widely noted in a number of research studies, high-profile statements and official reports (Bruinsma and Meershoek, 1999; Budapest Group, 1999; O'Neill, 1999; Bruggeman, 2002; Williams, 2002). According to Europol, around 500,000 persons enter the European Union illegally every year and around half of this number are assisted in some way by organised criminal groups (Bruggeman, 2002).

As we saw in the Introduction, one important aspect of the institutionalisation of the 'trafficking-as-organised crime' approach has taken place vis-à-vis the 2000 United Nations Convention Against Transnational Organised Crime and its supplementary Trafficking Protocol which now sit at the very heart of the mainstream, contemporary trafficking legislation and international anti-trafficking discourse. In the UK, the government regards the problem of 'illegal trade in people' as primarily instigated by 'organised crime groups', to be dealt with under the rubric of its overall organised crime strategy and

as one of the priorities of the Serious Organised Crime Agency (SOCA) (Home Office and Scottish Executive, 2006). Many of the same global and regional counter-organised crime tactics are considered transferable to counter-trafficking initiatives.

Yet the 'trafficking-as-transnational organised crime' approach is not without its critics (see Chapter 4). Taylor and Jamieson (1999), for example, questioned the 'alarmist interpretation' of 'transnational threats' posed by organised crime groups. Others have questioned the very existence of transnational organised crime and the dominance of transnational organised crime groups in human trade (Hobbs, 1998; Sheptycki, 2003). Instead, they highlighted the role of legitimate and semi-legitimate groups (such as private businesses, job recruitment agencies, overseas marriage consultant agencies) and employees of international organisations (for example, members of national armed forces or international peacekeeping missions) in the trafficking chain (Ruggiero, 1997; Kyle and Liang, 2001; Human Rights Watch, 2002b).

Even when counter-trafficking has resulted in the apprehension of organised traffickers, critics suggest the enforcement approach has failed to significantly reduce human trade, as traffickers and intermediaries demonstrate their flexibility by changing transportation and distribution routes or moving the trade further underground (Friman and Reich, 2007b). When the principal concern of the enforcement-led approach is to stop organised criminals, the interests of victims often become of secondary concern (Chapter 3). All this points to a need to rethink the diverse agents and beneficiaries of human trafficking, to examine what Skeldon (2000) refers to as a 'continuum of facilitation' in the trafficking process, and to consider the adverse consequences of an enforcement-led approach in counter-trafficking interventions.

Prostitution

Fourth, definitions of human trafficking have coalesced around contested positions on issues of prostitution, individual agency, and consent. The notion that trafficking is synonymous with the traffic of women for sexual exploitation can be traced back to public concerns about the trade of white women and young girls in Europe for the

purpose of prostitution from the mid-nineteenth century. Much has been written about the campaigning zeal of moral propagandists and middle-class feminist lobbies against 'white slave traffic', which came to mean the procurement, by force, deceit, or drugs, of a white woman or girl against her will, for prostitution. As Woodiwiss and Hobbs (2008: 108) wrote of the 'white slave hysteria' in the American context, 'large numbers of American women were thought to be at risk of kidnapping and enforced prostitution at the hands of foreign criminals'; 'foreigners were corrupting America with "the most bestial refinements of depravity"'.

Social anxieties and moral indignation about the abuse of 'innocent' women in the white slave trade were important precursors to the contemporary trafficking discourse. Historians and some feminist researchers have argued that the 'cultural myth about the white slave trade' and moral panics were linked not so much to welfarist concerns about women but to broader fears and anxieties about urbanisation, growing transatlantic migrations, white working-class women's increasing mobility, and their newfound freedoms through non-marital sexual relations and waged work (Walkowitz, 1980; Grittner, 1990; Doezema, 2000; Keire, 2001; Scully, 2001; Chapkis, 2003). Then as now, trafficking narratives and counter-trafficking campaigns have relied heavily on the paradigmatic images of female powerlessness, sexual purity, and the spectacle of transgressive bodies. State officials and moral entrepreneurs tended to use particular 'rhetorical devices' and 'common motifs' of young women as either hapless victims deceived by 'cruel seducers' and foreign 'evil agents' or as sexually 'loose' persons who contaminated the social body (Hudson, 1990; Murray, 1998; Doezema, 2001).[7] Such narratives reflect broader constructions of gender and state relations, national honour and, ultimately, what Yuval-Davis (1997) has termed 'collectivities' boundaries'.

A series of international instruments were developed in the early part of the twentieth century addressing the 'traffic of women': the 1904 International Agreement for the Suppression of White Slave Traffic, the

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[7]This moralising tendency was also pronounced in the American moral reform campaign targeting 'fallen women', whereby reformers 'could not comprehend the idea that prostitution could be a rational choice for women faced with a field of limited opportunities and options in the labour and marriage markets' (Hudson, 1990: 76).

1910 International Convention for the Suppression of the White Slave Traffic, the 1921 International Convention for the Suppression of the Traffic of Women and Children, the 1933 International Convention for the Suppression of the Traffic of Women of Full Age, and the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Farrior, 1997).[8] The 1949 Convention is notable as the first UN Convention dealing with trafficking. However, the treaty has been criticised for confining trafficking exclusively to the cross-border movement of persons into prostitution and ignoring other forms of labour trafficking, thereby excluding vast numbers of women and men from the assistance and protection they require.

Notwithstanding recent international instruments that recognise trafficking in sectors and settings other than prostitution, trafficking of women and children for sexual exploitation has continued to be the dominant paradigm in the fields of research, enforcement, prevention and service provision. As a consequence, trafficking for other forms of exploitation tends to be neglected. Significantly, the sex trafficking agenda remains split along ideological lines on their views of prostitution as 'work' versus 'sexual slavery', women's agency in relation to prostitution, and the distinction between 'voluntary' migrant sex work and 'forced' trafficking (Doezema, 2000, 2002; Sullivan, 2003). By and large, religiously inspired and feminist abolitionists consider that prostitution is the worst form of patriarchal oppression and the most intense form of victimisation of women, that it is impossible for a woman to consent to sell sexual services, and that all (migrant) women in prostitution are victims of sexual violence and slavery (Barry, 1995; Jeffreys, 1999).[9] As Kempadoo (2005a: 36) notes about this abolitionist perspective, women are seen 'to be always forced into prostitution – in

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[8]According to Chiang (1999) and Chuang (1998), most of these international conventions and treaties failed to provide explicit definitions of 'trafficking' and forced prostitution, proved ineffective in protecting the rights of trafficked women, and tended to attract limited political support from states.

[9]See also the work of the influential international anti-trafficking Coalition Against Trafficking in Women (CATW), which adopts the neo-abolitionist view that 'all prostitution exploits, regardless of women's consent' and that, by extension, trafficking in women includes any migration for prostitution, available at: http://www.catwinternational.org (accessed 8 October 2009).

short, trafficked – through the power and control men exercise over their lives and bodies'.

Other women's rights and sex workers' rights activists, however, have challenged the criminalising and moralising tendencies of the abolitionist discourse. They argued in favour of distinguishing between 'trafficking in women' and 'forced prostitution' on the one hand, and 'sexualized labour' on the other (Murray, 1998; Kapur, 2002; Chapkis, 2003; Kempadoo, 2005a; Global Alliance Against Traffic in Women, 2007). The argument is that, rather than conceptualising prostitution *per se* 'as an inherent violence to women', it is the way in which the sex trade is organised, the conditions under which women have to work, 'the violence and terror that accompany travel into, and work in, an informal or underground sector' that are seen to constitute trafficking (Kempadoo, 2005a: 37).

These tensions within the prostitution debate have remained unresolved under the UN Trafficking Protocol (Gallagher, 2001; Doezema, 2002). While the sidestepping of the issue and the lack of an explicit definition of sexual exploitation have made it possible for the Trafficking Protocol to be adopted by signatory states without prejudice to their respective domestic laws, this has also allowed for conflicting interpretations of what does and does not constitute trafficking for prostitution. This means that:

> diametrically opposing proposals for the reform of prostitution laws can each be presented as contributing to the struggle against 'trafficking'. Thus feminist abolitionist groups … are lobbying hard for measures to suppress the general market for prostitution … on the grounds that demand for prostitution stimulates trafficking. Meanwhile, sex workers' rights activists … argue that it is the absence of [labour standards in the sex sector] that encourages the use of trafficked and other forms of unfree labour in the sex industry. (O'Connell Davidson and Anderson, 2006: 14)

As we shall see in Chapter 5, the criminalising and moralising tendencies of the abolitionist discourse have remained influential, with particular implications for the substantial policies and practices in counter-sex trafficking interventions.

Migration

Fifth, human trafficking has been understood as a migration problem. As the UK Action Plan on Tackling Human Trafficking makes clear, trafficking is to be tackled first and foremost as an 'immigration crime' problem:

> As human trafficking often involves crossing international borders, it is essential that measures to address it are mainstreamed into the UK's immigration system. Dealing effectively with human trafficking will be an integral part of the new Border and Immigration Agency's business, delivering the Agency's objectives to strengthen our borders and ensure and enforce compliance with immigration laws. (Home Office and Scottish Executive, 2007)

From this perspective, human trafficking is a subset of illegal migration; the primary concern of states is the breaching of immigration controls; trafficked persons are treated as first and foremost violators of immigration laws and regulations as they often cross borders illegally and may work without authorisation. The acknowledgement of internal trafficking[10] has done little to challenge the dominant understanding of trafficking as a problem of cross-border migration.

The notion of trafficking as an illegal immigration problem and, by extension, the conflation of immigration and trafficking control measures, is most apparent in the stepping up of border controls, interception measures, greater document verification, carrier sanctions, readmission and repatriation agreements, migrant detention, and other exclusionary measures (Pearson, 2002b; Global Alliance Against Traffic in Women, 2007; Grewcock, 2007). In the UK, it is significant that the main counter-trafficking provisions are found in an asylum and immigration legislation, namely the Nationality, Immigration and Asylum Act 2002 (subsequently under the Sexual Offences Act 2003) and the Asylum and Immigration Act 2004, within the broader context

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[10]The UN Convention's definition of trafficking does not require the victim of trafficking to be a foreign national or international borders to be crossed in the commission of the offence. There have been a number of documented cases of internal trafficking or trafficking of EU nationals within the EU and cases of trafficking of US citizens as well as migrants with valid work permits within the USA.

of increasingly restrictive migration and asylum control measures.[11] As the House of Commons Home Affairs Committee inquiry into human trafficking (2009) noted:

> [W]e are concerned about the continuing tendency to view trafficking as an immigration crime, coupling it with facilitation or people smuggling, which is completely different. Not only does this increase the risk that victims will be treated only as those whose immigration status needs to be determined, it also poses the threat that those whose immigration status is not in doubt – UK nationals or those from the EEA, or migrant domestic workers with the correct visas, for example – will be ignored altogether. (paragraph 86)

A more critical and sociologically informed approach to the trafficking–migration nexus focuses on the conditions that require, facilitate or obstruct migrations, the motivations for men and women's migration, and the exploitation within different forms of legal and illegal migration. Sociologists, criminologists and political scientists have pointed to the growth in regular, irregular and forced migratory movements in various regions, which have been spurred on by economic crises, lack of sustainable livelihoods, political conflict, civil war, ethnic persecution, wider processes of global social transformation, social and gender inequalities, and hierarchies around notions of racial, religious and national difference (Piper, 1999; Koser, 2000; Morrison, 2000; Sassen, 2002; Castles, 2003; Asis, 2004; Kelly, 2005b).[12] For many living on the

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[11]For example, the Nationality, Immigration and Asylum Act 2002 curtailed asylum seekers' eligibility for benefits, imposed new restrictions on the right to apply for asylum, and expanded the power of the government to detain asylum seekers. The subsequent Asylum and Immigration Act 2004 made further changes to restrict eligibility for benefits, to increase penalties for document fraud and to expand the 'safe third country' provisions, and permitted the use of electronic monitoring devices to track applicants' whereabouts while they are in deportation proceedings. As critics have noted, 'These barriers are likely to hamper the ability of trafficked persons to access protection either if they were trafficked because they had fled a situation of armed conflict or human rights problems or because they would be at risk of re-trafficking if returned to their homeland' (Women's Commission for Refugee Women and Children, 2005: 6).

[12]According to Taylor and Jamieson (1999: 263), there were over 12 million forced migrants in all regions of the world in 1994; since then, genocidal and civil conflicts meant some 700,000 people have been displaced from the Former

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margins of the global economy, displaced by political turmoil or social unrest, and kept out of legal channels of migration, border crossing through irregular channels has increasingly become their only means of escape. Seen in this light, trafficking is an unintended consequence of restrictive migration policies and asylum policies and of state efforts to curb illegal entry and illegal employment of migrants.

From this critical migratory perspective, trafficking has to be analysed within the context of a hierarchy of globalised migratory movement. Globalisation has arguably produced both 'winners' and 'losers' in a world characterised by increased levels of social divisions and inequalities, endemic disorder, conflict and collective violence. While it may seem as if we live in an increasingly cosmopolitan, 'borderless' world, Bauman (1998) reminds us this is the case only for the 'globally mobile' of the first world and not the others in the second world who are 'locally tied'. For those who are kept out by 'the walls built of immigration controls, of residence laws and of "clean streets" and "zero tolerance" policies', border-crossing via illicit means may be the only viable option (ibid.: 88–9).

Human rights

Sixth, trafficking has been conceptualised within a human rights frame-work. The consolidation of human rights has gathered momentum in the latter half of the twentieth century through the growth of the international human rights movement, the proliferation of international human rights instruments and institutions, and the rise in human rights discourses as the 'lingua franca of global moral thought' (Ignatieff, 2001). Violations of human rights have been seen as both a cause and a consequence of trafficking: 'accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking' (United Nations High Commissioner for Human Rights, 2002: 5).

Yugoslavia, 2 million people uprooted in Bosnia-Herzegovina, and several million people living in camps and shanty towns in Rwanda, Uganda, Burundi, the Congo, Sudan and Ethiopia. They form what Kevin Bales (1999) has termed 'disposable people' – that is, 'a vast reservoir of human beings living without rights, security, and, usually, any hope of a return home'.

The fundamental human rights violated in the context of human trafficking are espoused under the UN Universal Declaration of Human Rights 1948 and European Convention on Human Rights and Fundamental Freedoms 1950, including the right to life and security of person; right to be free from slavery or servitude; right to freedom of movement; right to be free of torture or cruel, inhuman and degrading treatment; right to health; and right to free choice of employment. More specifically, a number of international declarations and human rights instruments and regional conventions have addressed the right of an individual not to be trafficked, including the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 (Article 6), the UN Convention on the Rights of the Child, 1989 (Articles 11 and 35), the International Covenant on Civil and Political Rights, 1966 (Article 8),[13] and the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (Article 3). It has been acknowledged by the United Nations that trafficking may constitute persecution and that trafficked victims may be entitled to international refugee protection (para. 12 and para. 15) (United Nations High Commissioner for Refugees, 2006). More specifically, victims of trafficking may qualify for international refugee protection if their country of origin is unable or unwilling to provide protection against further re-trafficking or as a result of traffickers' potential retaliation when circumstances can be linked to the 1951 Convention relating to the Status of Refugees.

In the European Union, the Council of Europe Framework Decision on Combating Trafficking in Human Beings 2002 (para. 3) and the Council of Europe Convention on Action against Trafficking in Human Beings 2005, declare that human trafficking constitutes first and foremost 'a violation of human rights and an offence to the dignity and the integrity of the human being' (Council of Europe, 2005). The Council of Europe Convention expands the definition of trafficking set out in the UN Trafficking Protocol to explicitly include in-state trafficking and trafficking not necessarily involving organised criminal groups. It contains a specific focus on assistance to trafficked persons and the protection of their human rights on the principle of

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[13]The Human Rights Committee of the ICCPR has repeatedly referred to trafficking in women as a violation of Article 8 that no one shall be held in slavery or servitude.

non-discrimination. It sets up a legal framework for the protection and assistance of victims with binding measures, an independent monitoring mechanism, and contains provisions that go beyond the minimum standards agreed upon in other international instruments.[14]

The human rights discourse which posits the trafficked victim as a bearer of universal and inalienable rights, is most apparent in the work of various United Nations agencies such as UNICEF and OHCHR (United Nations Special Rapporteur on Violence against Women, 2000; United Nations High Commissioner for Human Rights, 2002; United Nations Special Rapporteur on the Human Rights of Migrants, 2005), in legal writings (Farrior, 1997; Chuang, 1998; Gallagher, 2002; Obokata, 2006), and in advocacy work of strategically placed elements of civil society such as non-governmental organisations and law centres (Human Rights Watch, 2002b; Pearson, 2002b; Amnesty International, 2004; Global Alliance Against Traffic in Women, 2007). A human rights approach offers a conceptual and normative framework for reorienting the trafficking debate towards the exploitation of persons, regardless of their immigration status, and as a framework for action, i.e., for empowering and mobilising trafficked persons. Human rights may also serve as a tool for developing effective policies (e.g., by deepening an analysis of the causes of trafficking) and for holding states accountable for their efforts (including their human rights obligations towards non-citizens) (Kaye, 2003; Experts Group on Trafficking in Human Beings, 2004; Patten, 2004). This involves identifying which individuals or groups of people are disproportionately more likely to be trafficked than others … and analysing who is accountable for protecting them and recommending what measures are required to ensure that their human rights will be upheld and protected more effectively. (Global Alliance Against Traffic in Women, 2007: 7)

While this turn to human rights has been significant in terms of securing popular recognition of a social wrong, and including trafficked persons within a community of rights-bearers, critics have warned of a tendency to reduce the concept of human rights violation to 'an amorphous category' that can be stretched unreflectively and of the imperialist bent to the deployment of rights discourse:

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[14]The UK has signed and ratified the Council of Europe Convention, which came into force in April 2009.

[S]uch an approach depends on dubious claims about women's collective experiences, reinforces stereotypes of the native and culturally bounded non-Western women (depicted as incapable of consenting to her migration or prostitution), and invites remedies from the state that have little to do with genuine empowerment. (Munro, 2008: 245)

Others have pointed to the uneven and weak implementation of human rights standards in counter-trafficking work. In principle, states have a responsibility under international law 'to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons'; they have a duty to ensure that counter-trafficking measures 'shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked' (United Nations High Commissioner for Human Rights, 2002; see also Joint Committee on Human Rights, 2006). In practice, the state may act as both protector and violator of human rights of trafficked persons. Notwithstanding the development of international instruments in the field of migrant rights (e.g., International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990, which entered into force in July 2003), critics have noted the tendency of states to place immigration controls and national security concerns before human rights protection of trafficking victims.

More specifically in relation to the UN Trafficking and Smuggling Protocols, Gallagher (2001: 976) argues that even though 'human rights concerns may have provided some impetus (or cover) for collective action, it is the sovereignty/security issues surrounding trafficking and migrant smuggling which are the true driving force behind such efforts'. Others have suggested that although the UN Trafficking Protocol has established some 'new' (and has confirmed existing) rights of trafficking victims, the rights and protections offered to victims in many countries are best described as 'meagre' (Sullivan, 2003):[15]

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[15]Under the UN Trafficking Protocol, anti-trafficking measures which are linked to law enforcement are obligatory for all states ratifying the Protocol. Other measures designed to protect and assist people who are trafficked (including measures to provide for the physical, psychological and social recovery of victims of trafficking) are optional for ratifying states to implement, rather than being presented as rights for individuals who have been trafficked.

> [C]rucially, the Trafficking Protocol is problematic from a human and migrants' rights perspective because it attaches special significance to situations in which abuses at the point of destination are linked to the use of force or deception within the migration process. States Parties are not being required to meet new and higher standards with respect to protecting the rights of *any* migrant person who is subject to deception, force and exploitation within their borders, but only with respect to those who have also been cheated and exploited within the migration process. (O'Connell Davidson, 2006: 9)

Similarly, in his report on European asylum policy for the UN High Commissioner for Refugees, Morrison (2000) suggests that European states have shown limited 'human rights interest in migrants that enter into smuggling or trafficking to escape persecution'; rather, 'the emphasis is on closing down criminal activities but without providing alternative means of migration for those with no choice other than to flee'. Green and Grewcock (2002) went further to suggest that legitimate concerns about protecting the human rights of victims of trafficking have been co-opted into state policies of control and surveillance and the wider political project of 'state identity' and cultivating 'a hegemonic European character built upon principles of exclusion'. In other words, the concern is that human rights discourse has been co-opted by state governments to serve political ends.

Conclusion

The six conceptual approaches to trafficking sketched out in this chapter represent competing understandings of the nature and causes of the trafficking problem and what is to be done about it. Although the story of precisely how and why one or more of these approaches are translated into specific policies and practices in national and local contexts remains to be told, the key argument throughout this book is that the contemporary language of human trafficking has been dominated by the twin conceptions of transnational organised crime and illegal immigration. These two conceptions and the invocation of the law and order and immigration control framework enable diverse, complex stories of transnational (im)mobility to be reframed as 'threats' to the global community, the state and gendered social order and as 'prosecutable'

cases in the criminal justice process. In the process, trafficked victims' suffering and their rights become appropriated by 'a logic of security' and 'politics of risk' where 'migrants, boat people, asylum-seekers or trafficked women are integrated in a continuum of danger' (Aradau, 2004: 252).

While some officials, NGOs and advocates may be able to make use of the indeterminate space created by definitional ambiguities of the trafficking problem to promote the rights and welfare of trafficked migrants, these are at best partial accommodations. What remains unchallenged is the criminalisation of irregular migration. Such a conceptualisation has held sway in shaping the development, diffusion and implementation of enforcement-oriented and immigration control strategies to combat trafficking in the international and national contexts and the 'rescue' of those trafficked victims who cooperate in state processes of criminal justice but not others. Indeed, most of the funding in the past decade has gone into creating a counter-trafficking framework (e.g., harmonising anti-trafficking legislation, creating readmission agreements), strengthening institutional and technical capacity (e.g., training for police and judges, gathering intelligence and constructing trafficking databases, enhancing border security), and keeping unwanted migrants at a distance (e.g., repatriation, supporting local NGO shelters, developing information and awareness-raising campaigns in countries of origin)

As we shall see in the following chapters, this predominant framing of trafficking as a transnational organised crime and immigration control problem has brought an unprecedented growth in transnational law enforcement, a meshing of state criminal justice and immigration control functions, and troubling consequences for trafficked persons and other migrants caught up in the 'war on trafficking'. Relatively few policies and actions directly address men and women's desires to be mobile and the conditions of their mobility, the rights of those at risk of trafficking, or the broader challenge of poverty, discrimination and exploitation that vulnerable migrant groups are faced with in countries of origin and destination. Notwithstanding the turn to human rights in recent years, there remains a rights deficit in the treatment of trafficked persons not only in the context of violations committed by organised criminal groups but also in dominant political constructions and state actions against unwanted migrants and non-citizens.