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## **DIIS Brief**

# **Troubling Trafficking: why I am worried about motherhood and apple pie but don't endorse slavery**

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### **Abstract**

Trafficking in persons is currently viewed as a serious problem by a wide range of different agencies, organisations and lobby groups. And yet different groups identify trafficking as a problem for very different reasons and often have very different political agendas with regard to the issue. I examine three types of “stakeholders” with a view to identifying the key challenge for each in using the language of trafficking. These stakeholders are feminist “abolitionist” NGOs and their supporters; migrants’/ workers/human rights organisations; and states.

I identify definitions of consent and exploitation, recognition of workers’ agency, and the relation between immigration controls and “trafficking” as being problems that these stakeholders must address before genuinely being able to share common ground on addressing global abuse and exploitation of labour.

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Trafficking is in the news. It is on the political agenda, both nationally and internationally. Thousands of individuals, hundreds of groups, dozens of newspapers are determined to stamp it out. This public concern with trafficking consistently reflects and reinforces firstly a deep concern with prostitution/sex work, and secondly a concern about immigration, abuse and exploitation. To challenge the expression and some of the actions taken as a response to this concern is akin to saying that one endorses slavery or is against motherhood and apple pie. It is a theme that is supposed to bring us all together. But in this paper I want tread the line of challenging motherhood and apple pie without endorsing slavery. There is a real danger that a moral panic over trafficking diverts attention from the structural, systemic causes of abuse and exploitation and confuses arguments. In particular I want to argue that the positions and actions taken on trafficking mask very different and often conflicting agendas and that those who seek to occupy the common ground of trafficking might find themselves in treacherous territory.

### **Interest groups**

Trafficking in persons is currently viewed as a serious problem by a wide range of different agencies, organisations and lobby groups. And yet different groups identify trafficking as a problem for very different reasons and often have very different political agendas with regard to the issue. I want to examine 3 broad groups of “stakeholders” for the purposes of this paper with a view to identifying the key challenge for each in using the language of trafficking and the strong depiction of the Victim of Trafficking. These stakeholders are feminist “abolitionist” NGOs and their supporters; migrants’/workers/human rights organisations; and states. (These of course are not mutually exclusive). Outside of the information and analysis generated by these groups there is also a broader popular interest in trafficking apparent in media coverage. Until recently, in the UK at least this has tended to concentrate on: illegal entry and/or employment; movement across international frontiers; prostitution/death. However, there is just beginning to develop an interest in forced labour exploitation, reflecting in part a concerted attempt to shift emphasis on to trafficking for forced labour (Flynn 2007).

I will argue that each of the three interest groups mentioned above views the issue through the lens of different political concerns and priorities. Each has a principal conceptual challenge when they use the trafficking framework. These challenges are ultimately shared, but receive different emphasizes depending on who is criticizing whom. Ultimately this is just a way of cutting the cake, a way of getting a handle on the complex and contradictory issues and fundamentally these challenges I think demonstrate deep problems with the concept that are not simply terminological but have serious practical and political implications.

### **Definitions: the Palermo Protocol**

Much store is set by a landmark international agreement which offered a legal definition of trafficking. In November 2000, the UN Convention Against Transnational Organised Crime was adopted by the UN General Assembly. The purpose of this convention was to promote interstate cooperation in the combating of transnational organized crime and to eliminate “safe havens” for its perpetrators. It also is supplemented by three additional protocols dealing with Smuggling of Migrants, Trafficking in Persons – especially women and children, and Trafficking in Firearms. The definition of trafficking in persons contains three elements: an action consisting of “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... (which).. 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 (for children the requirements for means are waived). The smuggling of migrants is defined as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State party of which the person is not a national or a permanent resident”.

The Palermo Protocol, as it is known, is on one level hugely successful. As of April 2007 it has 111 signatories Compare the ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and their families which has 36 ratifications and 15 signatories, approved by the UN ten years earlier in 1990. However one should remember that the Palermo Protocol is *not a human rights instrument*. It is an instrument designed to facilitate cooperation between states to combat organised crime, not an instrument designed to protect or give restitution to the victims of crime. The emphasis is on intercepting traffickers and smugglers and on punishing and prosecuting them. States are to strengthen border controls to prevent trafficking and smuggling. Border controls, not human rights protection lie at the heart of both the smuggling and trafficking protocols. While states are encouraged to offer protection to trafficked persons, in particular to consider providing victims of trafficking the possibility of remaining, temporarily or permanently, on their territory, actual obligations are minimal and the protection provisions are weak. They must

*consider* implementing a range of measures to provide for the .... Recovery of victims of trafficking; *endeavour* to provide for the physical safety of trafficking victims... and *ensure* that domestic law provides victims with the possibility of obtaining compensation (Gallagher 2001).

The tone is, as Gallagher puts it, “optional”. Crucially trafficked persons are not prevented from prosecution for status related offences – i.e. are still liable to prosecution as an illegal entrant for example.

Furthermore, arguably one reason for the success of the protocol is its lack of precision. Since the protocol makes particular and special reference to prostitution and sexual exploitation, but simultaneously places a responsibility upon governments to protect the human rights of persons trafficked into sectors other than the sex industry, it can be read as taking a neutral stand on “the prostitution debate”. This semblance of neutrality is achieved at the expense of precision, however. So, for instance, the protocol does not define the phrase “exploitation of prostitution of others or other forms of sexual exploitation” because “government delegates to the negotiations could not agree on a common meaning” (GAATW 2001, p31). States seem to have agreed to disagree about prostitution in order to maintain the distinction between trafficking and migrant smuggling. Prostitution is dealt with only with reference to trafficking and not with reference to domestic law.

The fact that there are two protocols suggests that there are two discrete groups of wrongdoers, traffickers and smugglers, and two groups of migrants, those who are trafficked and those who are smuggled. States and other parties often emphasise that these are two differ-

ent groups. (Home Office 2007; Flynn 2007). Smuggled migrants are not entitled to any of the special protections that states should consider making available to victims of trafficking, and there is no requirement placed on states to consider the human rights of smuggled migrants when repatriating them. Early commentators found the unclear relationship between the two protocols, and, more specifically the failure of both to provide any guidance on *identification* to be a “significant, and no doubt deliberate, weakness”. This failure, it is argued, means that states will default to identification as smuggled rather than trafficked, because responding to trafficked people is administratively and financially more costly. I will argue however that the problem of identification is in fact a result of fundamental problems with the definition of trafficking in persons that the protocol does not resolve, smuggling and trafficking networks are not distinct, and that in practise implementing a distinction between smuggled and trafficked people is extremely difficult.

### **Prostitution/sex work: consent and miserable choices**

Negotiations over the Palermo Protocol brought together states and feminists who were particularly concerned with prostitution. Thus the trafficking protocol has its roots not just in concerns about crime and borders, but through a lens of concerns about prostitution of women and minors. There is particular and special reference made in the protocol to sexual exploitation and exploitation of the prostitution of others. The protocol does address other forms of trafficking for forced labour etc, and there are moves by national governments and international actors to take trafficking for forced labour more seriously. However, until recently the policy discussions and research on trafficking have been very much focused on prostitution. The debates around the protocol itself were affected by the polarised debate between those who might be termed “feminist abolitionists” and those arguing from a “sex workers’ rights” perspective. Abolitionists argue that prostitution reduces women to bought objects, and is always and necessarily degrading and damaging to women. Thus, they recognise no distinction between “forced” and “free choice” prostitution, and hold that in tolerating, regulating or legalizing prostitution, states permit the repeated violation of human rights to dignity and sexual autonomy. All prostitution is a form of sexual slavery, and trafficking is intrinsically connected to prostitution (Barry 1995). From this vantage point, measures to eradicate the market for commercial sex are simultaneously anti-trafficking measures, and *vice versa*.

Feminists who adopt what might be termed a “sex workers’ rights” perspective reject the idea that prostitution is intrinsically or essentially degrading. Since sex workers’ rights feminists view sex work as a service sector job, they see state actions which criminalize or otherwise penalise those adults who make an individual choice to enter prostitution as a denial of human rights to self determination (NSWP 1994, Alexander 1997). They also strongly challenge feminist abolitionists’ simple equation of the demand for trafficking and the demand for prostitution. From this standpoint, it is the lack of protection for workers in the sex industry, rather than the existence of a market for commercial sex in itself, that leaves room for extremes of exploitation, including trafficking. The solution to the problem thus lies in bringing the sex sector above ground, and regulating it in the same way that other employment sectors are regulated.

For abolitionists concerns with trafficking are about women’s rights and prostitution. Those working in the sex trade are not smuggled into states, they must be trafficked since no woman

can really free consent to prostitution. They argue that their focus is “the human rights implications of prostitution per se” (Reanda 1991). Abolitionists have been criticised for not recognising agency, that it is possible for women to make a decision to work in commercial sex, and that those who do so are not victims of violence or personal pathologies but agents. They condemn “prostitutes” to perpetual victimhood, whose only possibility lies in rescue.

But what of the many women (and children) who say that they have made a choice? How do I respond when a person says that they are consenting to a contract that I find disagreeable? If I believe that normatively, nobody *should* sell sex, or that, in the case of forced labour, nobody *should* sell themselves into slavery, what ought to be my response when faced with people who have done so? While it is easy to condemn the buyer (“the demand” in current policy parlance), what about the willing seller? One move might be to consider the social context: if a person sells sex when they have a plethora of other choices of how to earn their money then they ought not to sell sex because it harms all women that they can be thus commodified; if a person sells sex when they are poor then they have not really consented, but rather they have been forced by poverty. And indeed, some have argued that there are in fact three positions on the sex work/prostitution debate: the abolitionist, the sex workers’ rights, and those who emphasise the distinction between forced and free prostitution. Doezma (1998) has pointed out some of the problems with the emphasis on this forced/free distinction, most particularly that it facilitates evasion of the challenges posed by sex workers’ rights arguments. In terms of responses to trafficking then the challenge to proponents of this argument are two fold. Firstly that if sellers are coerced by poverty and do not properly consent to these unacceptable contracts then a policy response which focuses on borders and immigration control is clearly insufficient. As Radin (1996: 51) puts it:

If poverty can make some things non-saleable because we must... presume that such sales are coerced, we would add insult to injury if we then do not provide the would-be seller with the goods she needs or the money she would have received. If we think respect for persons warrants prohibiting a mother from selling something that is in some sense ‘inside’ herself to obtain food for her starving children, we do not respect her personhood more by forcing her to let them starve instead.

To foreclose one of a highly limited set of options open to a person because others feel uncomfortable with that option cannot be said to be advocating for her rights, rather she is being required to sacrifice herself further for the greater benefit of all women. If one is concerned with the rights of that individual surely one should be offering more options in the expectation that most people will avoid miserable choices and that, if selling sex is inherently degrading for women, then most women will, given other choices, avoid it.

The second challenge for this position is how to avoid it being used as a mechanism for distinguishing between the woman who “chooses” prostitution who is guilty and does not deserve human rights protection (she is “smuggled”), and the woman who is “innocent” and does (she is “trafficked”). How to avoid being seen as assisting the state in distinguishing between the victim, who is deserving of help and support as a trafficked victim, and the whore who should just put up or get out when in practise of course we know that questions of consent are far more complicated, and often mask old debates about agency and structure, and how these interact with each other.

## **Human/workers'/migrants' rights activists**

Many of these issues also represent a conceptual challenge for other types of rights activists who are increasingly being drawn into the language of trafficking as attempts are made to frame its discussion with reference to “forced labour” and “exploitation. If it is only innocent victims who merit help and support, and, in the context of the trafficking protocol, some minimal sympathetic attention to their basic rights, what of the “guilty”? Victimhood, agency and guilt or innocence are common problems. However, a further difficulty for those who focus on labour or migrant rights is how to distinguish trafficking from legally tolerated employment contracts (also from legally tolerated forms of exploitation of women and children within families). Questions about what constitutes an exploitative employment practice are much disputed - indeed they have historically been, and remain, a central focus of the organised labour movement’s struggle to protect workers. There is variation between countries and variation between economic sectors in the same country in terms of what is socially and legally constructed as acceptable employment practice. In the absence of a global political consensus on minimum employment rights, and of cross-national and cross-sector norms regarding employment relations, it is extremely difficult to come up with a neutral, universal yardstick against which “exploitation” can be measured. The protocol definition of trafficking leaves open questions about precisely how exploitative an employment relation has to be before we can say that a person has been recruited and transported “for purposes of exploitation”.

For migrant labour, at least for low waged migrant labour, surely one of the reasons it is permitted by states in the first place, and in practise why it is sought by employers, is precisely because it can be exploited. How to draw a line in the sand between “trafficked” and not trafficked but just-the-regular-kind-of-exploitation migrants? Indeed, given that movement across international borders is not a requirement for trafficking to take place, how to make this distinction between trafficked migrants and exploited workers in general? The problem is that workers, migrant or not, cannot be divided into two entirely separate and distinct groups – those who are trafficked involuntarily into the misery of slavery-like conditions in an illegal or unregulated economic sector, and those who voluntarily and legally work in the happy and protected world of the formal economy. Violence, confinement, coercion, deception and exploitation can and do occur within both legally regulated and irregular systems of migration and employment.

So far as definitions of trafficking are concerned, the problem is further complicated by the fact that these abuses can vary in severity, which means they generate a continuum of experience, rather than a simple either/or dichotomy. At one pole of the continuum, we can find people who have been transported at gunpoint, then forced to labour through the use of physical and sexual violence and death threats against them or their loved ones back home. At the other pole, we can find people who have not been charged exorbitant rates by recruiting agencies or deceived in any way about the employment for which they were recruited, and who are well-paid and work in good conditions in an environment protective of their human and labour rights. But between the two poles lies a range of experience. Ideas about the precise point on this continuum at which tolerable forms of labour migration end and trafficking begins will vary according to our political and moral values.

## States

States concerns with trafficking are very much focussed on “illegal immigration” despite the fact that trafficking, as opposed to smuggling, does not have to be to do with illegal entry. It is important when considering this however to remember that “Victim of trafficking” is both an *administrative category* entailing certain state protections and obligations towards individuals, and a *descriptive term* applied by NGOs and other civil society actors to people who have certain sets of experiences – though exactly what should constitute those sets of experiences is contested. Those who fit the *descriptive term* do not necessarily fall into the *administrative category*, a further reason for discrepancies between large scale numbers of estimated victims, which have a strong reliance on NGO figures and estimates, and the numbers of those officially registered. Indeed state officials can be less than rigorous in their usage of the term. Take the tragedy in Dover in 2000 where 58 Chinese people died in the back of a truck having paid £15,000 each to group that organised their illegal entry to the UK. This was widely publicised as an instance of “deadly traffic in humans” (International Herald Tribune). Official European documents give this as an example of trafficking but given that they had entered voluntarily into the contract, were entering the UK illegally it is highly doubtful that they would have been designated “trafficked” had they been found alive. Like many illegal entrants discovered entering the UK in extremely dangerous and difficult conditions, they would have been classed as smuggled and in all probability returned to their country of origin. Similarly in a recent statement the UK Home Secretary, John Reid, says that

People traffickers... are behind three quarters of illegal migration to this country (leaving) vulnerable and often desperate people at the mercy of organised criminals

This means a lot of people are not obtaining their rights as victims of trafficking!

The challenge for states is precisely in implementing the smuggled/trafficked distinction. The question resolves into the broader issue of the role of immigration controls in constructing categories of people who are vulnerable to abuse. If certain immigration statuses create marginalized groups without access to the formal labour market, or any of the protections usually offered by states to citizens and workers, then how can the state prevent itself equipping employers with labour control and retention mechanisms that would not otherwise be available to them? How can states prevent immigration controls from becoming part of the problem, and indeed attain the far more ambitious goal of ensuring that immigration controls are part of the solution?

## Matters of movement

The challenge and problems outlined above may be differently emphasized, elided or ignored depending on who is talking about this elusive term “trafficking”. But some of the divisions between interest groups become most sharp when one attempts to consider, why does movement matter? It is of particular note that according to protocol definitions key distinctions between trafficking and smuggling are:

a) that entry into a state can be legal or illegal in the case of trafficking but not smuggling;  
and

- b) that trafficking can take place within national boundaries i.e. the transportation, recruitment element does not have to occur across international frontiers.

Trafficking does not have to take place across international borders, one does not need to be “illegal” in order to be trafficked, as one does not need to be a “prostitute”. But in this case, why does movement matter at all? For feminists, labour, and migrant rights’ activists, why is being forced into prostitution or to labour at the barrel of a gun when you are in your home town less heinous than being forced into prostitution or work elsewhere? It is the outcome, exploitation and abuse, that is the problem, not where it takes place.

It could be argued that movement matters because it heightens vulnerability to this outcome, and potentially, makes alleviation more problematic – if you are isolated, don’t speak the language etc then it is both easier to exploit you, and indeed in this way movement may be part of a mechanism facilitating exploitation. However, while there is undoubtedly a problem with reducing exploitation and its mechanisms to simple mathematics and units of labour, surely what this suggests is that one has to examine the social context and relations within which all exploitation takes place, and account for and respond to it. In this instance ensuring that people have information on their rights, possibilities for social and welfare contacts. Thus in seeking to protect a group of workers who are particularly vulnerable for reasons to do with language, familiarity etc, activists can focus on movement as a shorthand for this vulnerability, and take refuge on a rare patch of common ground with states around “trafficking”. However, for states the reason for the emphasis on movement is clearly based on their concern with transnational organized crime. The Protocol was concerned to plug gaps with national law enforcement and criminal justice mechanisms and to ensure co-operation between states on the basis that transnational organized crime cannot be tackled on the territory of one state. Border controls and movement of people (“victims” not necessarily “traffickers” of course) are central. The differences between states and rights’ activists therefore crystallize around the role of immigration controls. Are immigration controls a factor that can heighten vulnerability to exploitation? Some consensus around this question could make the common ground of trafficking an oasis rather than a mirage.

## References

- Alexander, P. 1997: 'Feminism, sex workers and human rights', in J. Nagel (ed) Whores and Other Feminists. London: Routledge.
- Barry, K. 1995: *The Prostitution of Sexuality*. NY: New York University Press
- Doezema, Jo (1998) 'Forced to Choose: Beyond the Voluntary v Forced Prostitution Dichotomy' in Kamala Kempadoo and Jo Doezema (eds) global Sex Workers: Rights, Resistance and Redefinition London: Routledge
- Flynn, Don (2007) Human Trafficking and Forced Labour. What Perspectives to Challenge Exploitation? Brussels: PICUM
- Gallagher, Anne (2001) 'Human rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis' Human Rights Quarterly 23: 975-1004
- GAATW, 2001: *Human Rights and Trafficking in Persons: A Handbook*. Bangkok: GAATW.
- Home Office (2007) UK Action Plan on Tackling Human Trafficking London
- NSWP, 1994: 'Sex work and human rights', Network of Sex Work Projects, European Symposium on Health and the Sex Industry, Edinburgh.  
<http://www.bayswan.org/NSP.html>
- Radin, Margaret (1996) Contested Commodities: the trouble with trade in sex, children, body parts, and other things London: Harvard University Press
- Reanda, Laura. 'Prostitution as a Human rights Question, Problems and prospects of United Nationals Action.' Human Rights Quarterly 13: 209-211