

TRAFFICKING, MODERN SLAVERY AND THE HUMAN SECURITY AGENDA

IN FEBRUARY 2008, A MAJOR UNITED NATIONS (UN) CONFERENCE ON HUMAN trafficking was held in Vienna. Attended by "international celebrities" as well as representatives from governments, Non Governmental Organizations (NGOs), and international agencies, Antonio Maria Costa, head of the UN Office on Drugs and Crime (UNODC), described the event as something between the World Economic Forum at Davos and the 1960s music festival, Woodstock. "This is not an inter-governmental conference, nor is it a talk shop. Think of it more as a rally. We march together."¹ And yet, eight years after states drafted the *Trafficking Protocol to the UN Convention on Transnational Organized Crime*, and five years after this Protocol came into force, it remains unclear what, precisely, we are being asked to march against. In dominant discourse, "trafficking" is presented as a hugely profitable business in which organized criminals transport millions of human victims around the globe into conditions of slavery. Thus, Costa continued his commentary by saying "200 years after the end of the trans-Atlantic slave trade, we have the obligation to fight a crime that has no place in the 21st Century. Let's call it what it is: modern slavery."²

Juxtaposing talk of "trafficking" with images of the trans-Atlantic slave trade makes for powerful rhetoric. It also serves to divorce the human rights violations that are commonly associated with the term "trafficking" from their specific historical context. For although we are invited to picture "victims of trafficking" as the contemporary equivalents of those Africans who between the 15th and 19th Centuries were seized, manacled, shipped across the world, sold as chattels, branded, and forced to labour under threat of torture or death, there are some crucial differences between past and present.

First, where those who were forcibly transported from Africa had no pre-existing desire or ambition to move to the New World, the people who are described as "victims of trafficking" almost invariably wanted to move to another region or country, and almost invariably had excellent reasons for wishing to do so. It is extremely rare that migrant adults or children who end up in exploitative situations have been plucked from quietly contented lives and taken against their will to a distant place by "slavers" or their agents. In some cases, the decision to leave home is based on the belief that poor

¹ BBC News, 2008. "UN forum aims to end trafficking." <http://newsvote.bbc.co.uk/2/hi/europe/7242180.stm> (accessed February 21, 2008).

² Ibid.

life-chances and earning opportunities will be greatly improved through migration. In others, as Maybritt Jill Alpes' article in this volume shows, the decision to migrate is made in a context of more acute forms of human insecurity. Thus, Alpes' research with West African migrant women in prostitution in Paris found that some had migrated to escape the Muslim-Christian tensions in Nigeria, one woman moved because she "had been subjected to harmful traditional practices, another one left because she did not agree with a proposed arranged marriage and yet another one had been orphaned through her families' political persecution."

Whatever the motivation for moving, the decision to migrate is taken in a highly unequal world, and international mobility is one of many privileges that are unevenly allocated. For example, where it is relatively easy for the nationals of Western high-income OECD countries to cross borders legally, those who hold passports from countries "with a history of violent political conflict (e.g., Afghanistan, Iraq, Somalia), countries with a strictly autocratic regime (e.g., Northern Korea and Myanmar), very poor countries (e.g., Ethiopia and Haiti) or countries with some combination of these aspects"—in other words, countries where human security is most often compromised—find it extremely difficult to do so.³ There is no easy correlation between the legality of the mode of entering another country and the safety of the migrant at the point of destination (and entering through legal channels does not automatically confer "legal" immigration status). However, it is widely recognised that demand for mobility in conjunction with the introduction of ever more restrictive immigration policies and tighter border controls by affluent, migrant-receiving countries has led to the emergence of a growing market for clandestine migration services, including smuggling across borders, faking travel documents, and arranging marriages.⁴

In this criminalized, concealed and so entirely unregulated market, migrants are open to a variety of forms of abuse and exploitation, some of which may place their lives in jeopardy or lock them into extremely violent and exploitative situations at the point of destination. And yet their experience is not *necessarily* one of violence, exploitation and abuses. Some irregular migrants are assisted by third parties who do not cheat them or harm them in any way, and even when they do experience elements of abuse or exploitation, it may be that the individuals concerned nonetheless considers this preferable to remaining at home, where threats to their security in the form of violence, exploitation or straightforward starvation may be far greater. This is another sense in which the movement of people occurring today differs markedly from the movement of people that took place under the trans-Atlantic slave trade.

An equally crucial difference between the trans-Atlantic slave trade and what is described as "modern slavery" is that those who were historically transported from Africa to the Americas were moved into societies where slavery was one of the established and recognised statuses used to define employment relations. Scholars of labour history and slavery point out that it

³ Eric Neumayer, "Unequal access to foreign spaces: How states use visa restrictions to regulate mobility in a globalized world," *British Geography*, 72-84.

⁴ Jyoti Sanghera, "Unpacking the trafficking discourse," in *Trafficking and Prostitution Reconsidered*, eds. Kamala Kempadoo, Jyoti Sanghera and Bandana Pattanaik (London: Paradigm, 2005); Ratna Kapur, *Erotic Justice: Law and the new politics of postcolonialism* (London: Glasshouse, 2005); Eleonor Kofman et al. *Gender and International Migration in Europe* (London: Routledge, 2000); ILO, "Getting at the roots: Stopping exploitation of migrant workers by organized crime," International Labour Office. Paper presented to International Symposium on the *UN Convention Against Transnational Organized Crime: Requirements for Effective Implementation*. Turin, 22-23 February 2005.

was not actually possible to cleanly demarcate slavery from other statuses defining employment relations (such as indentured servant, apprentice, or labourer) through reference to the degree of unfreedom or labour exploitation it implied for the individual.⁵ The early law of the American colonies, for example, locked formally "free" labourers into lengthy relationships (3-5 years or more) with their masters on pain of imprisonment and/or corporal punishment and/or a prolonged period of servitude should they attempt to leave.⁶ However, a "slave" was readily identifiable in the sense that s/he was legally defined as such, and it is therefore possible to speak of and study slaves in the Americas as a specific, bounded group (even if what research reveals is that this legal category encompassed a diverse range of experience, and that there was significant overlap between the experience of slaves and that of many non-slaves).

Today, by contrast, people are not being transported into societies where slavery is legally recognised and regulated as a judicial category. "Victims of trafficking" are not people who have been formally assigned the legal status of slave, and because today, as in the past, the experience of unfreedom and exploitation ranges along a continuum, this generates real confusion around who, precisely, we mean when we speak of "trafficked" persons. So, for example, the Palermo Trafficking Protocol was introduced in tandem with a protocol on smuggling, and as Bhabha observes,⁷ these protocols are framed around an assumed dichotomy between irregular migration that is coerced and irregular migration that is consensual: "Where people who are trafficked are assumed not to have given their consent and are considered 'victims' or 'survivors,' people who are smuggled are considered to have willingly engaged in a criminal enterprise."

But as the articles in this volume by Testaì and Alpes, all illustrate very effectively, the idea of a neat line of demarcation between oppositional categories of migration—voluntary and consensual versus involuntary and non-consensual migration—vastly over-simplifies the systems and processes that facilitate irregular migration in the real world, and fails to recognise the complexity and variety of social relations between irregular migrants and those who benefit directly or indirectly from their exploitation.⁸

We might also draw on insights from the work of Robert Steinfeld⁹ (discussed by Testaì, this volume) to criticize the notion of a clear opposition between forced and voluntary migration. Steinfeld points out

⁵ Laura Brace, *The Politics of Property: freedom and belonging* (Edinburgh: Edinburgh University Press, 2004); Tommy Lott, "Early Enlightenment conceptions of the rights of slaves," in *Subjugation and Bondage*, ed. Tommy Lott (Rowman and Littlefield, 1998); D. Geary, "Europe and slave protests in the Americas (1780 – 1850)," *Mitteilungsblatt des Instituts fuer Soziale Bewegungen, Heft 31* (Bochum: Ruhr University, 2004).

⁶ Robert Steinfeld, *The Invention of Free Labor* (University of North Carolina Press, 1991).

⁷ Jacqueline Bhabha, "Trafficking, smuggling and human rights," *Migration Information Source* (2005), <http://www.migrationinformation.org>

that the how the line dividing free and unfree labour is drawn is a matter of convention in liberal democratic societies—it is imagined through reference to "a judgement about what kinds of coercive pressures are legitimate and illegitimate in labor relations."¹⁰ This judgement has varied historically, but today it is generally informed by a belief that economic pressures are less coercive than physical force or the threat of imprisonment, even though "the threat of starvation may certainly operate more powerfully than a short term of confinement."¹¹ The same holds good in relation to migration, and thus we find that dull economic compulsion does not feature in the list of forces in the *UN Trafficking Protocol* (2000) that are deemed to nullify a person's consent to exploitation, even though, again, being unable to feed one's self or one's children, or to pay for medical treatment for sick dependants may operate as just as an irresistible force as the threat of physical violence.

Moreover, because the Protocol definition of the term "trafficking" does not describe a single, unitary act leading to one specific outcome, but rather refers to a *process* (recruitment, transportation and control) that can be organized in a variety of ways and involve a range of different actions and outcomes, and because there are often close similarities between the process described as "trafficking" and that described as "smuggling,"¹² it is by no means clear at what stage in the migratory passage a person becomes a "victim of trafficking." Nor is it clear why, in cases where migrants are subject to forced labour or slavery-like practices, questions about how they were recruited and transported into this condition should determine their status and so their entitlement to protection and assistance. Indeed, the report of an *Experts Group on Trafficking in Human Beings* convened by the European Union in 2003 notes that forced labour is the crucial element of the Protocol, and states that "policy interventions should focus on the forced labour and services, including forced sexual services, slavery and slavery-like outcomes of trafficking—no matter how people arrive in these conditions—rather than (or in addition to) the mechanisms of trafficking itself."¹³ In practice, however, policy interventions and police and immigration officers who come into contact with migrants who have been subject to forced labour continue to differentiate between "illegal immigrants," who are held to have consented to movement, and "victims of trafficking," who are held to have been coerced into moving.

The fact that "trafficking" is used as an umbrella term for a process that can lead to a variety of outcomes muddies the water in other ways. It means that "trafficking" can, in theory, intersect with a wide array of other markets, institutions and practices (labour markets, prostitution, marriage, benefit fraud, organ trading, child adoption, independent child migration to name but

⁸ Bridget Anderson, *Doing the Dirty Work* (London: Zed, 2005); Rhacel Parrenas, *Servants of Globalization: Women, migration and domestic work* (Stanford, CA: Stanford University Press, 2001); Russel King, "Towards a new map of European migration," *International Journal of Population Geography*, vol. 8 (2002), 89-106; Rutvica Andrijasevic, "The difference borders make: (il)legality, migration and 'trafficking' in Italy among 'eastern' European women in prostitution," in *Uprootings/Regroundings: Questions of Home and Migration*, ed. Sara Ahmed et al (Berg, 2003); Helma Lutz, "Life in the twilight zone: migration, transnationality and gender in the private household," *Journal of Contemporary European Studies*, vol. 12, n°1 (2004), 47-55; Julia O'Connell Davidson, *Children in the Global Sex Trade* (Cambridge: Polity, 2005).

⁹ Robert Steinfeld, *Coercion, Contract and Free Labor in the Nineteenth Century* (Cambridge: Cambridge University Press, 2001).

¹⁰ *Ibid.*, 16

¹¹ *Ibid.*, 25

¹² There are also often close parallels between the process described as "trafficking" and that defined as "legal immigration" (see Julia O'Connell Davidson, "Will the real sex slave please stand up?" *Feminist Review* n°83 (2006), 4-22.

¹³ European Commission, *Report of the Experts Group on Trafficking in Human Beings* (Brussels: European Commission, 2004).

a few). Though some of these are socially tolerated and legally recognised and/or regulated, so that the term "trafficking" would—presumably—be applied only in cases that involved exploitation and coercion of a type and degree that grossly violated accepted norms, others are stigmatised and/or socially and politically contested. Questions about "trafficking" are easily conflated with broader questions about whether certain markets or practices should exist at all, for example, questions about whether body parts or sexual services can be treated as commodities (see the article by Jeff Whitehead in this volume on "organ trafficking," and the article by Karen Dunlop on "sex trafficking").¹⁴ And attempting to use the concept of "trafficking" as an analytical tool in relation to the many and varied rights violations that can be associated with all these different markets, institutions and practices is rather like attempting to sharpen a pencil with jelly.

Take "organ trafficking," for example. Though human organs for transplant may sometimes be procured by means of violence or its threat, there are also significant numbers of people who are driven by economic pressures alone to consent to sell organs in both legal and illegal markets. Are they "victims of trafficking?" If the answer is "yes" because they are consenting to a contract that may harm them, then why aren't people who agree to be smuggled across borders in ways that potentially endanger their lives also automatically regarded as "victims of trafficking?" The term "trafficking" is also enormously elastic in the hands of the alliance of radical feminist and religious NGOs that are currently lobbying for the abolition of prostitution *per se*.¹⁵ It stretches to accommodate all women who work in prostitution, even those who state they have freely chosen to do so, but then contracts to exclude all but the most "seriously" exploited workers in other sectors.

And whether we are talking about contested markets or about markets, institutions and practices that under normal circumstances are regarded as legitimate, identifying "trafficked" persons is always problematic because the experience of coercion and exploitation during the migratory process and at the point of destination spans a continuum. Since there is no consensus about the point on the continuum at which poor but tolerable working conditions slip over into forced labour (or in which tolerable conditions for wives or adopted children and so on slip into "modern slavery"), there is no universal, established, external referent against which cases can be measured and judged to be "trafficking" or not "trafficking."¹⁶ Taken together, all of this means that 'trafficked persons' do not exist as some kind of prior, objective or legal category of persons that can form the object of

¹⁴ Kathleen Barry, *The Prostitution of Sexuality* (NY: New York University Press, 1995); Sheila Jeffreys, *The Idea of Prostitution* (Melbourne: Spinifex, 1997).

¹⁵ Ronald Weitzer, "The social construction of sex trafficking: ideology and institutionalization of a moral crusade," *Politics & Society* vol 35 (2007), 447-474.

research or policy.¹⁷ This is one of the reasons why we should take all claims about the scale and profitability of "human trafficking" with copious quantities of salt. It is also why we need to interrogate what it is, exactly, that people like Antonio Maria Costa are asking us to march against.

In a world in which there are simultaneously more pressures and incentives for migration and more barriers in place to prevent movement (at least to prevent movement from poorer to more affluent regions), migration does often go hand in hand with very serious violations of human and child rights. But we are not being enjoined to fight against all of these violations alike.

Missing from the mainstream "anti-trafficking" agenda are concerns about the rights violations endured by legal migrants. Framed by concerns about transnational organized crime, the *UN Protocol* approaches trafficking as a subset of illegal migration. And yet, leaving aside the fact that it is perfectly possible for a person to move within a state or enter another state legally whilst still being "trafficked" according to the protocol definition (children can enter a country legally with kin who then subject them to slavery or servitude; people can be coerced or deceived into travelling from one European Union country—such as Lithuania—to another—such as the UK—for purposes of exploitation), it is known that the actions and outcomes taken to constitute "trafficking" by the Protocol—violence, confinement, coercion, deception and exploitation—sometimes take place within legally regulated systems of migration and employment (also within legal systems of migration into private households).

Migrant workers who are legally present in many countries under various work permit schemes can find themselves subject to forced labour and other forms of exploitation, and in many cases, their abuse and exploitation in the destination country is linked to deception or the abuse of a position of vulnerability at the recruitment stage.¹⁸ In the United Arab Emirates, for example, the construction industry relies heavily on workers who have migrated through legal channels but who are often in effect subject to a form of debt-bondage—many are forced to work for many years for extremely low wages in extremely poor and dangerous conditions to pay off debts to labour recruiters, and are unable to quit because their passports have been confiscated by their employer.¹⁹ But this is not the kind of "modern slavery" that anti-trafficking campaigners are calling on us to march against.

Also missing from the agenda are questions about the human and child rights violations associated with the measures that states set in place to control and police unauthorized

¹⁶ Bridget Anderson and Julia O'Connell Davidson *Trafficking – A Demand Led Problem? Part I*, (Stockholm: Save the Children Sweden, 2002).

¹⁷ "Victim of Trafficking" does, of course, exist as an administrative category in a number of states. It is a status assigned to those migrants who are considered deserving of protection and assistance on grounds that they have experienced the particular constellation of coercive and exploitative practices during the migratory process and at the point of destination that the authorities understand as "trafficking." But if anti-trafficking campaigners were to focus on those who are actually afforded the status of "Victim of Trafficking," the numbers involved would be so small as to make any comparison with the trans-Atlantic slave trade appear almost ludicrous. In the United States, for example, the authorities have managed to identify just "1,362 victims of human trafficking brought into the United States since 2000" (Jerry Markon, "Human trafficking evokes outrage, little evidence," *Washington Post*, September 23, 2007).

¹⁸ AMC, *Asian Migrant Yearbook 2000: Migration Facts, Analysis and Issues in 1999* (Hong Kong: Asian Migrant Centre, 2000); Bridget Anderson and Ben Rogaly, *Free Market, Forced Labour?* (London: TUC, 2005); ILO, *A Global Alliance Against Forced Labour* (Geneva: International Labour Office, 2005).

¹⁹ Human Rights Watch, "Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the United Arab Emirates" *HRW* vol 18, n°8 (2006).

migration. In addition to the harms associated with and following from deportation proceedings, between 1993 and 2006, the organization *UNITED for Intercultural Action* documented more than 6700 deaths of refugees and migrants in Europe attributable "to border militarization, asylum laws, detention policies, deportations and carrier sanctions,"²⁰ and UNITED's figures are undoubtedly underestimates. And though dominant discourse on "trafficking" tells us the threat of harm comes from mafia thugs and other hardened criminals, immigration policy and the state actors that enforce it appear to present an equal if not greater risk to irregular migrants' health and well-being, even life itself. Hundreds of thousands of undocumented migrants are held in detention centres around the world, often in appalling conditions.²¹ A 2002 report on Moroccan migrant children in Spain found they were frequently abused by staff and other children in overcrowded, unsanitary residential centres.²² HRW researchers interviewed migrant children who had been denied medical care, beaten with batons and electrical cables, held in "punishment cells" for up to a week without adequate bedding and sometimes without access to a toilet. Detained in residential centres for sometimes more than two years, not all the children were permitted to attend school.

These kinds of threats to human security were not the focus of the Vienna Forum, for state-sponsored violence, like structural violence²³ is not on the "anti-trafficking" agenda.

Alpes (this volume) observes that to approach the social reality of migration experiences in terms of legal definitions, such as the Palermo Protocol, "forces scholars into a statist perspective." This is certainly the distinguishing feature of academic and journalistic research that leaves the term "trafficking" unchallenged and uncritically reproduces assertions about "modern slavery."²⁴ But there is also a growing body of scholarship that critically deconstructs dominant discourse on "trafficking," and that approaches migrants as purposive actors who, like all social actors, always make choices, though rarely between options that are of their own choosing. This not only allows us to recognise migrants, even those who are subject to

²⁰ UNITED, "United for Intercultural Action: European network against nationalism, racism and fascism, and in support of migrants and refugees" (2007), www.unitedagainstracism.org

²¹ Liz Fekete, "Conditions at Detention Centres Slammed," *IRR News* March 1, 2000; R. Vertaik, "Inquiry Urged Over Increase in Detention Centre Deaths," *The Independent*, September 17, 2005; IRR, *Roll call of deaths of asylum seekers and undocumented migrants* (2006) www.irr.org.uk; Amnesty International, "Europe: Treatment of refugees and asylum seekers," *Media Briefing*, June 20, 2005.

²² Human Rights Watch. "Nowhere to Turn: State Abuses of Unaccompanied Migrant Children by Spain and Morocco" (2002) www.hrw.org

²³ The term is used by Sheper-Hugues and Bourgois to describe "The *everyday* violence of infant mortality, slow starvation, disease, despair and humiliation that destroys socially marginalized human beings." See Nancy Scheper-Hughes and Philippe Bourgois, ed., *Violence in War and Peace* (Oxford: Blackwell, 2004).

²⁴ Kevin Bales, *Disposable People: New Slavery in the Global Economy*. Berkeley (CA: University of California Press, 2000); Phil Williams, *Illegal Immigration and Commercial Sex: the new slave trade* (London: Frank Cass, 1999); Paolo Monzini, *Sex Traffic: Prostitution, Crime and Exploitation* (London: Zed, 2005).

the most extreme forms of exploitation and abuse, as subjects and agents (rather than regarding them as objects and eternal victims), but also helps to focus attention on the structural factors, both global and local, that serve to constrain the options available to individuals.

This issue of the *Human Security Journal* makes an important contribution to this emerging literature. The article by Maybritt Jill Alpes make extremely effective use of interview data to reveal the complex and many-layered patterns of dependency, obligation and reciprocity that exist behind what can only ever be thinly described in the statist language of "victims" and "perpetrators," and to show that the division between "human trafficking" and "smuggling of migrants" is both unworkable and irrelevant from a human rights perspective. Patrizia Testai's contribution to this volume also deserves to be singled out for praise. It provides a truly groundbreaking analysis of the relationship between debt and "trafficking," one that powerfully illustrates the political dangers that attend on the discursive construction of "trafficking" as a form of "modern slavery" detached from its specific historical, global, social and economic context.

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