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Journal

Journal of International, Transnational and Comparative Law , 4(1)

Author

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Publication Date

2019-08-29

Transnational Criminal Law in a Globalised World: The Case of Trafficking

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Since the adoption of the Palermo Protocol on Trafficking fifteen years ago, a complex transnational legal order around trafficking, forced labour and modern slavery has developed around the world. Although the idea of trafficking has expanded to include forced labour and modern slavery, it eludes clarity—conceptual and legal—even as anti-trafficking initiatives span a densely plural field of domestic criminal law alongside naming and shaming techniques, indicators, slavery indices, codes of conduct and reporting mechanisms, especially around supply chain transparency. At a discursive level, the dominant carceral approach to trafficking now co-exists with a human rights approach and a labour approach. The Article, in addition, articulates what is emerging as a ‘development’ approach to trafficking. It concludes by reflecting on the nature and function of transnational criminal law in addressing what is ultimately a problem of deep socio-economic inequality borne out of the very processes of globalisation that gave rise to the Palermo Protocol and which sought to curtail human mobility.

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INTRODUCTION

Not a day goes by without a sensationalist report on the travails of modern slaves, be it the saga of Indian teenagers trafficked into sex work as depicted in the Hollywood movie *Love Sonia*,¹ or workers trafficked into the UK's nail bar and car wash shops,² or the 2018 Global Slavery Index released by the Walk Free Foundation founded by mining magnate Andrew Forrest which estimates that there are 40.3 million modern slaves around the world.³ Anti-slavery groups remind us that modern slavery afflicts almost everything that we consume on a day-to-day basis. This includes basic commodities like tea, sugar,⁴ coffee,⁵ prawns,⁶ chicken, eggs, onions, mushrooms,⁷ "slave chocolate" from Cote D'Ivoire and cotton from Uzbekistan.⁸ Exploitation is also rife in wartime captivity in Nigeria, bonded labour in Pakistan, fishing boats in Thailand,⁹ households employing overseas migrant domestic workers,¹⁰ Qatari construction sites with Nepali workers, the brick kiln industry in India, Brazilian garment factories employing Bolivian workers,¹¹ in Unilever's supply chain in Vietnam, and in Kenyan flower and green bean cultivation.¹²

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1. LOVE SONIA (Tamasha Talkies 2018).
2. Felicity Lawrence, *How Did We Let Modern Slavery Become Part of Our Everyday Lives?*, THE GUARDIAN (Apr. 2, 2018, 1:00 EDT), <https://www.theguardian.com/commentisfree/2018/apr/02/modern-slavery-daily-life-exploitation-goods-services>.
3. WALK FREE FOUND., GLOBAL SLAVERY INDEX: AUSTRALIA (2018), available at <https://www.globalslaveryindex.org/2018/findings/country-studies/australia/>.
4. Ben Richardson, *Still Slaving Over Sugar*, in FORCED LABOUR IN THE GLOBAL ECONOMY, BEYOND TRAFFICKING AND SLAVERY SHORT COURSE VOLUME 2, at 43, 46 (Genevieve LeBaron & Neil Howard eds., 2015).
5. ANTI-SLAVERY INTERNATIONAL, PRODUCTS OF SLAVERY AND CHILD LABOUR (2016), http://www.antislavery.org/wp-content/uploads/2016/11/products_of_slavery_and_child_labour_2016.pdf.
6. Kate Hodal, Chris Kelly & Felicity Lawrence, *Revealed: Asian Slave Labour Producing Prawns for Supermarkets in US, UK*, THE GUARDIAN (June 10, 2014, 7:05 EDT), <https://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour>.
7. Genevieve LeBaron, *It's Time to Get Serious About Forced Labour in Supply Chains*, in FORCED LABOUR IN THE GLOBAL ECONOMY, BEYOND TRAFFICKING AND SLAVERY SHORT COURSE VOLUME 2, at 32, 35 (Genevieve LeBaron & Neil Howard eds., 2015).
8. Louise Eldridge, *Cotton Crimes in Full Swing*, ANTI-SLAVERY INTERNATIONAL (Oct. 5, 2016), <https://www.antislavery.org/cotton-crimes-full-swing/>.
9. Joel Quirk, *The Rhetoric and Reality of 'Ending Slavery in Our Lifetime'*, in POPULAR AND POLITICAL REPRESENTATIONS, BEYOND TRAFFICKING AND SLAVERY SHORT COURSE VOLUME 1, at 20, 25 (Joel Quirk & Julia O'Donnell Davidson eds., 2015).
10. Alastair Sloan, *UK Tied Visa System 'Turning Domestic Workers into Modern Day Slaves'*, THE GUARDIAN (Mar. 17, 2015, 2:00 EDT), <https://www.theguardian.com/world/2015/mar/17/uk-tied-visa-system-turning-domestic-workers-into-modern-day-slaves>.
11. Jens Lerche, *ILO Campaigns: Missing the Wood for the Trees? in Forced Labour in the Global Economy*, BEYOND TRAFFICKING AND SLAVERY SHORT COURSE VOLUME 2, at 74, 77 (Genevieve LeBaron & Neil Howard eds., 2015).
12. Rachel Wilshaw, *What Would Loosen the Roots of Labour Exploitation in Supply Chains? in Forced Labour in the Global Economy*, BEYOND TRAFFICKING AND SLAVERY SHORT COURSE VOLUME 2, at 78, 83 (Genevieve LeBaron & Neil Howard eds., 2015).

Drafters of the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) supplementing the UN Convention against Transnational Organized Crime 2000 (UN Convention) could have hardly imagined that the Protocol would one day cover labour exploitation in global commodity chains.¹³ This Article explains how this came to be. Despite being one of the most ratified UN instruments,¹⁴ however, the transnational legal order (TLO) generated by the Trafficking Protocol is poorly institutionalized. The Article elaborates on the reasons for this by mapping the various phases of its development, the discursive and ideological issues that are at its core, the factors for its institutionalization relating to concordance and issue alignment, and the varied regulatory fields that it has implicated. Paradoxically however, the criminal justice approach to trafficking remains hegemonic. This hegemony however cannot be simply attributed to the unidirectional influence and dissemination of transnational (and Western) ideas about how to address the problem. Rather, using the example of the India, I show how national legal contexts are crucial to when and how the logic of criminalization is pursued. The recursive nature of the trafficking TLO is therefore significant and helps explain the normative basis for the authority of transnational law.

I. TRAFFICKING: GLOBALISATION'S PROBLEM CHILD

When drafters of the Trafficking Protocol sat down to draft it in the late 1990s, they envisaged trafficking as an offence involving the cross-border movement of persons against their will for exploitative purposes. Although international law had historically targeted the “traffic” in women and children across borders particularly for prostitution, in the 1990s, this traditional concern converged with several developed states’ interests in stemming illegal international labour migration to create a criminal law regime against “trafficking.” Consequently, under the Trafficking Protocol and the Protocol on Migrant Smuggling¹⁵ which supplemented the UN Convention, participating states promised to criminally sanction anyone assisting another to migrate illegally (migrant smuggling) as well as recruiting, harboring or transporting a person through means of coercion, force and deception for purposes of exploitation (trafficking). Under the Trafficking Protocol, the trafficked person cannot be criminally punished in the receiving country for being

13. Ad Hoc Comm. on the Elaboration of a Convention against Transnational Organized Crime on Its Eleventh Session, *Revised Draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. Doc. A/AC.254/4/Add.3/Rev.7 (July 19, 2000); U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319; G.A. Res. 55/25, Convention against Transnational Organized Crime (Nov. 15, 2000).

14. U.N. Office on Drugs & Crime, *Global Report on Trafficking in Persons*, 48, U.N. Pub. Sales No. E.16. IV. 6 (2016), [hereinafter 2016 Report].

15. U.N. Protocol to Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2241 U.N.T.S. 480 (Nov. 15, 2000).

trafficked and may be able to obtain a visa to stay there, but is most likely to be repatriated. Negotiated within two years “at lightning speed on the UN clock,”¹⁶ the Trafficking Protocol was adopted in 2000, came into force in 2003 and has been exceptionally well ratified by 173 countries to date.

Although presented and often discussed as a problem of massive proportions requiring urgent attention, the prevalence of trafficking is notoriously difficult to verify.¹⁷ Estimates vary wildly from 1.3 million people¹⁸ to 45.8 million as estimated by the Walk Free Foundation.¹⁹ Indeed, Savona and Stefanizzi observe that available information on trafficking is “fragmentary, heterogeneous, difficult to acquire, uncorrelated and often outdated.”²⁰ Underlying these highly varied estimates of the problem of trafficking, however, is the acknowledgment, even by the United Nations Office on Drugs and Crime (UNODC), the only UN entity focusing on the criminal justice aspects of trafficking, that the data on the extent of the problem is woefully inadequate.²¹ The UNODC attributes this inadequacy to the lack of international standardization of definitions along the lines of the Trafficking Protocol, the failure of even countries with similar legal systems to count the same things and countries’ failures to include domestic crimes amounting to trafficking within their data.

This wide variance can also be attributed to the fact that trafficking as an issue has been over-determined by many competing discursive frames and ideologies promoted by the epistemic communities that have developed around them for the past two decades. These discursive frames include sex work, migration, smuggling, human rights, security, crime control, criminal justice, forced labour, slavery, border control, and increasingly, extreme exploitation, especially forced labour and modern slavery.²² As I will demonstrate, these discursive frames are mirrored in the paradigmatic approaches to addressing the problem of trafficking and the choice of law used to counter it, highlighting the significance of the frame²³ through which the problem is sought to be understood.

16. Paulette Lloyd & Beth A. Simmons, *Framing for a New Transnational Legal Organization: The Case of Human Trafficking*, in TRANSNATIONAL LEGAL ORDERS 400, 423 (Terence C. Halliday & Gregory Shaffer eds., 2015).

17. 2016 report, *supra* note 14, at 47.

18. G. Danailova-Trainor & F. Laczko, *Trafficking in Persons and Development: Towards Greater Policy Coherence*, 28 INT’L MIGRATION 38, 57 (2010).

19. Annie Kelly, *46 Million People Living as Slaves, Latest Global Index Reveals*, GUARDIAN (Jun. 1, 2016, 5:22 EDT), <https://www.theguardian.com/global-development/2016/jun/01/46-million-people-living-as-slaves-latest-global-index-reveals-russell-crowe>.

20. Ernesto U. Savona & Sonia Stefanizzi, *Introduction to Measuring Human Trafficking: Complexities and Pitfalls* 2, 2–3 (Ernesto U. Savona & Sonia Stefanizzi eds., 2007).

21. U.N. Office on Drugs & Crime, *Global Report on Trafficking in Persons*, U.N. Pub. Sales No. E.14.V.10 (2014) [hereinafter 2014 Report]; 2016 report, *supra* note 14.

22. Austin Choi-Fitzpatrick, *The Good, Bad, the Ugly: Human Rights Violators in Comparative Perspective*, 2 J. HUMAN TRAFFICKING 1, 14 (2016); Maggy Lee, *Introduction to HUMAN TRAFFICKING: COMPLEXITIES AND PITFALLS* 3–11 (Maggy Lee ed., 2007).

23. Clifford Bob, *Re-framing Exploitation Creep to Fight Human Trafficking: A Response to Janie Chuang*, 108 AM. J. INT’L L. UNBOUND 264–67 (2017).

II. A TRANSNATIONAL LAW APPROACH TO TRAFFICKING

In adopting a transnational legal approach, this Article “places processes of local, national, international, and transnational public and private lawmaking and practice in dynamic tension within a single analytic frame.”²⁴ Transnational law is recursive so that “the production and implementation of transnational legal norms among international, transnational, national, and local lawmakers and law practitioners dynamically and recursively affect each other.”²⁵ Further, a “transnational legal order” or TLO is a “collection of formalized legal norms and associated organizations and actors that authoritatively order the understanding and practice of law across national jurisdictions.”²⁶ The legal form includes both norms enacted by the state through formal law but also those developed by networks, which are directed toward enactment or recognition and enforcement within nation-states.²⁷ Thus, a TLO encompasses both hard law as well as soft law norms such as codes of conduct and diagnostic and prescriptive indicators.

TLOs are dynamic and in flux such that they “can rise or fall in rapid bursts or in long drawn-out, incremental cycles. They may entail trial and error or big bang-like events.”²⁸ Further, TLOs may become institutionalized over time with a convergence of legal norms and practices so as to guide actors over what norms apply to given situations.²⁹ This can reflect concordance (or alternatively discordance) at varied levels—the transnational, national and local. Institutionalization is also reflected in the alignment of a given TLO with the issue at hand. One could thus imagine competing TLOs, which may regulate the very same issue to varying extents in which case, it becomes possible to delineate these interactions in terms of (i) correspondence, (ii) partition (especially where the legal scope and geographical scope do not converge), (iii) misalignment/non-alignment, and finally (iv) antagonistic competition between them.³⁰

Like transnational legal studies, the field of transnational criminal law is relatively new. In fact, Neil Boister coined the term “transnational criminal law” in 2001 to study a distinct area of international criminal law relating to “the indirect suppression by international law through domestic penal law of criminal activities that have actual or potential trans-boundary effects.”³¹ The core component of transnational criminal law is often a crime suppression treaty, whether agreed

24. Terence C. Halliday & Gregory Shaffer, *Transnational Legal Orders*, in *TRANSNATIONAL LEGAL ORDERS* 3, 3 (Terence C. Halliday & Gregory Shaffer eds., 2015).

25. *Id.* at 38.

26. The term “order” “connotes some regularity of behavioral orientation, communication and action” while a “legal” order “involves international or transnational legal organizations or networks, [which] directly or indirectly engage multiple national and local legal institutions, and assumes a recognizable legal form.” *Id.* at 11.

27. *Id.* at 12.

28. *Id.* at 32.

29. *Id.* at 42.

30. *Id.* at 46.

31. Neil Boister, *Transnational Criminal Law?*, 14 *EUR. J. INT'L L.* 953, 955 (2003).

bilaterally, regionally or through a large UN-backed multilateral convention directed at suppressing conduct that is subsequently criminalized through domestic law. This is the “horizontal” component of transnational criminal law and “[t]he vertical component in transnational criminal law involves domestic criminalization of the specified conduct of individuals and the enactment of allied procedures and provisions for cooperation with regard to those individuals by the states parties to the particular suppression convention.”³² Transnational criminal law is therefore conformal in nature, which explains its patterns of settlement and institutionalization. This Article brings into conversation insights from transnational legal studies and transnational criminal law through this study of the trafficking TLO.³³

III. ASSESSING THE TRAFFICKING TLO

Human trafficking is one of the most hotly debated areas of transnational criminal law. As mentioned earlier, few international legal instruments have been ratified as widely as the Trafficking Protocol. According to the UNODC, since the Protocol’s entry into force, the number of countries criminalizing trafficking in persons on the basis of the Protocol definition saw a near fivefold increase, from 33 in the year 2003 to 158 in August 2016 (out of the 179 countries considered).³⁴ Certainly, the number of states that criminalized sex and labour trafficking in domestic laws increased from 10 percent in 2000 to about 73 percent in 2013³⁵ to 90 percent in 2014.³⁶ Some scholars observe that anti-trafficking law has percolated to the local level³⁷ and that its reach is deep and extensive.³⁸ In addition, trafficking encompasses various forms of exploitation including practices similar to slavery and forced labour, thereby implicating other international treaties (e.g. on forced labour and slavery), non-treaties and soft law codes of conduct³⁹ at the international and national levels. There are also varied forms of norm-setting on trafficking, including, indicators, labour codes, corporate social responsibility initiatives, “ethical audits,” rankings and naming and shaming techniques such as the publication of a “dirty list” of companies using forced labour. Viewed through the legal pluralist, multi-scalar lens of transnational legal studies, the stunning legal architecture spawned by the Trafficking Protocol constitutes a TLO.

Despite the existence of the trafficking TLO for the past eighteen years however, the low rates of conviction for trafficking-related offences indicate its poor institutionalization. Chapter 1 of the 2016 UNODC Global Report on

32. Neil Boister, *Further Reflections on the Concept of Transnational Criminal Law*, 6 TRANSNAT’L LEGAL THEORY 9, 19 (2015).

33. *See generally* 6 TRANSNAT’L LEGAL THEORY 1, 1–250 (2015).

34. 2016 Report, *supra* note 14, at 48.

35. Lloyd & Simmons, *supra* note 16, at 436.

36. 2014 Report, *supra* note 21, at 12.

37. Lloyd & Simmons, *supra* note 16, at 414.

38. *Id.* at 416.

39. *Id.* at 414.

Trafficking is revealing in this respect. While one sub-heading speaks to the extensive incorporation of the Protocol into national law and is labeled “The United Nations Trafficking in Persons Protocol: a universal legal standard,” the second which speaks to its enforcement is labeled: “Investigations, prosecutions and convictions for trafficking in persons: stagnation at a low level.” Despite the spectacular figures of modern slaves already mentioned, only 44,758 trafficked persons around the world have been identified, resulting in 5776 convictions.⁴⁰ According to the UNODC, 6800 persons were convicted for trafficking between 2012 and 2014.⁴¹ Conviction rates have remained “stubbornly low” since 2003;⁴² 41 percent of countries have not had any convictions or have recorded less than ten convictions between 2010 and 2012.⁴³ This held true for the period between 2012 and 2014.⁴⁴ Although the rate of conviction is positively related to the length of time that an anti-trafficking law has been on the books, the UNODC notes that “the criminal justice system response, however, appears to be stagnating at a low level. For most countries, the number of processed cases is limited, regardless of stage (investigation, prosecution or conviction).”⁴⁵ Not surprisingly, anti-trafficking offences have proved ineffective in comparison to other serious offences such as homicide or rape for which conviction rates are higher.⁴⁶

However, this is not simply a problem of the gap between the “law in the books” and “law in action.” The poor enforcement of the Trafficking TLO can be attributed to the indeterminacy of the concept of trafficking, the malleability of its definition in Art. 3 of the Trafficking Protocol, the lack of alignment and concordance within the TLO, deep ideological differences on how to address trafficking and the varied frames through which to understand the problem of trafficking. As I will detail below, these factors have resulted in the poor settlement of legal norms on trafficking even at the international level. It is no different at the national and local levels. Concordance across the international, national and local levels is more symbolic than substantive as the exact scope of the offence of trafficking continues to be in doubt. Alternate modes of governance like indicators moreover replicate the conceptual indeterminacy and operational inconsistencies of state anti-trafficking laws.

40. Janie A. Chuang, *Exploitation Creep and the Unmaking of Human Trafficking Law*, 108 AM. J. OF INT'L L., 609, 642 (2014).

41. 2016 Report, *supra* note 14, at 34.

42. Kristiina Kangaspunta, *Was Trafficking in Persons Really Criminalised?*, 4 ANTI-TRAFFICKING REV. 80, 86 (2015).

43. 2016 Report, *supra* note 14, at 52.

44. 2016 Report, *supra* note 14, at 48.

45. *Id.*

46. Kangaspunta, *supra* note 42, at 88.

IV. INDETERMINACY AND CONCEPTUAL MALLEABILITY OF THE TRAFFICKING TLO

Article 3 of the Trafficking Protocol defines trafficking as follows:

Art. 3. (a): “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; (b): The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.⁴⁷

We can disaggregate the definition as the mode of or action required for trafficking (recruitment, transportation, transfer etc.), the means by which it is obtained (threat or use of force or other forms of coercion etc.) and the purpose for which it is obtained, namely, exploitation. In the case of people aged eighteen and over, all three elements must be proved for a case of trafficking.⁴⁸ The Trafficking Protocol offers an expansive understanding of both the means of trafficking as well as the purpose for which one is trafficked, namely, exploitation. The concepts of coercion and exploitation are central to the Trafficking Protocol. Yet the Trafficking Protocol does not define these and related terms and their meaning is far from definitive even when available in international law.

Each of the two central legal concepts in the law of trafficking, namely, the means and purpose, both span a continuum of possibilities. The means of coercion can range from legally recognizable and fairly narrowly construed notions of coercion, deception, fraud and abduction to the capacious, outlier concept of the abuse of a position of vulnerability. Similarly, while Art. 3 points to specific labour conditions that constitute exploitation and are recognized and understood under international law, this list of labour conditions is not exhaustive and could well include a range of working conditions that are best described as precarious, exploitative and normatively reprehensible or as “contrary to human dignity”⁴⁹ as described in court rulings of some European countries.

A narrow construction of the offence of trafficking might entail coercive

47. G.A. RES. A/55/25, at 32 (Jan. 8, 2008).

48. Mike Dottridge, *Introduction* to GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN, COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD 1, 4 (2007); Anne Gallagher, *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis*, 23 HUM. RIGHTS Q. 975, 987 (2001).

49. KLARA SKRIVANKOVA, JOSEPH ROWNTREE FOUND., BETWEEN DECENT WORK AND FORCED LABOUR: EXAMINING THE CONTINUUM OF EXPLOITATION 16 (2010).

means of entry including violence, deception or fraud resulting in a slavery-like situation (e.g. young woman recruited for a nanny job but duped into forced sex work). In contrast, a broader construction of the offence of trafficking may penalize the recruitment of a victim by abuse of a position of vulnerability resulting in precarious work with less than minimum-wage pay (e.g. the undocumented migrant workers working in a Dutch restaurant for less than the Dutch minimum wage.)⁵⁰ This malleability of the definition of trafficking means that states can tailor the offence according to their need and political, ethical and normative desire.⁵¹ Moreover, although the offence of trafficking (at least in adults) requires both the means and exploitative purpose to be proved, states dispense with the one or the other;⁵² their domestic legal mediations of the coercion-exploitation balance also vary quite dramatically. Interestingly, even soft law norms such as the ILO's Operational Indicators of Trafficking in Human Beings⁵³ variously interpret Art. 3.⁵⁴ This is further complicated when the means of entry and/or the sector in which trafficked labour is carried out is legal. Where either is legal, enforcement personnel presume the lack of coercion, exploitation and ultimately, trafficking.

Based on this analysis, it appears that states prosecute trafficking offences involving extreme forms of coercion and exploitation while ignoring categories of trafficking with intermediate levels of coercion and exploitation. Thus, some states have focused unduly on targeting sex work through anti-trafficking law. Given its highly stigmatized nature, sex work ticks the boxes of both coercion and exploitation per se, the reasoning being that who but a coerced person would want to do sex work, and how can sex work be anything other than exploitative? Moreover, sex work itself is likely to be illegal in many countries making travel for sex work difficult, with countries specifically inquiring if the migrant has ever been prosecuted for sex work. But apart from sex work, which forms of labour exploitation warrant the label of trafficking is often unclear. According to the ILO, discussions amongst jurists and lawmakers on the definitional aspects of trafficking continue without clear resolution.⁵⁵ A survey of the laws relating to trafficking in

50. Kangaspunta, *supra* note 42.

51. Jean Allain, *No Effective Trafficking Definition Exists: Domestic Implementation of the Palermo Protocol*, 1 ALB. GOV'T L. REV. 111, 125–26 (2014).

52. Reference is to issue paper from 2012 published by UNODC. UNITED NATIONS OFFICE ON DRUGS & CRIME, ISSUE PAPER: ABUSE OF A POSITION OF VULNERABILITY AND OTHER “MEANS” WITHIN THE DEFINITION OF TRAFFICKING IN PERSONS 6, 89 (2012), *available at* https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf [hereinafter UNODC Paper 2012].

53. *See* INT'L LABOUR OFFICE, INT'L LABOUR ORG., OPERATIONAL INDICATORS OF TRAFFICKING IN HUMAN BEINGS: RESULTS FROM A DELPHI SURVEY IMPLEMENTED BY THE ILO AND THE EUROPEAN COMMISSION (2009).

54. Prabha Kotiswaran, *Beyond Sexual Humanitarianism: A Postcolonial Approach to Anti-Trafficking Law*, 4 UC IRVINE L. REV. 353, 371–72 (2014).

55. INT'L LABOUR OFFICE, INT'L LABOUR ORG., REPORT AND CONCLUSIONS OF THE TRIPARTITE MEETING OF EXPERTS ON FORCED LABOUR AND TRAFFICKING FOR LABOUR EXPLOITATION ¶62 (2013), *available at* https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_203982.pdf.

twelve jurisdictions found a widespread lack of clarity on the definition of trafficking.⁵⁶ The UNODC further admits that this lack of clarity over the parameters of trafficking hinders detection of trafficked victims and overall enforcement efforts.⁵⁷

V. LACK OF ALIGNMENT WITHIN THE TRAFFICKING TLO

Another factor for the weak institutionalization of the trafficking TLO is its lack of alignment with TLOs in related areas such as sex work, slavery and forced labour. Recollect that exploitation in the Art. 3 definition of trafficking is an umbrella term for these varied forms of exploitation. Starting in the 1900s, international law developed on several forms of exploitation, such as the exploitation of the prostitution of others, slavery, practices similar to slavery, servitude and forced labour which resulted in divisions of labour amongst UN agencies.⁵⁸ Thus, there exists a long durée of preexisting TLOs on slavery and forced labour which while coexisting prior to the passage of the Trafficking Protocol, are now brought together in definitional terms under Art. 3 without a corresponding alignment in TLOs, leading to mis-alignment if not outright competition between these various TLOs. This is exacerbated by the fact that the trafficking TLO itself has undergone dynamic transformation over the past eighteen years.

At least three phases of anti-trafficking law since the negotiation of the Trafficking Protocol can be discerned:

- i. a phase between 2000 and 2009, which was the heyday of sex work exceptionalism;
- ii. a phase between 2009 and 2014 when closer attention to labour trafficking rendered visible the competing frames of “modern slavery” and “forced labour” and
- iii. from 2014, when legal interventions framed explicitly in terms of slavery and forced labour began to be enacted at the national and international levels.

A. Trafficking and Sex Work Exceptionalism 2000–2009

By sex work exceptionalism, I mean (a) the characterization by abolitionist groups (who model themselves after eighteenth century abolitionists of slavery, like William Wilberforce) of the sale of sex for money as an egregious violation of human dignity and an exceptionally harmful activity and (b) the overwhelming association of trafficking with trafficking for sex work and with sex work itself.

Trafficking had long been associated with prostitution hence it was little

56. U.N. Office on Drugs & Crime, Global Report on Trafficking in Persons, U.N. Pub. Sales No. E.13.IV.1 (2012).at 89.

57. UNODC Paper 2012, *supra* note 52.

58. See Mike Dottridge, *Trafficked and Exploited: The Urgent Need for Coherence in International Law*, in REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOUR AND MODERN SLAVERY (Prabha Kotiswaran ed., 2017).

surprise that the pre-existing sex work TLO (emerging from the 1950 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others⁵⁹) cast a long shadow over the trafficking TLO. Associated actors, both governmental and nongovernmental, disagreed fundamentally and along ideological lines on the normative status of sex work and therefore the remit of the crime of trafficking. Anglo-American feminists occupied a range of positions on prostitution from neo-abolitionism to pro-sex worker agency and played a crucial role in negotiating the Trafficking Protocol.⁶⁰ Neo-abolitionists' influence on the Trafficking Protocol negotiations compromised the definitional clarity of trafficking resulting in vague terms such as the "abuse of power or of a position of vulnerability."⁶¹ The Protocol also clarifies that consent of the victim to exploitation is immaterial where any of the means listed in Art. 3 are used. These were meant to cover even 'voluntary' sex workers who had consented to sex work where their vulnerability had been abused. Thus, in the initial years of the Trafficking Protocol, trafficking was invariably conflated with sex trafficking and sex work.⁶²

The Bush Administration in the United States in particular interpreted the anti-trafficking regime as primarily concerned with forced migration for sex work. The then US government, keen to abolish the sex industry, named and shamed countries through the annual Trafficking in Persons (TIP) Report issued under the Trafficking Victims and Protection Act 2000. This had ripple effects across the world when countries felt compelled to specifically target prostitution in their anti-trafficking laws as a way of moving up the TIP Report rankings. Western states thus used anti-trafficking policy for curbing sex work and for border-control, while emerging economies like Brazil, China and India narrowly construed trafficking as trafficking for sex work to deflect attention away from their vast domestic problem of labour trafficking. A robust sex panic⁶³ thus accompanied the first phase of the development of the trafficking TLO. This has been extensively documented by feminists, both in relation to its historical antecedent, the anti-white slavery campaigns at the turn of the twentieth century⁶⁴ and its contemporary use to allay fears about globalization through a yearning for a familiar race and gender order⁶⁵

59. United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Mar. 21, 1950, 96 U.N.T.S. 271.

60. Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1658 (2010).

61. 2012 Report, *supra* note 52, at 34.

62. Mike Dottridge, Global Alliance Against Traffic in Women, *Introduction to COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD* 1, 4 (2007), available at www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf; Chuang, *supra* note 60, at 1655, 1673–74.

63. See Ronald Weitzer, *Moral Crusade Against Prostitution*, SOCIETY 33 (2006).

64. See Jo Doezema, *Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking of Women*, GENDER ISSUES 18, 23, 30 (2006).

65. Rutvica Andrijasevic, *Beautiful Dead Bodies: Gender, Migration and Representation in Anti-Trafficking Campaigns*, 86 FEMINIST REV. No. 22, 27 (2007).

wherein women's migration was sought to be discouraged.⁶⁶

B. Expanding Trafficking to Include Labour Exploitation 2009–2014

By 2007, the consensus amongst scholars and activists alike was that the conceptualization and implementation of the Trafficking Protocol was over-inclusive in targeting coerced and voluntary sex workers and that it was under-inclusive in addressing the labour exploitation of millions of workers. Beginning in 2005 itself, the ILO through its report *A Global Alliance against Forced Labor*⁶⁷ argued for an expansive understanding of trafficking to include both sexual and labour exploitation. Registering the heightened (and unexpected) visibility of the issue of trafficking, the ILO initiated internal dialogue and reoriented institutional priorities by setting up the Special Program Against Forced Labor. It adopted key strategies of measurement and quantification through periodic reports (estimating that there were 12.3 million forced labourers in 2005 and 20.9 million in 2012) and leveraged existing political capital within its tripartite configuration. By 2009, with the change in regime in the United States, the US State Department in its annual TIP Report began to focus on labour trafficking in place of its previous sole preoccupation with sex trafficking and sex work. A combination of the waning of an exclusive emphasis on sex work along with the increased visibility of the ILO's interventions on forced labour and trafficking heralded a new phase in thinking about the scope of anti-trafficking law.

Critics of the antitrafficking framework put forward what they called the "labour paradigm of trafficking."⁶⁸ Moreover, where trade unions and other workers' groups had consciously stayed away from the issue of trafficking, they soon came to form networks with conventional anti-trafficking nongovernmental organizations (NGOs).⁶⁹ The entry of forced labour into activists' vocabularies also put on the table the possibility of regulatory plurality through the deployment of labour law mechanisms to address trafficking in addition to the criminal law.⁷⁰ Similarly, where anti-trafficking laws earlier defined trafficking purely in terms of sex trafficking, they now defined it more broadly to cover labour trafficking as well.⁷¹

C. Trafficking, Forced Labour and Modern Slavery as Competing Umbrella Terms 2014–date

From around 2012, trafficking became increasingly reframed in terms of both slavery and forced labour. Chuang calls this conflation of trafficking with forced

66. Rhacel Salazar Parreñas, *Trafficked? Filipino Hostesses in Tokyo's Nightlife Industry*, 18 YALE J. L. & FEMINISM 145, 178 (2006).

67. INT'L LABOUR OFFICE, *A GLOBAL ALLIANCE AGAINST FORCED LABOUR* ¶¶12–14 (2005), available at <https://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf>.

68. James Gray Pope, *A Free Labor Approach to Human Trafficking*, 158 U. PA. L. REV. 1849, 1853 (2010); Hila Shamir, *A Labor Paradigm for Human Trafficking*, 60 UCLA L. Rev. 76, 105 (2012).

69. Chuang, *supra* note 40, at 622.

70. See also Skrivankova, *supra* note 49.

71. 2016 Report, *supra* note 14, at 14–15.

labour and modern slavery, “exploitation creep.”⁷² A new term coined by sociologist Kevin Bales, namely, ‘modern slavery’ (which has no definition under international law) was added to the mix. The definition of modern slavery has varied over time.⁷³ The Walk Free Foundation founded by mining magnate and philanthropist Andrew Forrest was influenced by Bales and released the Global Slavery Index in 2013 and subsequently in 2014, 2016 and 2018, ranking countries in terms of their “modern slavery” problem. The 2013 Global Slavery Index defined modern slavery to include “slavery, slavery-like practices (such as debt bondage, forced marriage, and sale or exploitation of children), human trafficking and forced labour”;⁷⁴ in 2014, the definition was:

Modern slavery involves one person possessing or controlling another person in such a way as to significantly deprive that person of their individual liberty, with the intention of exploiting that person through their use, management, profit, transfer or disposal.⁷⁵

By 2016, the Global Slavery Index defined modern slavery to refer to “situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, abuse of power or deception, with treatment akin to a farm animal.”⁷⁶ The 2017 Global Estimates of Modern Slavery (GEMS) produced by the Walk Free Foundation and the ILO defines modern slavery as an umbrella term to cover forced labour (as defined by the ILO’s 1930 Convention) and forced marriage (as situations where a person is forced to marry without consent).⁷⁷ The Global Slavery Index 2018 defines modern slavery as “an umbrella term” that focuses attention on the “commonalities across concepts such as human trafficking, forced labour, debt bondage, forced or servile marriage, and the sale and exploitation of children.” The commonalities refer “to situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, abuse of power, or deception.”⁷⁸ Each global slavery index has been accompanied by an estimate as to the number of modern slaves in the world: 29.8 million in 2013; 35.8 in 2014 and 45.8 in 2016. The 2018 Index refers to numbers produced by GEMS namely, of 25 million forced labourers and 15 million men and women in forced marriage.

This expansion of the remit of trafficking found purchase with governments. The UNODC notes that while the term “modern slavery” has an important

72. Chuang, *supra* note 40, at 629.

73. See KEVIN BALES, ENDING SLAVERY: HOW WE FREE TODAY’S SLAVES (Univ. of Cal. Press Ltd. eds., 2007); KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY (Univ. of Cal. Press Ltd. eds., 1999).

74. WALK FREE FOUND, THE GLOBAL SLAVERY INDEX: AUSTRALIA 2 (2013).

75. WALK FREE FOUND, THE GLOBAL SLAVERY INDEX: AUSTRALIA 10 (2014).

76. WALK FREE FOUND, THE GLOBAL SLAVERY INDEX: AUSTRALIA 12 (2016).

77. Int’l Labour Org. (ILO), *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, at 3, (2017), https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf.

78. WALK FREE FOUND, GLOBAL SLAVERY INDEX 7 (2018), *available at* <https://www.globalslaveryindex.org/2018/findings/highlights/>.

advocacy impact and has been adopted in some national legislation to cover provisions related to trafficking in persons, the lack of an agreed definition or legal standard at the international level results in inconsistent usage.⁷⁹ The UK has for instance passed the Modern Slavery Act 2015. The law is essentially a criminal law, but includes a supply chain transparency clause which calls on corporations above a certain economic turnover has to report on the existence of forced labour in their supply chains. Although the California Transparency in Supply Chains Act existed prior to the passage of the Modern Slavery Act, 2015, several countries and provincial governments, including the Australian state of New South Wales, Australia (with proposed federal legislation), France and the Netherlands have followed suit, often with more stringent requirements for corporate accountability and vigilance that go beyond disclosure statements.

In relation to forced labour, the ILO's efforts culminated in the negotiation in 2014 of a significant Protocol and Recommendation, revising and in effect updating one of the most highly ratified ILO Conventions, Convention No. 29 Against Forced Labor (1930) ("Forced Labor Convention").⁸⁰ The 2014 Protocol and Recommendation were a long overdue attempt to update the Forced Labor Convention as the 1930 Convention and its 1957 counterpart⁸¹ were drafted and revised in the context of state-imposed forced labour whereas 90 percent of the forced labour in the world today is exacted by private sector employers. The 2014 Protocol was also a normative response to the highly carceral approach of the Trafficking Protocol which prioritized prosecution over its broader mandate to prevent trafficking and protect the rights of those trafficked. Indeed, Andrees and Aikman⁸² highlight the 2014 Protocol's human rights approach and its provisions on victim assistance and compensation, irrespective of immigration status, a non-penalization clause, "a labor-based, integrated approach to combating forced labor" which recognizes the crucial role of the labour administration, employers and businesses against forced labour as well as national-level policy-making mechanisms that include all relevant stakeholders. The requirement for both ratifying and non-ratifying countries to report under the 2014 Protocol offers a more robust implementation system. The Protocol entered into force in November 2016 and has been ratified by 25 countries. Thus, notwithstanding the misalignment and competition within the trafficking TLO, it has spurred the development of the forced labour TLO, thereby generating an overlapping zone of governance for those trafficked and in forced labour to benefit from human rights protections.

The definitional relationship between trafficking and forced labour has

79. 2016 Report, *supra* note 14, at 16.

80. ILO Convention Concerning Forced or Compulsory Labour, June 28, 1930, 39 U.N.T.S. 105.

81. *Id.* at 55; ILO Convention Concerning the Abolition of Forced Labour, June 25, 1957, 520 U.N.T.S. 291.

82. Beate Andrees & Amanda Aikman, *Raising the Bar: The Adoption of New ILO Standards Against Forced Labour*, in REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOUR AND MODERN SLAVERY 359 (Prabha Kotiswaran ed., 2017).

however not been resolved. It is still unclear whether trafficking is a subset of forced labour or if forced labour is a subset of trafficking.⁸³ Early ILO reports particularly in 2005, distinguished between trafficked forced labour and non-trafficked forced labour⁸⁴ based on the assessment that trafficking involved the cross-border movement of persons. However, as the requirement for movement became less certain, a 2009 ILO Report steered clear of its earlier distinction between trafficked and non-trafficked forced labour.⁸⁵ By 2013 when representatives of employers, workers and states came together to negotiate the 2014 Protocol, they remained undecided, with one camp insisting that trafficking encompassed all forced labour and another camp claiming that trafficking was merely one form through which forced labour was exacted.⁸⁶ Yet the executive summary to a 2014 report on the profits of forced labour claimed that “all exploitative purposes of trafficking are covered by the ILO’s Forced Labour definition with the exception of trafficking for the purpose of the removal of organs.”⁸⁷ It is not surprising then that the ILO has claimed that the forced labour TLO encompasses the trafficking TLO with the UNODC claiming the contrary. Although the UNODC praised the ILO on concluding the 2014 Protocol and the ILO defers to the UNODC’s mandate on trafficking and is keen for coherent antitrafficking policies and strategies rather than on widening the trenches between them, only a veneer of institutional cooperation exists between both UN agencies. As the ILO perseveres to remain relevant and ensure its survival, it has recently joined hands with the Walk Free Foundation to produce the Global Estimates of Modern Slavery (GEMS).⁸⁸ Without dwelling on

83. INT’L LABOUR ORG. (ILO), REPORT FOR DISCUSSION AT THE TRIPARTITE MEETING OF EXPERTS CONCERNING THE POSSIBLE ADOPTION OF AN ILO INSTRUMENT TO SUPPLEMENT THE FORCED LABOUR CONVENTION 16 (2013), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_203982.pdf; INT’L LABOUR ORG. (ILO), REPORT AND CONCLUSIONS OF THE TRIPARTITE MEETING OF EXPERTS ON FORCED LABOUR AND TRAFFICKING FOR LABOUR EXPLOITATION 12–13 (2013), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_207312.pdf.

84. INT’L LABOUR ORG. (ILO), A GLOBAL ALLIANCE AGAINST FORCED LABOUR IN NINETY THIRD SESSION OF THE INTERNATIONAL LABOUR CONFERENCE (2005), <https://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf>.

85. INT’L LABOUR ORG. (ILO), THE COST OF COERCION: GLOBAL REPORT UNDER THE FOLLOW-UP TO THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK IN NINETY-EIGHTH SESSION OF THE INTERNATIONAL LABOUR CONFERENCE (2009), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_106268.pdf.

86. INT’L LABOUR ORG. (ILO), REPORT FOR DISCUSSION AT THE TRIPARTITE MEETING OF EXPERTS CONCERNING THE POSSIBLE ADOPTION OF AN ILO INSTRUMENT TO SUPPLEMENT THE FORCED LABOUR CONVENTION, 57 (2013), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_203982.pdf; Int’l Labour Org. (ILO), *Report and Conclusions of the Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation* 51 (2013), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_207312.pdf.

87. INT’L LABOUR ORG. [ILO], PROFITS AND POVERTY: THE ECONOMICS OF FORCED LABOR 4 (2014), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf.

88. INT’L LABOUR ORG. (ILO), GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED

definitional conundrums, GEMS defines ‘modern slavery’ as an umbrella term to encompass forced labour, trafficking, slavery and practices similar to slavery.

The settlement of the definition of trafficking at the international level is thus tenuous. The resultant misalignment and competition between related TLOs on sex work, forced labour, slavery and now ‘modern slavery’ have been replayed at the domestic and local levels in various national contexts along with the attendant diagnostic struggles, ideological and institutional contradictions and mismatch between actors. There is neither high concordance nor discordance between laws at the international, national and local levels. We instead find what Shaffer and Halliday call “symbolic compliance.”⁸⁹ Experts however disagree on the extent of this intermediation. Jean Allain claims that no effective definition of trafficking exists, as the adoption of general principles and definitions are not mandated by the Trafficking Protocol, leaving states in the absence of any direction on core concepts of Art. 3 to make legislative choices in creating the offence of trafficking.⁹⁰ Moreover, “trafficking” can have little resonance in domestic contexts with rich histories of activism against forms of extreme exploitation. In Brazil for instance, trafficking is understood as an imported concept and the country’s own successful anti-slave labour movement is “loath to change their brand.”⁹¹

Anne Gallagher meanwhile argues that the core aspects of Art. 3 have made their way into numerous domestic laws. However, both she and Janie Chuang are critical of the steady doctrinal expansion of the concept of trafficking in international and US law, or “exploitation creep.”⁹² They attribute these expansionist doctrinal developments to definitional ambiguities in Art. 3 which, brokered through a series of compromises at the negotiating table, literally gave states a “blank check”⁹³ to operationalize the definition of trafficking in domestic law. They argue that clarity, certainty and coherence in the definition of trafficking are crucial given its criminal law implications for the rights of the defendant and in order to end impunity and seek justice for the victims of trafficking. However, invoking the criminal law to address the full spectrum of labour exploitation detracts attention away from its extreme forms, including slavery, practices similar to slavery and forced labour. Gallagher and Chuang therefore call for a realignment of the trafficking TLO around what they view as properly constituting the underlying

LABOUR AND FORCED MARRIAGE (2017), https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf.

89. TERRANCE C. HALLIDAY & GREGORY SHAFFER, *TRANSNATIONAL LEGAL ORDERS* (2015).

90. Allain, *supra* note 51, at 122.

91. Grupo Davida, *Trafficking as a Floating Signifier: The View From Brazil*, 4 *ANTI-TRAFFICKING REV.* 161, 161–66 (2015), http://observatoriodaprostituicao.ifcs.ufrj.br/textos/anti-trafficking_grupo-davida.pdf.

92. Chuang, *supra* note 40, at 609.

93. J. A. Chuang, *Contemporary Debt Bondage, “Self-Exploitation” and the Limits of the Trafficking Definition*, in *REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOUR AND MODERN SLAVERY* 112-13 (Prabha Kotiswaran ed. 2017).

offence of trafficking, namely, “instances in which individuals are moved into and/or maintained in a situation of egregious exploitation through means that were themselves highly abusive,”⁹⁴ and involving abusive, clandestine migration. In other words, they argue to retain the conceptual and legal distinctness of trafficking as “an extremely serious crime carrying severe penalties” and call for a return to the originally intended scope of the trafficking TLO, suggesting in the process, a clear partition of the trafficking TLO from associated TLOs relating to slavery and forced labour and consequently, a sensible division of labour between criminal law and labour laws in countering exploitation.

VI. IDEOLOGICAL DIFFERENCES IN THE DEVELOPMENT OF ANTI-TRAFFICKING LAW

Apart from conceptual elasticity and the lack of alignment, the trafficking TLO has been from the very start, affected by deep ideological disagreements, especially over sex work. These differences have persisted despite an expansive understanding of the concept of trafficking beyond sex work to include extreme forms of exploitation. These are reflected in the three main approaches to trafficking that shape the very construction of the problem and the appropriate legal response to it. These approaches are: the criminal justice approach which views trafficking as a problem of organised crime against which to direct the criminal law; the human rights approach which is keen to ensure the human rights of survivors of trafficking; and the labour approach to trafficking, which views trafficking as a problem of migration to which a coordinated immigration and labour law response is needed.

The criminal law paradigm views trafficking as an exceptional aberration to otherwise normal circuits of commerce and exchange in a globalized world, thus warranting the use of the heavy, corrective hand of the criminal law. This criminal law response to trafficking is said to have arisen from a particular alignment of geopolitical interests of developed countries in the wake of globalization. As Lloyd and Simmons explain, a “broad coalition of states had much to gain by choosing a prosecutorial model over one that makes human rights or victim protection its top priority.”⁹⁵ Thus the high rate of diffusion of the Trafficking Protocol transnationally could be attributed to the popularity of the “transnational organised crime frame” amongst states over the “human rights” frame preferred by non-state actors.⁹⁶ In this, the trafficking TLO is like other regimes of transnational criminal law (e.g. drug trafficking laws), which are emblematic of vast power differentials between countries in the global North and those in the global South⁹⁷ and lack

94. Anne T. Gallagher, *The International Definition of “Trafficking in Persons”: Scope and Application*, in REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY 83–111 (Prabha Kotiswaran ed., 2017).

95. Lloyd & Simmons, *supra* note 16.

96. *Id.* at 429.

97. Fernando Avelar, *Alternative Drug Policies in the Americas*, 18 L. & BUS. REV. AM. 403 (2012); Matthew S. Jenner, *International Drug Trafficking: A Global Problem with a Domestic Solution*, 18 IND. J. OF GLOBAL LEGAL STUD. 901 (2011); Marshall B. Lloyd, *Conflict, Intervention and Drug Trafficking: Unintended*

political legitimacy at the points of enactment and enforcement.⁹⁸

The human rights approach to trafficking seeks to mitigate the harshness of the criminal law regime by bolstering the human rights of victims of trafficking. As Gallagher notes, the UN Trafficking Principles and Guidelines issued by the UN High Commissioner for Human Rights in 2002 “provided a way forward that has supported the evolution of a cohesive ‘international law of human trafficking’ which weaves together human rights and transnational criminal law.”⁹⁹ Similarly in 2005, the Council of Europe adopted its own Convention on Action against Trafficking in Human Beings¹⁰⁰ which produced a human rights paradigm whereby the criminal law thrust of anti-trafficking law was retained but was softened vis-a-vis the victims of trafficking who were often prosecuted for committing crimes when trafficked.

The labour approach rejects the criminal justice view of trafficking. It understands coercion and exploitation as spanning a continuum of social scenarios so that the difference between the exploitation of workers and trafficking is a matter of degree not of kind.¹⁰¹ Advocates of the labour approach view trafficking fundamentally as a problem of labour migration and call for addressing structural systems of subordination and exploitation in labour sectors across the world by preventing the criminalization and deportation of workers who report exploitation and eliminating binding arrangements (where a migrant worker must only work for the employer sponsoring his or her visa), reducing recruitment fees, guaranteeing the right to unionize and by extending labour and employment laws to vulnerable workers.¹⁰² They point to “general processes that create low pay, long hours, arbitrary employment conditions, as well as silence the voices of labour and labour organisations” ignoring in the process, employment relations in export and domestic industries, and the general absence of labour inspectors and the non-implementation of labour laws.¹⁰³ Corporate anti-trafficking interventions meanwhile focus on exceptional and violent forms of labour trafficking such as sex trafficking and trafficking in the global south, particularly in informal markets, while perpetuating precarious working arrangements in the formal economy back home. These interventions in Bernstein’s words recast “temporary labor, bonded labor,

Consequences of United States Policy in Colombia, 36 OKLA. CITY U. L. REV. 293 (2011); Andrew Mitchell, *The United States Extraterritorial War on Drugs*, 2 S. CROSS U. L. REV. 36 (1998); Michael P. O’Connor & Celia M. Rumann, *Market Solutions to Global Narcotics Trafficking and Addiction*, 5 PHOENIX L. REV. 123 (2011); Kal Raustila, *Law, Liberalization & International Narcotics Trafficking*, 32 N.Y.U. J. OF INT’L L. AND POL., 89, 122 (1999); Justin B. Shapiro, *What are They Smoking?! Mexico’s Decriminalization of Small-Scale Drug Possession in the Wake of a Law Enforcement Failure*, 42 U. MIAMI INTER-AM. L. REV. 155 (2010).

98. Neil Boister, *Transnational Criminal Law?*, 14 EUR. J. OF INT’L L. 953, 957–58 (2003).

99. Anne T. Gallagher, *Two Cheers for the Trafficking Protocol*, 4 ANTI-TRAFFICKING REV. 14, 21 (2015).

100. Allain, *supra* note 51, at 122.

101. Shamir, *supra* note 68, at 110.

102. *Id.* at 76, 113–19.

103. Lerche, *supra* note 11, at 75; Kerry Rittich, *Representing, Counting, Valuing: Managing Definitional Uncertainty in the Law of Trafficking*, in REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOUR AND MODERN SLAVERY 238 (Prabha Kotiswaran ed., 2017).

and brokered labor, all key features of capitalist production under conditions of neoliberal globalisation— as progressive, good, and free,”¹⁰⁴ thus providing what Thomas calls a legitimization effect.¹⁰⁵

At the very minimum then, the criminal justice and human rights approaches view trafficking through an individualist, liberal frame. The criminal justice approach is driven by “a powerful mythology of isolated ‘bad apples’ (i.e. traffickers),” who inflict extreme violence on vulnerable victims for purposes of exploitation.” The heavy hand of the state is warranted in order to free the victim of trafficking and punish the trafficker. The labour approach instead, assumes a structuralist view of the problem by attributing it to ‘root causes’ and the structures of patriarchy, capitalism and racism that legitimize a range of exploitative working conditions. Thus, addressing only the criminal acts of individual traffickers entrenches a “politics of exception”¹⁰⁶ and depoliticizes extreme exploitation¹⁰⁷ which arise from “the smooth functioning of global capitalism and official policies, rather than amoral individuals and corrupt institutions.”¹⁰⁸ These fundamental ideological differences in conceptualizing and responding to trafficking have further undermined the settlement of legal norms within the trafficking TLO.

VII. A DEVELOPMENT APPROACH TO TRAFFICKING?

Eighteen years after its negotiation, the trafficking TLO has entered a new phase with the adoption by the UN in 2015 of the Sustainable Development Goals (SDGs). SDG 8 seeks to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Target 8.7 in particular calls on states to “take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.”

The global ‘development goal’ to end trafficking is new. However, the developing world has long been the playground of humanitarian interventions in the guise of anti-trafficking initiatives. The indicator culture that has developed around trafficking in the form of the annual Trafficking in Persons Report and the

104. Elizabeth Bernstein, *Brokered Subjects and Sexual Investability*, in REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY 329, 339 (Prabha Kotiswaran ed., 2017).

105. Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335, 387–90 (2006).

106. Joel Quirk & Annie Bunting, *The Politics of Exception: The Bipartisan Appeal of Human Trafficking*, in 1 POPULAR AND POLITICAL REPRESENTATIONS: BEYOND TRAFFICKING & SLAVERY SHORT COURSE 64, 67 (2014).

107. Julia O’Connell Davidson, *New Slavery, Old Binaries: Human Trafficking and the Borders of “Freedom,”* 10 GLOBAL NETWORKS 244 (2010).

108. Joel Quirk & Julia O’Connell Davidson, *Introduction* to 1 POPULAR AND POLITICAL REPRESENTATIONS: BEYOND TRAFFICKING & SLAVERY SHORT COURSE 10, 16.

Global Slavery Index¹⁰⁹ has long encoded states' responses to trafficking in terms of their stage of development. Developing countries thus often perform the worst and developed countries the best, even if the 2018 Global Slavery Index recently acknowledged that developed countries have more modern slaves than previously thought.¹¹⁰ The entry of trafficking into the SDG agenda is however also an occasion to bring back into focus the structural approach to extreme labour exploitation adopted by certain developing countries.

In this Article, I briefly consider the experience of India, a country with a long-standing problem of extreme exploitation and the most 'modern slaves' (18 million according to the 2016 Global Slavery Index), where a large percentage of trafficking is internal and which has dealt with the problem in ways that are at variance with the criminal justice model of the Trafficking Protocol. I ask whether this could be labeled "a development approach to trafficking," why it has been eclipsed by the globally hegemonic criminal justice approach and whether this can be attributed to the influence of the trafficking TLO.

Long before Western governments began to address extreme labour exploitation including in the context of migration, in the 1970s, India developed labour laws on bonded labour, contract labour and inter-state migrant labour, all forms of exploitation amounting to 'trafficking'.¹¹¹ These laws pioneered innovative strategies by prioritising welfare over rescue and rehabilitation, proposing community-based rehabilitation rather than institutionalised rehabilitation, imposing liability on intermediaries with a backstop to the principal employer to ensure decent work conditions and by sparingly using criminal law which resulted in a more prominent role for the executive than the police. And although there are several similarities between a labour approach and development approach to trafficking, in the latter, the state is not simply an arbiter of relations between labour and capital. The postcolonial state assumes a strong developmental role and is responsible for the welfare of its citizens. Often the developmental state is also the employer extracting forced labour from workers on vast projects such as the building of dams or stadia as the cases on contract and bonded labour of the 1980s bear out. Further, in the 1980s, an activist judiciary conceptualized forced labour broadly (much like the American legal realists) to encompass economic coercion rather than as an exceptional occurrence in the world of work requiring police action. Similarly, judges interpreted exploitation as involving any pay less than the minimum wage (not unlike some EU countries today). This model, directed toward structural reform would on paper, have been a powerful counter to the criminal justice model that has been diffused by the Trafficking Protocol.

Unfortunately, however, these innovative labour laws were chronically under-

109. Siobhán McGrath & Samantha Watson, *Anti-slavery as Development: A Global Politics of Rescue*, 93 GEOFORUM 22 (2018).

110. WALK FREE FOUND, GLOBAL SLAVERY INDEX: AUSTRALIA (2018), available at <https://www.globalslaveryindex.org/2018/findings/country-studies/australia/>.

111. Kotiswaran, *supra* note 54, at 353.

enforced. The general criminal law¹¹² and the Immoral Traffic Prevention Act, 1986, India's anti-sex work criminal law meanwhile criminalised various forms of trafficking and developed on parallel tracks rather than in conversation with the labour law innovations I mention above. Contestations over the normative status of sex work meanwhile continued during the 1980s and 1990s. In the 2000s, when trafficking became a high-profile international issue, India, like many other countries conflated trafficking with trafficking for sex work and with sex work itself.

Two camps became central to the trafficking debates: sex worker groups on the one hand and neo-abolitionist groups on the other. The latter included radical feminist groups and culturally nationalist and socially conservative NGOs, which sought to protect the "dignity" of Indian women and children. Neo-abolitionist NGOs were heavily invested in raids, rescue, and rehabilitation and subscribed to a crime control paradigm of trafficking. As efforts to amend the ITPA did not materialise, these groups took to public interest litigation (PIL) as a route to achieving institutional reform. As repeat players in such litigation, they collaborated with the police in raids and rescue operations compensating for the executive's lack of resources. Consequently, a small number of neo-abolitionist groups infiltrated the bureaucracy so that they were appointed to every single expert committee constituted by the courts or the relevant ministry (typically the Ministry for Women and Child Development (MWCD)) to address trafficking. In 2013 when the Indian Parliament passed sweeping rape law reforms, these neo-abolitionist groups lobbied the government for an offence criminalising trafficking (defined by and large in consonance with Art. 3 of the Trafficking Protocol). As if this was not enough, a PIL filed in 2004 by a neo-abolitionist group came alive in 2015 and the Supreme Court dismissed the petition on the assurance of the MWCD that it would introduce a comprehensive anti-trafficking legislation. This led to the formulation of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 (2018 Bill).

The MWCD introduced the 2018 Bill in Parliament in July 2018; it was passed by the lower house but lapsed before being presented before the upper house in late 2018. The Bill is a draconian legislation that entrenches a classic raid-rescue-rehabilitation model, alongside a robust criminal law system with stringent penalties, reversals of burden of proof, provisions for forfeiting traffickers' assets, and an extensive surveillance machinery that is meant to prevent trafficking. It proposes the offence of aggravated trafficking for bonded labour, forced labour, bearing a baby through assisted reproductive technologies, for marriage and for begging, thus detailing various forms of exploitation not specifically listed in the Trafficking Protocol. Offences are cognizable and non-bailable. The Bill's focus on rescue and rehabilitation is perplexing as existing homes have historically been ineffective at best (causing women to escape and return to sex work) and have facilitated sexual

112. The Indian Penal Code, No. 45 of 1860, PEN. CODE §§ 365–74, available at https://indiacode.nic.in/acts/1_Indian%20Penal%20Code,%201860.pdf.

abuse and even suicide at worst.¹¹³ Importantly, the Bill does not repeal the ITPA or labour laws on bonded labour making the relationship between them unclear. The Bill unthinkingly applies techniques developed in the context of sex work such as raids, rescues and rehabilitation to all forms of extreme exploitation and exemplifies neo-abolitionist thinking. Although the Bill now covers sectors of labour exploitation beyond sex work, the letter and spirit of labour law jurisprudence is entirely missing from the Bill.

What accounts for the dissonance between a labour/development approach to trafficking that India pioneered in the 1970s and 1980s and the hegemonic criminal law approach of the trafficking TLO that the 2018 Bill uncritically follows today? One reason is simply the triumph of neo-liberal capitalist ideologies the world over, and the concomitant weakening of trade unions and the radical dismantling of labour laws. Another is the influence of the trafficking TLO as it has proliferated worldwide over the past 18 years. The initial impetus to introduce anti-trafficking laws after all came from India's international law obligations under the Trafficking Protocol. The TIP reports were also instrumental in triggering law reform. Thus, India came close to criminalising the customers of sex work (and adopting the Swedish model) in 2005 but this failed due to international pressure from public health actors who feared its negative consequences on HIV prevention efforts. As international opinion shifted to construe trafficking broadly to go beyond sex trafficking, so did that of the Government of India. Thus, by 2013, despite attempts to conflate trafficking and sex work, Indian sex workers groups' opposition was robust enough to defeat such a move, resulting in a trafficking offence under Section 370 of the IPC which reflected a generic Art. 3 formulation of trafficking.

Just as in the West, in India too, one found the 'strange bedfellows' phenomenon whereby radical feminist groups became aligned with evangelical Christian organisations like the International Justice Mission in pushing for anti-trafficking legislation. Moreover, state and civil society actors routinely interacted (with each other and their respective counterparts internationally) in spheres of transnational modernity¹¹⁴ often deriving legitimation from each other. Thus, in response to a statement from the UN Special Rapporteurs for Trafficking and Modern Slavery criticising the 2018 Bill, the Minister for Women and Child

113. *Hyderabad: Rescued Uzbek Woman Ends Life in Shelter Home*, DECCAN CHRON. (Apr. 15, 2018), <https://www.deccanchronicle.com/nation/crime/150418/hyderabad-rescued-uzbek-woman-ends-life-in-shelter-home.html>; *Review of Women's Studies*, ECONOMIC & POLITICAL WEEKLY (Nov. 5, 2016), <https://www.epw.in/journal/2016/44-45>; Padma Govindan, *Rethinking Emancipation: The Rhetorics of Slavery and Politics of Freedom in Anti-Trafficking Work in India*, 15 INTERVENTIONS 511 (2013); Aziza Ahmed & Meena Seshu, "We Have the Right Not to Be Rescued...": *When Anti-Trafficking Programmes Undermine the Health and Well-Being of Sex Workers*, 1 ANTI-TRAFFICKING REV. 149 (2012); Veronica Magar, *Rescue and Rehabilitation: A Critical Analysis of Sex Workers' Antitrafficking Response in India*, 37 SIGNS 619 (2012).

114. SALLY E. MERRY, *HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* (2006).

Development Smt Maneka Gandhi claimed how she and the founder of a neo-abolitionist group Kailash Satyarthi shared the draft 2018 Bill at a child labour conference in Argentina in 2017 to considerable praise from other governments. Thus, international developments on trafficking have certainly influenced the development of Indian anti-trafficking law.

However, the soft power exercised by the international community has not always been well received by the Indian government. The government of India long resented the TIP ranking system and refused to fill out questionnaires circulated by the US government.¹¹⁵ More recently, India vigorously protested the Global Estimates of Modern Slavery (GEMS) released by the Walk Free Foundation, the International Labour Organisation and the International Organisation for Migration¹¹⁶ and lodged a complaint on its faulty methodologies with the ILO. Similarly, it is rumored that the 2018 Global Slavery Index had no negative comments on India (unlike in 2016 when the headlines screamed about India having the largest number of 'modern slaves' in the world) because the Indian government had of late denied visas to researchers from the Walk Free Foundation.

I argue further that the influence of the trafficking TLO is not ultimately determinative. For instance, the introduction of the offence of trafficking (Section 370) in 2013 was triggered by a domestic political opportunity, namely the Delhi rape case and the occasion it afforded neo-abolitionist groups to lobby for a trafficking offence. Before then, trafficking was not a priority issue for the Indian women's movement or the government, which was looking to amend the ITPA to meet its international law obligations under the Trafficking Protocol. Similarly, once Section 370 was passed, there was no need per se to enact a separate statute building it out. And although the London-based Freedom Fund suggested that the 2016 version of the Trafficking Bill (a precursor to the 2018 Bill) was drafted to respond to the 2016 Global Slavery Index, which was damning of India,¹¹⁷ in reality, the 2018 Bill resulted from the domestic legal innovation of PIL. A neo-abolitionist NGO launched PIL on trafficking in 2004, little expecting the promise of an anti-trafficking statute a decade later. The political opportunity structures are thus resolutely local. Unlike in the West, trafficking has also failed to capture the popular imagination of the Indian public where despite its ramifications for millions of desperately poor Indian labourers, trafficking cannot even begin to compete with several other issues jostling for national attention.

The cultural content of the domestic iteration of neo-abolitionism also varies from its Western version. In a social history of the predecessor statute of the ITPA,

115. Vibhuti Ramachandran, *The Politics of the US State Department's TIP Report in India: Ethnographic Vignettes and Theoretical Possibilities* (May, 2010) (unpublished manuscript) (on file with author).

116. Bibek Debroy, Opinion, *International Labour Organisation's Omissions*, INDIAN EXPRESS (Nov. 30, 2017), <https://indianexpress.com/article/opinion/columns/international-labour-organisation-modern-slavery-forced-marriage-4960954/>.

117. Nick Grono, Opinion, *Measuring Slavery Encourages Governments to Do Better*, THOMSON REUTERS FOUND. NEWS (July 16, 2016), <http://news.trust.org/item/20160716164413-tig2w>.

namely the Suppression of Immoral Traffic Act, 1956 (SITA), legal historian Rohit De elaborates on how women leaders of the Indian nationalist movement, elevated to key positions in the newly independent state, worked tirelessly both from within the government (as architects of a massive social welfare bureaucracy) and from outside (through NGOs) to pass India's anti-sex work law.¹¹⁸ They did not wish to criminalise the sex worker herself, who in their view was a victim of economic circumstance and whose freedom to practice an occupation of choice was protected by the Constitution.¹¹⁹ Feminists instead prioritised rehabilitation to be operationalized by female police officers and state-run homes staffed by female social workers, over penalisation. This form of welfare governmentality forms the basis of the ITPA and continues to be mobilised by socially conservative neo-abolitionist groups who oppose sex work (voluntary sex work included) on the grounds that it offends human dignity. Some of these groups are closely aligned with the Bharatiya Janata Party (BJP) at the federal level, whose government has increasingly resorted to carceral techniques to address social problems with the aid of surveillance mechanisms. This has in fact fractured relationships between Bachpan Bacho Andolan, a neo-abolitionist group and Apne Aap, a radical feminist organisation where the former supported the 2018 Bill and the latter has protested its passage. There is thus a long tradition of nationalist humanitarianism which helps explain the overwhelming support for the 2018 Bill.

CONCLUSION

In conclusion, the jury is still out on the value of the trafficking TLO. Some experts like Gallagher argue that it “has done more than any other single legal development of recent times to place the issue of human exploitation firmly on the international political agenda.”¹²⁰ Plant similarly claims that the Trafficking Protocol has challenged various international organizations working on different forms of object labour in Art. 3 by introducing the expansive and indeed, elastic concept of exploitation.¹²¹

Yet, prosecutions for trafficking are disproportionately low in comparison to the resources expended on the issue. Rather, the trafficking TLO is actively misused to disproportionately target sex workers, migrants, migrant brides and sexual minorities in countries as diverse as Romania, Bulgaria, Mexico, Sweden, Brazil, Singapore and Myanmar.¹²² In South-East Asia, the TLO has contributed to

118. Rohit De, *The Case of the Honest Prostitute: Sex, Work, and Freedom in the Indian Constitution*, in A PEOPLE'S CONSTITUTION: THE EVERYDAY LIFE OF LAW IN THE INDIAN REPUBLIC (Rohit De, 2018). This is a monograph.

119. INDIA CONST. art. 19(1)(g), available at <http://legislative.gov.in/sites/default/files/coi-4March2016.pdf>.

120. Gallagher, *supra* note 99, at 16.

121. R. Plant, *Combating Trafficking for Labour Exploitation in the Global Economy: The Need for a Differentiated Approach*, in REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOUR AND MODERN SLAVERY (Prabha Kotiswaran ed., 2017).

122. Davida, *supra* note 91, at 162; Ela W.V. de Castilho, *Human Trafficking in Brazil: Between*

“miscarriages of justice on a significant scale” as countries seek to appease their donors and those in charge of drafting the annual TIP reports.¹²³ Even as the ILO collaborates with Walk Free to settle the trafficking TLO, GEMS has muddied the waters by focusing on forced marriage, an issue neither amenable to a clear definition nor around which international consensus can be built. Moreover, under the trafficking TLO, victims of trafficking continue to be prosecuted for engaging in illegal activities. Even the benefits of the expanded trafficking TLO are questionable because only the most “egregious” forms of labour trafficking are addressed, leaving the exploitation of migrant workers to be addressed by labour and employment laws.¹²⁴ The informal economy is villainized as a site for trafficking when the formal sector is increasingly predicated upon precarious labour.¹²⁵ The trafficking TLO has triggered changes in the forced labour TLO. It has also contributed to the passage of supply chain transparency laws. However, the commonwealth version of supply chain transparency provisions is for the most part, weak¹²⁶ when compared to corporate vigilance laws passed by civil law countries like France.

The incorporation of target 8.7 within the broader SDG agenda on creating decent work meanwhile has mixed implications for the future development of the trafficking TLO. While we may hope for a renewed consideration of systemic approaches to trafficking (including from developing countries, which could close the loop of transnational law making), Western countries that were central to the adoption of the Trafficking Protocol may continue to use SDG 8.7 to name and shame developing countries for their ‘modern slavery’ problem.

Ultimately, trafficking is only one of many issues to have emerged in the aftermath of two decades of globalization that confounds the regulatory efforts of states. Issues that plague the trafficking TLO, namely, the lack of normative coherence on the question of precisely what trafficking is, the range of regulatory frameworks (whether criminal, labour, immigration, international) that can be brought to bear on it, the ineffectiveness of cross-border criminal law, the rise of indicators as a technique of governance and the multitude of actors involved in creating legal and social norms through formal state law and “soft law” at the

Crime-Based and Human Rights-Based Governance, 4 ANTI-TRAFFICKING REV. 174, 179 (2015); Laura K. Hackney, *Re-evaluating Palermo: The Case of Burmese Women as Chinese Brides*, 4 ANTI-TRAFFICKING REV. 98, 101 (2015); Synnøve O. Jahnsen & May-Len Skilbrei, *From Palermo to the Streets of Oslo: Pros and Cons of the Trafficking Framework*, 4 ANTI-TRAFFICKING REV. 156, 158 (2015); Marjan Wijers, *Purity, Victimhood and Agency: Fifteen Years of the UN Trafficking Protocol*, 4 ANTI-TRAFFICKING REV. 56, 71 (2015).

123. Anne T. Gallagher, *Editorial: The Problems and Prospects of Trafficking Prosecutions: Ending Impunity and Securing Justice*, 6 ANTI-TRAFFICKING REV. 1, 10 (2016).

124. Kathryn Baer, *The Trafficking Protocol and the Anti-Trafficking Framework: Insufficient to Address Exploitation*, 4 ANTI-TRAFFICKING REV. 167, 171 (2015).

125. See E.g., VERITÉ, FORCED LABOR IN THE PRODUCTION OF ELECTRONIC GOODS IN MALAYSIA: A COMPREHENSIVE STUDY OF SCOPE AND CHARACTERISTICS (2014), <https://verite.org/wp-content/uploads/2016/11/VeriteForcedLaborMalaysianElectronics2014.pdf>.

126. See e.g., Modern Slavery Act § 54 (2015) (Eng.).

international, regional, domestic and local levels around trafficking are hardly unique. Hence it is ideal to think of the trafficking TLO as one which implicates the criminal law only in part and which must be viewed in relation to other regulatory regimes.