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Imaginary Penalties: reconsidering
anti-trafficking discourses and technologies

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A thesis submitted to the Department of Law of the London
School of Economics for the degree of Doctor of Philosophy,
London, April 2012

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Abstract

The antithesis between a criminalisation and a human rights approach in the context of trafficking in women has been considered a highly contested issue. On the one hand, it is argued that a criminalisation approach would be better, because security measures will be fortified, the number of convictions will inevitably increase, and states' interests will be safeguarded against security threats. On the other hand, it is maintained that a human rights approach would bring more effective results, as this will mobilise a more 'holistic' approach, bringing together prevention, prosecution, protection of victims and partnerships in delivering gendered victim services. This antithesis, discursively constructed at an international level, cuts across a decentralised reliance on the national competent authorities.

To investigate this powerful discursive domain, I set these approaches within the larger framework of a tripartite 'anti-trafficking promise' that aims to eliminate trafficking through criminalisation, security and human rights. I ask how clearly and distinctively each term has been articulated, by the official anti-trafficking actors (police and service providers), and what the nature of their interaction is within the larger whole. In grappling with these questions, I undertake both empirical and theoretical enquiry. The empirical part is based on research I conducted at the Greek anti-trafficking mechanisms in 2008-2009. The theoretical discussion draws, in particular, on the concept of 'imaginary penalties' introduced in the criminological work of Pat Carlen. I consider what it might mean to bring this concept to bear in the context of anti-trafficking. In my analysis, criminalisation is linked to a 'toughness' rhetoric, an ever-encroaching and totalising demand for criminal governance. Security is shown to express the contemporary grammar of criminalisation, crafting a global language of risks and threats as core elements of the post 9/11 ideological conditions in the area of crime control. Finally, human rights are figured as tempering or correcting the criminal law for the sake of victims' protection. Together, these three elements constitute a promise that, once they are balanced and stabilised, trafficking can be abolished.

Yet it is not only trafficking that is at stake. My study shows how anti-trafficking discursive formations also produce particular forms of subjectivity and conceptions of class, sex, ethnicity and race. The upshot is to bring into focus the imaginary penalties at the centre of anti-trafficking discourses and technologies, while also suggesting the possibilities for contesting and transforming their subjects and fields of operation. The thesis opens up the conceptual map of future critical engagement with the relation of structural inequalities and imaginary penalties.

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P. S. Bouklis

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Chapter 1

Introduction to Anti-Trafficking

Anti-trafficking is materialising before our very eyes.¹ Anti-trafficking task forces, action plans, policy designs, evaluation reports, legal definitions and sanctions, welfare services offering assistance to victims, sources of funding issued by financial institutions, governmental commitments and institutional promises. How can we understand this mobilisation of forces? Can it be understood as a mere sign of increased human rights awareness in Western societies? And if so, how can it be explained that despite these human rights sensibilities, contemporary societies are confronted with the global proliferation of transnational trafficking in women?²

Questions about the gendered dimensions of trafficking are now raised regularly: why especially women? What are the contemporary gendered dimensions of trafficking that impose a different analysis to women and men? In spite of these recurring questions, and the acceleration of political inquiries, certain patterns have repeated the same conceptual systematisations over and over again. These systematic articulations, however, have failed to offer cogent answers and explanations.

¹ Adapting the original statement 'Empire is materialising before our very eyes', see, M Hardt and A Negri, *Empire* (London & Cambridge: Harvard University Press, 2001), xi. In this sense, anti-trafficking is one among many interlocking areas of governance, see, S Marks, 'Empire's Law', *Indiana Journal of Global Legal Studies* 10, no. 1 (2003), 449, 461-4.

² Among a variety of existing definitions, I use the terms 'trafficking in women' and (for preserving the economy of the text) 'trafficking' interchangeably. The purpose is to acknowledge that trafficking has been regulated as a gender-specific crime, even when this is not explicitly stated. Also, I maintain a focus on trafficking for sexual purposes insofar as the deployment of various terms by official discourse was in fact primarily focused on this research area (of sexual purposes) for most of the period under investigation. This brings an intrinsic value to the current analysis as it continuously resituates the social categories of gender and sexuality within the question of anti-trafficking.

Legal Knowledge

From the described above array of forces I focus predominantly on legal knowledge and specifically on the presumption that a properly tailored legal response to trafficking in women is sufficient to eliminate it. Having given rise to heated political debates, and while the 'right' balance is being sought, trafficking in women has generated much legal production. As a result of this legal production, many social mechanisms have also been generated over the past decade, both domestically and internationally. In an effort to conceptualise the causes and conditions of the contemporary emergence of trafficking, legal definitions have made categorical assertions about the nature of the problem and the available solutions to it.³ Prevailing understandings of these legal solutions to the trafficking problem have asserted that they are proportionate to the scale of the problem. As a mere action and reaction, these prevailing understandings have seen the relation between crime and the transnational response to it as the natural and mechanic association between rules, institutions, transnational criminality and victimhood.

It is, however, inaccurate to assume that these (domestic and international) anti-trafficking structures have been articulated through neutral discourses, merely projecting the issues at stake. Rather, anti-trafficking solutions have put forward specific alternatives. In mobilising these possible alternatives, anti-trafficking enunciations have offered a certain number of statements. The selection of these statements has not been random, but has relied on a process of inclusion and exclusion. Some statements have been deemed appropriate to be invested in decisions, institutions or practices, while others have been rejected. In this sense,

³ See, e.g., J G Raymond, 'The New UN Trafficking Protocol', *Women's Studies International Forum* 25, no. 5 (2002), 491.

the system of anti-trafficking solutions has been essentially incomplete, following the rules of formation of certain discourses and their strategic choices.

This inclusion and exclusion of anti-trafficking solutions denotes a reality that embraces the breadth of choices, as well as the multiplicity of conflicts. To critically engage with the frictions between legal and political opinions expressed, and to capture the particular points of conflict between competing agendas (as diverse as migration, security, organised crime, terrorism, labour and international relations, gender and sexuality), the anti-trafficking field has often been depicted as a battleground.⁴ My investigation reviews this ‘battle’ landscape of anti-trafficking to which the official legal and policy narratives will be brought to bear in the coming chapters. It is by investigating these polemic discourses that my thesis traces the antithesis between a criminalisation⁵ and a human rights approach; two conflicting legal frameworks developed to ‘combat trafficking’, as asserted by the UN 2000 Anti-Trafficking Protocol.⁶

Law Enforcement and Human Rights

The overall focus on law enforcement on the one hand, and the desirability of human rights protection on the other, has been subject to intense academic engagement. A key aim of the critiques offered has been to highlight the fluctuation between conceptualising trafficking either as a human rights issue or as

⁴ See, e.g., J Doezema, 'Now You See Her, Now You Don't: Sex Workers at the UN Trafficking Protocol Negotiation', *Social & Legal Studies* 14, no. 1 (2005), 61; V Munro, 'A Tale of Two Servitudes: Defining and Implementing a Domestic Response to Trafficking of Women for Prostitution in the U.K. And Australia', *Social & Legal Studies* 14, no. 1 (2005), 91; J O'Connell Davidson, 'Will the Real Sex Slave Please Stand Up?', *Feminist Review* 83, no. 1 (2006), 4, 6.

⁵ I use the term throughout the thesis to denote the criminal law applications and sanctions that subject persons to state punishment. See, D Husak, 'The Criminal Law as a Last Resort', *Oxford Journal of Legal Studies* 24, no. 2 (2004), 207.

⁶ A/RES/55/25 (2001), in pertinent literature it is usually quoted as the Palermo Protocol.

an issue of crime prevention and punishment. Even within the legal texts this dichotomy is obvious. Major legal instruments, such as the UN 2000 Anti-Trafficking Protocol, and the Council of Europe 2005 Anti-Trafficking Convention,⁷ demonstrate this oscillation between the obligation to protect trafficked women, who are constructed as ‘innocent victims’ of violence, and the perceived need to ‘protect state borders’ and punish traffickers.

This conceptual antithesis between protection and punishment has often conflated issues of trafficking with issues of asylum, immigration and smuggling, and, in the context of trafficking in women, with sex work. Thus, the conceptual antithesis between legality and illegality is imposed upon the fields of trafficking, asylum, immigration, smuggling and sex work, and stabilises reflections of crime and victimhood on the subjects involved. This conflation of diverse issues has engendered the debates and has imposed the antithesis between punishment and protection on the victims. In other words, based on diverse representations, women have been regarded as either ‘innocent’ victims or ‘responsible’ actors. Hence, women’s representations vary: from innocent victims of violence to ‘accomplices’ and ‘criminals’.⁸

It is commonly accepted that these two (seemingly) conflicting approaches are manifested through two (seemingly) opposing languages. To this extent, it is reaffirmed that criminalisation and human rights must have been articulated differently, in contrast and tension with each another, and by different actors. It is with this vacillating and contrasting narrative in mind that I set out to explore the international, and especially European, anti-trafficking discourses and to make

⁷ CETS No. 197 (2005).

⁸ A Carline and Z Pearson, 'Complexity and Queer Theory Approaches to International Law and Feminist Politics: Perspectives on Trafficking', *Canadian Journal of Women and the Law* 19, no. 1 (2007), 73, 102-3.

sense of the criminalisation approach and of the human rights approach to trafficking in women.

In doing so, I draw on the critical traditions of ‘deconstruction’, ‘discourse analysis’ and, insofar as theoretical and methodological frameworks merge, ‘imaginary penalties’.⁹ I apply these theoretical and methodological tools to previous theoretical accounts as well as to legal and policy documents, and in doing so I contest the described initial antithesis between criminalisation and human rights. My broad understanding of these texts is that they comprise a field of research; within this field I read strategies, codes, discursive constellations, continuities and sudden irruptions. Hence, in constructing antithetical schemas, continuities or ruptures, these discursive formations give access to the ‘already said’ as well as to the ‘not said’, to the statements and silences of a social field of knowledge.¹⁰ My analysis offers a distinctive contribution to understanding the way knowledges operate to create anti-trafficking structures, claiming a universal (objective, just and scientific) view of the world, through the dominant vocabularies of criminal law and human rights.¹¹

Criminalisation, Security, Human Rights

In fact, to make this antithesis between criminalisation and human rights more workable, and not merely a field of mutual exclusion, a vast framework has been

⁹ Since a more detailed discussion of the issue follows as this Chapter progresses, it should be noted that I do not use the term ‘imaginary penalties’ to indicate that the conceptualisation of a penalty is not real, but rather to relate to a specific theoretical strand, see P Carlen, ed. *A Criminological Imagination: Essays on Justice, Punishment, Discourse* (Burlington: Ashgate, 2010).

¹⁰ M Foucault, *The Archaeology of Knowledge* (London & NY: Routledge, 2007), 28-9, 75.

¹¹ On the universalisation project and the operation of asymmetrical counterconceptions in the history of international law, see M Koskeniemi, 'Histories of International Law: Dealing with Eurocentrism', *Zeitschrift des Max-Planck-Instituts für Europäische Rechtsgeschichte* 19, no. 1 (2011), 152, 170.

sustaining these two concepts, expressed by anti-trafficking actors and through the legal texts. On the one hand, it is argued that criminalisation has been installing the language of punishment, of sanctions, of the justified and just punitive measures that have the power to combat crime. This means that criminalisation measures are reaching out to existing criminal sanctions, or are stabilising the desire for new and better laws. These laws are to provide a remedy for a wrong and to impose the disciplinary shadow on the constitution of the subjects' modes of being.

Criminalisation technologies in the past have been thought to be the total or voracious institutions, like prisons.¹² However, in the context of anti-trafficking, I argue that the main criminalisation utensils are the fortification of security measures. Devotion to this approach thus denotes that emphasis is placed on intelligence, surveillance, increased controls and harsher punishments. As such, the specialised anti-trafficking measures are part of a wider dynamic, a 'Fortress Europe', security mechanism.¹³ In this respect, the aim of anti-trafficking technologies would be to safeguard states' interests against security threats, an effort that would inevitably increase the number of convictions, presuming that criminal prosecutions are indeed an index of governmental efforts to eradicate trafficking.

On the other hand, it is maintained that a human rights approach to the trafficking problem would be more comprehensive and humane, and therefore would utilise established human rights norms and principles in the context of anti-

¹² See, e.g., E Goffman, *Asylums. Essays on the Social Situation of Mental Patients and Other Inmates* (London & NY: Penguin Books, 1991); M Foucault, *Discipline and Punish: The Birth of the Prison* (Harmondsworth: Penguin Books, 1991).

¹³ In the context of trafficking, Claudia Aradau has highlighted the 'perverse continuity' between security and humanitarian articulations and, to that extent, my analysis is inspired by her work. See, C Aradau, 'The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking', *Millennium - Journal of International Studies* 33, no. 2 (2004), 251.

trafficking. This could potentially bring more effective results, as it would be mobilising a humanistic, victim-friendly, ‘holistic’ anti-trafficking approach, by bringing together root causes, prevention, prosecution, protection and security of victims, and partnerships in delivering gendered victims’ services. This approach decisively suggests that trafficking is actually a human rights and not a criminalisation problem. This categorisation is meaningful to the extent that it is founded on the presumption that anti-trafficking actors view the practice from a human rights perspective.¹⁴ Put differently, the categorisation of anti-trafficking structures in terms of either criminalisation or human rights mobilises specific discourses, which then justify one approach or the other.

Although antithetical, both approaches rely on overarching security constructions that hold together these apparently contradictory elements.¹⁵ From international (and inter-state) security to victims’ security, anti-trafficking security discourses have been binding together the loose ends of an ‘anti-trafficking promise’. The promise that trafficking could be eliminated through criminalisation, security and human rights mechanisms has been articulated at an international level, and cuts across a decentralised reliance on the national competent authorities. A prominent contemporary constitution of that promise in juridical terms is offered by the UN 2000 Anti-Trafficking Protocol,¹⁶ which marked the inauguration of a contemporary, balanced (arguably, almost perfect) legal structure comprised by three main elements. These elements, in the anti-trafficking context, emerge as foundational concepts for holding together the ‘holistic’ anti-trafficking solution, encompassing the three ‘Ps’: prosecution,

¹⁴ See, T Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach* (Leiden: Koninklijke Brill NV, 2006), 121.

¹⁵ C Aradau, *Rethinking Trafficking in Women. Politics out of Security* (London & NY: Palgrave Macmillan, 2008), 3.

¹⁶ See, art. 2, *Statement of Purpose*.

prevention and protection. This model, which actually embraces criminalisation, security and human rights as a foundational tripartite anti-trafficking structure, has been more recently redesigned. Redesigned and, according to some critics, improved by incorporating gender sensibilities, the juridical ‘anti-trafficking promise’ has ultimately been renewed by the Council of Europe 2005 Anti-Trafficking Convention.¹⁷

To investigate this powerful discursive domain, I place the initial antithesis of criminalisation and human rights within the larger framework of a tripartite ‘anti-trafficking promise’ and I interrogate each term separately. I ask how clearly and distinctively each term has been expressed at an international – fluid and perhaps abstract – level, and then I focus on a particular national context in order to examine how specific anti-trafficking actors (police and providers of victims’ services) have re-articulated this promise, and what the nature of their interaction is within the larger whole.

Theorising Anti-Trafficking: what is the problem?

The problem with anti-trafficking structures is that they destabilise neat categories of conceptualisation and clear paths to justice. If the lexicon for understanding the injustice of trafficking in women is different under criminalisation and human rights anti-trafficking approaches, what impact does this antithesis have on bringing traffickers to justice? Or how does this antithesis affect the official identification of an individual as a victim of trafficking? In fact, this contemporary polemic, seen as a dialectical relationship between these two approaches, shapes the very conditions within which actors operate and struggles occur. Security, as

¹⁷ See, art. 1.

the third emerging term of anti-trafficking dialectical oppositions, has been increasingly prominent in the post-9/11 era. Its prominence draws on the construction of insecurity, on the re-articulation of risks and threats. Such conflicts that give ‘birth’ to ‘new’ articulations are typical in that they tend to silence structural injustices.

By silencing possible alternative solutions, by silencing possibilities of knowledge and by silencing the potential modes of existence for possible subjects, the main product of anti-trafficking is to secure its reproduction. The potential for solutions that challenge the contemporary criminalisation–security–human rights solutions to trafficking remains concealed, and the supremacy of the contemporary anti-trafficking realisation remains intact. By this I mean that the problem with theorising contemporary anti-trafficking is that anti-trafficking has laid down the foundations for the perpetuation of its processes, and has masked any alternative conceptualisations.

Key Studies in Trafficking: ways to address the problems

This section examines how the literature has engaged with the question of anti-trafficking, and is particularly concerned with the reading of diverse theoretical approaches to trafficking in women and their ideological, narrativising modes. At this stage, and to facilitate the present discussion, I should clarify that by ‘narrativisation’, as one would expect, reference is made to the process through which narrative form is given to anti-trafficking accounts. This process matters because by telling stories, through legal, academic or other texts, ‘social and political arrangements may be made to seem worthy of respect because they are venerable’; these stories then function as a form of legitimation in a historical

context.¹⁸ In an effort to facilitate further the examination of the conventional approaches to the subject, I advance two categories: ‘interventionist’ and ‘correlation and dependence’. As these two categories indicate, the current literature is not just about offering solutions to the trafficking problem; it creates a series of correlations and assumptions about trafficking and its risks.

The interventionist category includes authors who have identified the purpose behind the study of trafficking in women as an ongoing methodological and epistemological effort to establish a better understanding of it as a criminal phenomenon and suggest possible solutions to combat it.¹⁹ Many contemporary investigations have set out to offer interventionist proposals and, with their contributions, to correct or improve available data and the proposals (or action plans) put forward so far. These interventions broadly fit under the concepts of criminalisation and human rights or a combination of the two. Even though these two approaches initially seem to be competing with each other, under closer examination they open up a third space of promised ‘peace’, security and balance.

The second category of narrativising anti-trafficking highlights the connections between trafficking and other criminal (or regulated, social) phenomena.²⁰ In fact, authors have been searching for correlation and dependence between these diverse phenomena. Typically, the modes of theorising trafficking

¹⁸ See, S Marks, *The Riddle of All Constitutions. International Law, Democracy, and the Critique of Ideology* (Oxford & NY: Oxford University Press, 2000), 19-20.

¹⁹ See, e.g., S Kara, *Sex Trafficking: Inside the Business of Modern Slavery* (NY: Columbia University Press, 2009); A T Gallagher, 'Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the US Trafficking in Persons Reports', *Human Rights Review* 12, no. 3 (2011), 381; Y V Tverdova, 'Human Trafficking in Russia and Other Post-Soviet States', *Human Rights Review* 12, no. 3 (2011), 329.

²⁰ See, e.g., C van den Anker, 'Trafficking and Women's Rights: Beyond the Sex Industry to 'Other Industries'', *Journal of Global Ethics* 2, no. 2 (2006), 163; W H Wong, 'Is Trafficking Slavery? Anti-Slavery International in the Twenty-First Century', *Human Rights Review* 12, no. 3 (2011), 315; K Dunlop, 'Human Security, Sex Trafficking and Deep Structural Explanations', *Human Security Journal* 6, no. 3 (2008), 56; B Anderson and R Andrijasevic, 'Sex, Slaves and Citizens: The Politics of Anti-Trafficking', *Soundings: A Journal of Politics and Culture* 40, no. 11 (2008), 135; R Andrijasevic and B Anderson, 'Anti-Trafficking Campaigns: Decent? Honest? Truthful?', *Feminist Review* 92, no. 1 (2009), 151.

under this category revolve around the categories of slavery, migration, organised crime, corruption and sex work. The theoretical thinking behind threats has infiltrated this second category of anti-trafficking literature. Influenced by our contemporary mediatised era and communicated through informatised and interlinked social relations, anti-trafficking accounts reconstruct anti-trafficking in the face of some real or perceived (particular or generalised) threat. Threatening some sort of constructed social order, then, incites fear. In turn, fear incites scapegoating. Insofar as threats are materialised – embodied – specific persons are designated as scapegoats in these anti-trafficking stories and as such they are said to embody a moral threat in some intrinsic fashion.²¹

Under both these patterns of narrativising trafficking, it is easy to see that the accounts have been sensitive to the specificities of ethnicity and geographic locale, and therefore, important critiques have reflected on issues of poverty and the inequalities of class, gender and race. To achieve a critical understanding of these key analyses, this section aims to investigate how the accounts falling under the first category brush against the second, and what type of intertwined workings communicate their final products of anti-trafficking knowledge.

Modes of Anti-Trafficking: interventionism between criminalisation and human rights

Under the first category of interventionist narratives, prevailing insights have depicted trafficking as a threat to international order. Even when focusing on particular national contexts the narratives draw on the presumption of universality

²¹ R N Lancaster, *Sex Panic. And the Punitive State* (Berkeley & London: University of California Press, 2011), 23.

as an underlying force sustaining the representation of trafficking as a threat to global justice. To this extent they articulate clearly the dilemma ‘criminalisation or human rights?’, and even though they acknowledge that most of the contemporary models are in favour of criminalisation, they finally revert to a ‘third way’ proposal. Besides, it is not a coincidence that these accounts are chronologically linked to the implementation of legal developments and therefore their intervention is influential to the extent that it aims to affect the morphology of the emerging anti-trafficking structures.

An illustrative example of this first category is the analysis offered by Liz Kelly and Linda Regan of the anti-trafficking regime that was set up as a response to the problem of ‘trafficking in women for sexual exploitation in the UK’.²² The authors assess the extent to which trafficking became a serious threat in the UK national context and they underline the problems linked to finding accurate estimates, even when utilising a wide range of data sources and research techniques, mainly due to methodological and other existent discrepancies. They maintain that their ultimate target is to actually evaluate the law enforcement responses in the UK, and as such, their conclusive remarks aim to show that the current criminalisation approach has little to offer, particularly since the current model fails to tackle all (criminal and broader social) aspects of trafficking: ‘women are trafficked into existing sex industries, and from countries where there is either a strong local sex industry or where economic and social structures have broken down and women are experiencing increasing inequality and marginalisation’.²³ They thus put forward their critique, according to which the

²² L Kelly and L Regan, *Stopping Traffic: Exploring the Extent of, and Responses to, Trafficking in Women for Sexual Exploitation in the U.K.*, C F Willis ed. (London: Policing and Reducing Crime Unit, Home Office, 2000).

²³ *Ibid.*, 37.

current framework of mere criminalisation is actually doomed to be ineffective. Their analysis shows that any future shift in policy should not abandon the idea of criminalisation, but it should also reflect human rights principles. Through the language of human rights they propose that the intensification of monitoring sex work by law enforcement agencies would be beneficial, as it would ‘ensure the absence of coercion and violence with respect to local adult women and men’.²⁴

Consequently, Kelly and Regan’s proposal opens up a space for further regulation and intensification of controls, based on the combination of intelligence and human rights principles as a balanced approach. At the same time, they condemn strategies of increased detention at border points, since ‘detecting and removing women may have the unintended impact of increasing demand,’²⁵ and hence, may increase victimisation. Balancing costs, then, appears to be the ultimate objective, and the most appropriate way for doing so is the possibility of a new approach that would combine the vocabularies of human rights and intelligence.

Similarly, through the subsequent inquiry focusing on trafficking in persons in Central Asia, conducted in 2005,²⁶ Kelly, taking into consideration regional weaknesses, foresees the intensification of the problem. Arguably, to prevent that dim, ‘no future’ prediction from becoming the global future, the author puts forward a series of recommendations on counter-trafficking, focused on building the capacity of (and spurring alliances among) local communities, civil society and national authorities to combat trafficking, as well as on improving identification of victims. Kelly’s suggestions shift the focus from governmental

²⁴ *Ibid.*

²⁵ *Ibid.*, 38.

²⁶ L Kelly, 'Fertile Fields: Trafficking in Persons in Central Asia', (Vienna: International Organisation for Migration, 2005).

criminalisation to the possibility of embracing diverse actors in the terrain of surveillance and law and order, as a strategy to challenge governmental corruption. The narrative substantiates what exploitation might mean in this context and reiterates that there are specific universal commitments, which once enforced by national and local governments, will then set in motion protection, prosecution and prevention. Consequently, exploitation and trafficking could be treated in a more effective way.

The chronological order of events affects to a decisive degree the anti-trafficking narratives, their structure and scope. Anthony DeStefano's assessment of US anti-trafficking policy is exceptionally transparent on that front. The author explains that in the post-9/11 environment, 'law enforcement had many competing, pressing, and more politically popular areas of concern, including terrorism, the activity of drug cartels, and illegal migration generally'.²⁷ The Clinton administration originally designed their criminalisation-centred policy around the three Ps: prosecution, protection and prevention, while the Bush administration essentially worked on 'those ideals, fitting its abolitionist aims into the prevention category'.²⁸ Elaborating on the merits of criminalisation, DeStefano upholds that perhaps the less problematic area involving measurement of conduct is that of prosecution. Since the introduction of the US Trafficking Victims Protection Act of 2000 (TVPA), governments have undertaken numerous actions to meet the law enforcement requirements, and agencies have increased their volume of reporting on such programs.²⁹ Therefore, gradually but steadily since the years 2002–2003, governments have documented a rise in trafficking investigations, the courts have charged more defendants and, overall, more

²⁷ A M DeStefano, *The War on Human Trafficking* (NJ: Rutgers University Press, 2007), 130.

²⁸ *Ibid.*, 128.

²⁹ TVPA, *Victims of Trafficking and Violence Protection Act* (2000).

convictions have been reported. These descriptions justify the author's overarching claim that the narrative of anti-trafficking is a narrative of 'war on trafficking'.

Along these lines of criminalisation, and toward casting a wide net of offences, important arguments have been offered in support of expanding criminalisation based on a harm-reduction model. In some instances this model has been interpreted as the blanket prohibition on the purchase (or on the broader commercialisation) of sex, not only with the view to tackle trafficking.³⁰ Catharine MacKinnon's thesis, for instance, on 'Pornography as Trafficking' draws on the Beijing Platform for Action (1995), which directs governments to 'take appropriate measures to address the root factors ... that encourage trafficking in women and girls for prostitution and other forms of commercialised sex' and to protect their rights through both criminal and civil measures.³¹ Through their investment in criminalisation, many of the narratives have expressed their faith in criminal law, even though they have remained vigilant to the possibility that criminal law may generate unintended consequences and bring opposite results.³²

This emphasis on criminalisation and the need to 'combat trafficking' has been considered as puzzling in many respects. Julia O'Connell Davidson and Bridget Anderson put forward a two-fold problematisation relevant to the usefulness of prioritising criminalisation approaches.³³ Initially, they suggest that

³⁰ See, J Bindel, 'False Distinctions between Pornography, Prostitution and Trafficking' in *Trafficking and Women's Rights*, C Van Den Anker and J Doomernik eds. (London & New York: Palgrave Macmillan, 2006), 138.

³¹ C MacKinnon, 'Pornography as Trafficking', *Michigan Journal of International Law* 26(2005), 993, 1009. Fourth World Conference on Women, Sept. 4-15, 1995, *Beijing Declaration and Platform for Action*, paragraph 118, U.N. Doc. A/CONF.177/20/Rev.1.

³² See, M M Dempsey, 'Sex Trafficking and Criminalisation: In Defense of Feminist Abolitionism', *University of Pennsylvania Law Review* 158, no. 6 (2010), 1729, 1772.

³³ J O'Connell Davidson and B Anderson, 'The Trouble with "Trafficking"' in *Trafficking and Women's Rights*, C Van Den Anker and J Doomernik eds. (London & NY: Palgrave Macmillan, 2006), 11.

it is perhaps the concept of ‘trafficking’, with its long history of legal regulation, influenced by feminist abolitionist struggles against the issue of ‘white slavery’, which helps us identify the issues at stake. Therefore, they maintain that under the umbrella term ‘trafficking’, a series of human rights abuses is being acknowledged that would otherwise go unrecognised. This first point is of wide application and value, and will be further elaborated in the next section, which looks into the second mode of narrativising trafficking. Their second point, according to O’Connell Davidson and Anderson, has an underlying cynical tone, since they see that behind the criminalisation language of ‘use-value’, ‘harm-reduction’ and so forth, there are strong financial incentives in increased resources made available for border control and anti-trafficking law enforcement activities. To the extent that humanitarian and civil society actors are prepared to engage with trafficking among other issues in their broad human rights agenda, then human rights discourses could also be hijacked to serve the purposes of criminalisation.

Moreover, as long as trafficking has been securitised and framed as an issue linked to international security risks, criminalisation is then a useful political tool in the arena of international affairs. Mark Miller and Gabriela Wasileski offer a valuable account of the multiplicity of sanctions and different shades of criminalisation.³⁴ In their analysis, not only are perpetrators to be punished for trafficking offences but states are also to be chastised and disciplined for not taking legal action to stop human trafficking. They use Greece as a case study, exemplary of the international pressure exercised upon the emergence of anti-trafficking structures, and they maintain that it was under the shadow of US sanctions, such as the loss of US military and economic assistance, that the Greek

³⁴ M Miller and G Wasileski, 'An Underappreciated Dimension of Human Trafficking: Battered and Trafficked Women and Public Policy', *Human Rights Review* 12, no. 3 (2011), 301.

specialised anti-trafficking forces were formed. By praising the benefits of criminalisation, the commentators suggest on the one hand that, due to the differences in the ways that states see and deal with ‘threats’, and due to the important lack of a comprehensive network that addresses reparation and victims’ support, criminalisation and prevention plans still remain the single sound path to the ‘new security agenda’. On the other hand, they acknowledge the fact that further efforts should be made in the area of domestic violence and the broader area of violence against women, if states are to bring real anti-trafficking results.

For some observers the starting point is the opposite to criminalisation concerns. A human rights approach is better, they argue, because it shifts the weight from harsher punishments to positive obligations on states, which involve the protection of victims and the taking of effective steps to prevent trafficking.³⁵ Obokata’s analysis is exemplary in highlighting factors that have a negative impact on the enjoyment of human rights. The fact that poverty has a negative impact on human rights entitlements is explicit in the freedom from want in the Preambles of the Universal Declaration of Human Rights 1948 (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and is also recognised by UN human rights mechanisms such as the Commission on Human Rights, the Committee on Economic, Social and Cultural Rights and the Independent Expert on Human Rights and Extreme Poverty.³⁶ On a practical level, therefore, poverty affects the rights of individuals to work, food, housing, and to an adequate standard of health and education. It also affects the enjoyment of civil

³⁵ See, S Drew, *Human Trafficking - Human Rights. Law and Practice* (London: Legal Action Group, 2009), 4-5.

³⁶ For a thorough analysis of the relevant developments, see Obokata, (2006), 122-3.

and political rights such as life, liberty and security.³⁷ Consequently, inasmuch as poverty along with various forms of discrimination and inequality are the interlinked causes of trafficking, then several human rights issues arise during the process of trafficking, to the extent that this process has been depicted in the legal texts.³⁸ From recruitment, transportation and arrival in the place where women are forcibly recruited to instances of torture and inhuman and degrading treatment, the human rights vocabulary has been successful in engaging with a wide variety of concerns linked to trafficking.

The issue that arises, however, as the focal point of contestation, concerns non-state actors' (such as organised criminal groups) accountability under international human rights law. The traditional view is that states are the bearers of obligations under international law for taking on direct rights and responsibilities. As such, states can be held legally accountable under international human rights law, while non-state actors cannot. This point has been criticised as considerably outdated,³⁹ however, it supports the view that even through the lens of human rights, law enforcement is repositioned as a matter of priority. In this respect, on the one hand a human rights approach has much to contribute, providing meaningful and nuanced considerations of what drives trafficking in women in our particular historical context.⁴⁰ On the other hand, it suggests that human rights principles can only be applied and enforced through prosecution and punishment, re-inscribing the underlying logic of criminalisation.

To sum up, from the concepts of 'increased effectiveness' and 'achieving balance' to the 'war on trafficking', criminalisation has been offering a valuable

³⁷ *Ibid.*

³⁸ See, e.g., L Fergus, 'Trafficking in Women for Sexual Exploitation', (Melbourne: Australian Centre for the Study of Sexual Assault, June 2005).

³⁹ Obokata, (2006), 128-31; Drew, (2009), 4-5, 41-92.

⁴⁰ Drew, (2009).

vocabulary, constitutive of the anti-trafficking agenda. With the addition of human rights principles, it has been argued that states could fulfil their security and justice goals through a balanced approach. The crafting of this balance then should be the consequence of careful calculations, political weight-shifting and planning. I will now examine how ‘correlation and dependence’ anti-trafficking stories offer a complementary layer of analysis based on the economic-oriented vocabulary of calculations, quantity, precision and planning. This added analytical layer then cuts through the initial binary construction of criminalisation–human rights, and transfers security from a discursive periphery to the centre of anti-trafficking.

Modes of Anti-Trafficking: correlation and dependence

Under this category of trafficking literature, the focus is on the elaboration of a complex network of interlinked threats. Among the most prominent critiques, Vanessa Munro’s thesis on anti-trafficking action draws on comparative research and suggests that the construction and operation of national anti-trafficking regimes should be understood through the multi-lens offered by a complex agenda of issues that are correlated, if not interdependent.⁴¹ As agenda items, the most influential frameworks that compete in the antagonistic struggle of gaining attention and priority, one can observe issues of ‘prostitution policy, immigration, social exclusion, ... globalisation, labour relations and the regulation of sexuality’.⁴² The issue of trafficking then provides a valuable terrain for a closer

⁴¹ V Munro, 'Stopping Traffic? : A Comparative Study of Responses to the Trafficking in Women for Prostitution ', *British Journal of Criminology* 46, no. 1 (2006), 318.

⁴² *Ibid.*, 318.

examination of how differences in legal culture, in interests and values, provide the context for exploring differences in the use of global law.⁴³

Munro's thesis then aims to examine the extent to which these different agendas have influenced the construction of domestic legal regimes. For Munro, the underlying tension between the competing agendas of immigration, human rights, policing and social services, and international imperatives has resulted in their 'imperfections' in accurately defining and therefore responding effectively to the diverse legal issues at stake. In particular, by providing vague definitions and abstract targets, an odd mixture of diverse countries with very different ways of conceptualising and responding to the problem of trafficking has been set up.⁴⁴ The path to justice is then compromised not by the domestic responses *per se*, but by duplicitous international responses, reflected in the UN 2000 Anti-Trafficking Protocol, which permit their provisions to be manipulated in line with domestic agendas. Therefore, beyond international and regional level responses, according to Munro our main efforts should be focused on the domestic stage, as this is the actual setting of the correlation, dependence or battle between competing agendas.⁴⁵

Threats: organised crime, smuggling, corruption, illegalised migration

On these social issues, which appear to be interlinked, Munro explains, diverse views have accounted for precious insight, particularly in linking trafficking, organised crime and illegalised migration.⁴⁶ Besides, at a juridical level, it is

⁴³ See, D Nelken, 'Human Trafficking and Legal Culture', *Israel Law Review* 43, no. 1 (2010), 479.

⁴⁴ Munro, (2006); V Munro, 'Of Rights and Rhetoric: Discourses of Degradation and Exploitation in the Context of Sex Trafficking', *Journal of Law & Society* 35, no. 2 (2008), 240.

⁴⁵ Munro, (2006), 332.

⁴⁶ From the terms available to describe movement of people across states, I use the terms 'illegalised migration' and 'illegalised migrant(s)' to recognise the significance of the legal and political apparatus that defines who is to be excluded or included at the border, see L Weber and S

within the framework of the UN Convention on Transnational Organised Crime that the UN 2000 Anti-Trafficking Protocol has been institutionalised. In the area of organised crime, then, the most dominant accounts in much of the contemporary literature have identified significant ties between organised, mafia-type, transnational organisations and trafficking in women. Being located in the aftermath of the post-Soviet Union era, the narratives convey the threatening image of criminality terrorising the rule of law.⁴⁷ To reinforce that view the authors draw direct lines between state corruption and underground criminality. Worse, in most accounts, the ‘merchandise’ that is trafficked or smuggled varies from drugs, cars and cigarettes to women and human organs, accompanied by the justification of a generalised moral decline that operates within states and erodes their legal and social foundations.⁴⁸

Pertinent analyses utilise a merged vocabulary, offering little distinction between the issues of trafficking, smuggling, organised crime and migration.⁴⁹ Expressed views maintain that emerging trends involve the increasing appearance of criminal groups from Eastern Europe, the Balkans, Asia or Latin America,⁵⁰ areas that come into view as hubs of organised crime and trafficking.⁵¹ Alan Wright’s commentary, for instance, suggests that smuggling and human trafficking are important parts of organised crime operations, insofar as state regulations fail to adequately regulate the mobility of labour and take over the

Pickering, *Globalisation and Borders. Death at the Global Frontier* (NY: Palgrave Macmillan, 2011), 4-5.

⁴⁷ See, e.g., M Glenny, *Mc Mafia. Crime without Frontiers* (London: The Bodley Head, 2008), 27-31, 106; C McGill, *Human Traffic, Sex, Slaves and Immigration* (London: Vision, 2003).

⁴⁸ For a critical assessment of moral crusades in the context of sex trafficking, see, R Weitzer, ‘Social Construction of Sex Trafficking: Ideology and Institutionalisation of a Moral Crusade’, *Politics and Society* 35, no. 3 (2007), 447.

⁴⁹ A Wright, *Organised Crime* (Devon & Oregon: Willan Publishing, 2007).

⁵⁰ See, e.g., McGill, (2003).

⁵¹ Wright, (2007), 92-9.

control of migration patterns.⁵² In this respect, not only is trafficking to be viewed as a problem, but free movement of people is also framed as producing equally problematic outcomes. This type of homogenisation thus fosters ongoing distinctions between ‘us’ and ‘them’ (nationals and Others) and implicitly legitimates racist attitudes.⁵³ Moreover, framed around the existence of criminal networks, trafficking is seen as being dependent upon other illegalised enterprises, since ‘[m]any of the groups involved in smuggling and trafficking activity have often diversified their criminal operations, combining smuggling with other organised crime, illegal commodities and services’.⁵⁴ These narratives of dependence, then, often come to explain or even justify disciplinary state responses, involving military and paramilitary operations.⁵⁵

Other accounts, however, have been sceptical about merging distinct social phenomena, in the context of global governance, and have offered substantive comments on the construction of the ‘organised crime’ knowledge and its inefficiencies. Georgios Papanicolaou’s analysis of prohibition regimes, for instance, maintains that the regime institutionalised by the UN Convention on Transnational Organised Crime and its additional protocols on human trafficking and smuggling should be criticised on a dual basis.⁵⁶ Firstly, the contemporary legal developments offer a distinct break from previous anti-trafficking instruments, such as the League of Nations 1933,⁵⁷ and the United Nations Convention of 1949.⁵⁸ To the extent that the new legal regime ‘rests on a novel

⁵² *Ibid.*

⁵³ McGill, (2003), 208-9.

⁵⁴ Wright, (2007), 95.

⁵⁵ See the relevant analysis put forward by Alan Wright, *ibid.*

⁵⁶ G Papanicolaou, 'The Sex Industry, Human Trafficking and the Global Prohibition Regime: A Cautionary Tale from Greece', *Trends in Organised Crime* 11, no. 4 (2008b), 379, 381-2. United Nations Convention against Transnational Organised Crime, A/RES/55/25 (2000).

⁵⁷ 150 LNTS 431, (1933).

⁵⁸ 96 UNTS 271, (1949).

fusion of the notion of (transnational) organised crime and the issues of prostitution, sex trafficking and illegal migration',⁵⁹ it becomes clear that more emphasis is placed on the criminalisation of illicit economic activities and the regulation of migratory flows. Secondly, Papanicolaou explains that this project to install the contemporary anti-trafficking regime lacks any credible threat assessment. Published statistical information appears scattered, unreliable and incompatible across publishing institutions. Even when valid statistical data are available, these are inadequate, since they lack concrete methodological design, with the indicative categories of gender, ethnicity and age often missing. Similarly, Sappho Xenakis has shown that anti-organised crime policy in Greece has emerged under the operation of a particular elite's incentives (political and diplomatic), and that the weak relationship between threat assessment and anti-organised crime policy can in fact be interpreted as a governance device.⁶⁰

The construction of threats then oversees much of the 'correlation and dependence' anti-trafficking stories. The criminological foundations of this construction, however, are not concretely based on scientific and credible threat assessment criteria, even to the extent that this assessment could be used as a justification strategy. Claudia Aradau's thesis on anti-trafficking, situated in a security continuum linking illegal migration, drug trafficking, terrorism and organised crime, is exemplary of the multiple discursive functions embedded in anti-trafficking narratives. The construction of inter-related threats, according to Aradau, has been a post-Cold War political attempt to re-invent threats *in absentia* of the communist enemy. Within this fear-construction climate, Aradau observes that two apparently incompatible discursive regimes are entangled and feed upon

⁵⁹ Papanicolaou, (2008b), 381 [emphasis omitted].

⁶⁰ S Xenakis, 'International Norm Diffusion and Organised Crime Policy: The Case of Greece', *Global Crime* 6, no. 3&4 (2004), 345, 365-6.

each other. On the one hand, it is the human rights vocabulary (partly renamed as human security) protecting particular subjectivities. While, on the other hand, it is the securitisation discourse, and the discursive construction of ‘threats against security’, targeting the very same subjectivities that are protected under human rights.⁶¹

Security viewed as the juxtaposition of human rights and criminalisation discourses is, therefore, entwined with the project of manufacturing threats, forming, at a strategic level, consecutive knots on the stick of penal governance. On a practical level, if it is indeed assumed that such a project can be sustained, clearly there must be either a single way or, more likely, a set of practices through which threats can be traded, spread, diffused – globalised. Here the evidence is more mixed and dispersed. Without making any claims about the comparative detailed exploration of the conditions that make possible, or delimit, the spread of specific policies and practices sustaining the construction of threats, my reflections on contemporary literature are that across countries (which ‘import’ threats) quite significant variations in law enforcement philosophies and practices can be found.⁶² Similarly, one should expect a great variation in the conceptualisation of human rights as well. Perceptions of security are then contingent upon geographic locations and the ways that the issues of organised crime,⁶³ sex work⁶⁴ and migration⁶⁵ are being conceptualised and consequently utilised, sharpening the

⁶¹ Aradau, (2004).

⁶² See, e.g., T Newburn, 'Diffusion, Differentiation and Resistance in Comparative Penalty', *Criminology & Criminal Justice* 10, no. 4 (2010), 341.

⁶³ UNODC, 'Trafficking in Persons: Global Patterns', (April 2006), 68-71.

⁶⁴ For a commentary on sex work in Africa and a view on the specificities of the field see L R Mberengwa and P G Ntseane, 'Perspectives of Women Sex Workers About Street-Level Prostitution in Botswana' in *Global Perspectives on Prostitution and Sex Trafficking. Africa, Asia, Middle East, and Oceania*, R L Dalla, et al. eds. (NY, Toronto & Plymouth: Lexington Books, 2011), 3-16.

⁶⁵ See, e.g., R V Magee, 'Slavery as Immigration?', *University of San Francisco Law Review* 44, no. 2 [University of San Francisco Law Research Paper No 2010-30] (2009).

focus on criminalisation, security and human rights in the formulation and implementation of transnational governance.

As anti-trafficking constructions unravel in the existing literature, it is evident that the initial dichotomy observed between a criminalisation and human rights approach to trafficking breaks down under the force of security constructions. Consequently, representations of security predicaments justify the enforcement of the state's punitive panoply.

More Threats: sex, slavery, subjectivities

Yet it is not only trafficking that is at stake. Although much of the legal analysis has focused on the punishing conduct, on the security predicaments and on the promising human rights emancipatory reforms, it is unfounded to assume that these narratives have a single, juridical aim and that their force may remain limited to the legal sphere. On the contrary, it is these very narratives to 'combat' trafficking in women that also entail analytical stories about women. As established in the previous section, these stories are rather complex; they talk about women and yet they describe the anxiety of crime, sexual fluidity and movement. From post-socialist countries to Western Europe, from the Global South to the Global North, to follow trafficking stories is also to follow gender expressions crossing borders. As Ursula Biemann describes this complex intersection of gender and constant mobility in trafficking, women are 'female geobodies in the flow of global capitalism'.⁶⁶ In this interaction between gender locations and mobility patterns, 'the existence of these women is marked by

⁶⁶ U Biemann, 'Remotely Sensed: A Topography of the Global Sex Trade', *Feminist Review* 70, no. 1 (2002), 75, 75.

constant mobility, their time is scheduled, their space is confined, civil rights and sexual governance are suspended'.⁶⁷ It is self-evident then that trafficking mobilities are threatening.

It has been frequently argued that trafficking is linked to a series of correlated and dependent threats; that is how narratives are normalised, naturalised and established as forms of knowledge. This is also how particular forms of trafficking become recognisable, and importantly, how these forms then generate a series of responsive institutional structures that have the potential (or at least so promise) to 'end' trafficking. The crime of trafficking is hence a social product reduced to and reflected by intelligible terms.⁶⁸ Similarly, the social category 'women' (perhaps based on the identification of a single biological trait but mostly defined by the values assigned to that material/bodily surface) also becomes intelligible through the readings of these same texts.⁶⁹

The main question that emerges then is how women become intelligible in anti-trafficking literature. Or reversing this question: what kind of subject-formations has anti-trafficking assumed? From these established representations of women, which are more problematic than others and why? The common way of addressing the question of subjectivity in anti-trafficking gives the impression that anti-trafficking mobilised static gender norms. These norms seemed to care only for those 'who present themselves, or who are exhibited, as victims'.⁷⁰ The regulatory regime gave strict descriptions of victimhood and invested a great deal of force in applying these gendered descriptions. These are not only evident in the

⁶⁷ *Ibid.*, 86.

⁶⁸ See, M Foucault, *Abnormal. Lectures at the College De France 1974-1975* (London & NY: Verso, 2003), 138-9.

⁶⁹ See, J Butler, *Bodies That Matter. On the Discursive Limits of 'Sex'* (London & NY: Routledge, 1993), 93-5.

⁷⁰ A Badiou, *The Communist Hypothesis* (London: Verso, 2010), 2.

representation of the problem through legal texts or media images, but also in institutional structures that have the potential to generate diverse solutions to the problem. In the paragraphs that follow I utilise the narratives that consider the dichotomy between sexual slavery and sex work. This binary articulation, I argue, registers not only the established legal approaches to the problem, but also the constraining representations of ‘women’.

Trafficking of Women, Slavery of Women

As contemporary dominant narratives hold, awareness of trafficking in women first began to spread in the late 1980s and early 90s. It was then that the first stories of trafficking in women were identified as such by law enforcement agencies.⁷¹ Most anti-trafficking stories thereafter convey the antithesis between past and present forms of slavery, and also a disapproval of the modern forms, triggered by the underlying expectation that the current legal and social standards are prohibitive of crimes imposed under the conditions of slavery.⁷² The institutionalisation of the Victims of Trafficking and Violence Protection Act 2000,⁷³ mentioned earlier, defined the problem of trafficking and made it officially recognisable as the modern form of slavery, providing paradigmatic definitions of ‘when the powerful take advantage of the weak’.⁷⁴

According to Reilly McDonnell, the legislative developments that established trafficking as a modern form of slavery have been remarkable in many respects.⁷⁵

⁷¹ J Leighton, 'My Life as a Slave in America' in *Enslaved. True Stories of Modern Day Slavery*, J Sage and L Kasten eds. (London & NY: Palgrave Macmillan, 2006).

⁷² See, e.g., D Batstone, *Not for Sale. The Return of the Global Slave Trade - and How We Can Fight It* (NY: Harper Collins Publishers, 2007).

⁷³ TVPA, (2000).

⁷⁴ Batstone, (2007), 77.

⁷⁵ M R McDonnell, 'Case Study of the Campaign to End 'Modern-Day Slavery'', (US Coalition for Child Survival, 2007), 1-10.

Firstly, the campaign to end ‘modern-day slavery’ provided a vocabulary that could keep the process alive/‘organic’, through words, images and the imaginary linkage between past and present, as the underlying message of the campaign had a shock value: ‘there is modern-day slavery – more than ever existed before – and there is something that can be done about it’.⁷⁶ Secondly, the ideological apparatus that supported the campaign had the potential to be globalised, and therefore, the initiatives to pursue anti-trafficking ends could also be globalised. From evangelical Christians, to human rights organisations and feminist groups, diverse interests were to be mobilised towards the compelling vision of ending modern-day slavery.⁷⁷ Thirdly, trafficking survivors, according to Reilly McDonnell, were located by members of the campaign:

These were women from Russia, Nepal, Mexico and Thailand who were willing to come to the United States to share their devastating and compelling stories. The hearing attracted dozens of legislators and staffers as well as representatives from every major media outlet. This was a major turning point, as it ‘cemented fledging bipartisan bonds between faith-based organisations, women’s rights groups, children’s groups, human rights groups, and others, which eventually led to the passage of the law’.⁷⁸

Besides, even if in principle the Victims of Trafficking and Violence Protection Act 2000 conveys a gender-neutral image of the problem, its explicit reference to the ‘international sex trade’ as the dominant form of exploitation implicitly engenders the relevant representations.⁷⁹ Also, the examples used by the act draw on women: ‘[f]or example, the low status of women and girls in some societies contributes to the growing trafficking industry by not valuing their lives as highly as those of the male population’.⁸⁰

⁷⁶ *Ibid.*, 2.

⁷⁷ *Ibid.*, 1.

⁷⁸ *Ibid.*, 4.

⁷⁹ TVPA, (2000), 1.

⁸⁰ *Ibid.*, 2.

The workings of the social category of ‘women’ in the context of anti-trafficking are then more difficult to decode than they initially appear to be, and the analytical task, proclaimed as easy, appears to be harder, against one’s expectations. Encouraged by Stephanie Limoncelli’s influential thesis,⁸¹ in order to gain some proximity to the discursive functions of ‘women’ as a constructed social category, we should seek out the emergence of trafficking in women and try to untangle the issues associated to it. Particularly the political concepts that construct the conditions for women’s victimisation, and the conception of the ‘war on trafficking’ as a response to the modern-slavery problem, as these become intertwined in broader campaigns relevant to violence against women and within a ‘zero tolerance’ environment. This is a critical task, under the condition that the relevant project really attempts to identify a few details that arise in the interstices between the broad brush strokes of trafficking literature.

Being interested in these details, Limoncelli excavates the historical narrative, according to which trafficking in women actually constitutes the very first instance where both the structures of international lawmaking and the content of the rules of international law make explicit reference to women’s interests. Suffrage, education, and married women’s citizenship also emerge during the same period. However, a clearly articulated discourse on rights and entitlements is not prominent in international developments or easily detectable in national structures.⁸²

⁸¹ Insofar as I can reflect on her main argument, Limoncelli maintains that states have attempted to control the boundaries of empire and nation through gendered and racialised sexual relations. Consequently, *sex trafficking* started being a problem in the late 1800s, when prostitution, in its modernised and bureaucratised form, became migratory. See, S Limoncelli, *The Politics of Trafficking: The First International Movement to Combat the Sexual Exploitation of Women* (Stanford: Stanford University Press, 2010).

⁸² *Ibid.*, 2-3.

Borrowing much of the terminology from the movement to combat slavery, the issue of trafficking is then depicted as a matter of ‘abolishing prostitution’ in the particular context of migration for sexual labour.⁸³ This dynamism is hence, on the one hand, a product of enforcing state regulations and harmonising enforcement across states, since up to that stage, ‘ages of consent for sexual relations varied tremendously across countries and in colonies, so traffickers could recruit young girls “legally” in one country and move them to another with a higher age of consent’.⁸⁴ On the other hand, it suggests the potential for a more organised women’s rights movement influenced by the emancipatory anti-slavery discourse – to the extent that it links imperialism, colonialism and the abuse of women in prostitution.⁸⁵

At this early anti-trafficking stage, priority is given to narratives of ‘emancipation and liberation’ against slavery in a broader sense, rather than to the social rights and the empowerment of women specifically.⁸⁶ The materialisation of ‘women’ as a social category comes later, and therefore, the first anti-trafficking struggles have a rather distinct political inflection compared to contemporary structures. Besides, this is an imperative reminder that the issues at stake involve the sexual victimisation of particular subjectivities.⁸⁷ Therefore, as Hilary Charlesworth et al. have noted, ‘if women’s interests are acknowledged at all, they are marginalised’.⁸⁸

⁸³ *Ibid.*, 45-7.

⁸⁴ *Ibid.*, 47.

⁸⁵ *Ibid.*, 55.

⁸⁶ See, C Law, *Suffrage and Power. The Women’s Movement, 1918-1928* (London & NY: I.B. Tauris Publishers, 1997), 3-10.

⁸⁷ For the importance of gender in the current subject-construction see, S. Winter and M. King, ‘Well and Truly F*: Transwomen, Stigma, Sex Work, and Sexual Health in South East Asia’ in *Global Perspectives on Prostitution and Sex Trafficking. Africa, Asia, Middle East, and Oceania*, R L Dalla, et al. eds. (NY, Toronto & Plymouth: Lexington Books, 2011), 139.

⁸⁸ H Charlesworth, C Chinkin, and S Wright, ‘Feminist Approaches to International Law’, *American Journal of International Law* 85, no. 1 (1991), 613, 614-5.

To submit further critical evidence of marginalisation, the articulation of the trafficking-specific victimisation of women already draws on some preliminary typifications of particular modes of ‘exploitation’ and ‘violence’ that the current discussion will be confined to grasp (– in a sense that dominant articulations offer limited access to the relevant categories). This is a restricted linguistic area within which a transnational condition is named as ‘the’ problem, as the exceptional, exploitative circumstances of victimisation. In being thus constructed, the articulations of rights can only capture limited conditions, since the normativised every-day unequal arrangements remain intact.

To illuminate further the conditions of anti-trafficking’s early history, Limoncelli’s thesis shifts the lens to the limitations of the evolution of the women’s movement. It elaborates on the criticism that the movement was limited as it arised out of Christian missionary and charitable work and within the regulatory ethos of the mid-1800s imperial states. Among the emergence of international humanitarian networks, Limoncelli stresses the importance of specific prominent figures that were to identify with the core principles of the campaign, such as Henri Dunant, founder of the International Red Cross, who contributed to the development of the Geneva Convention of 1864. However, Limoncelli explains that steps taken during that period were influenced by the galloping ideologies of globalisation and imperialism. It is this exact period that Martti Koskenniemi has identified as the emerging moment of international law, as part of ‘liberal entrenchment in Europe as the clouds of nationalism, racism and socialism were rising in the political horizon’.⁸⁹

⁸⁹ Koskenniemi, (2011), 152.

The reproduction then of gender stereotypes, constructing on the one hand women's disempowerment at an official level, and articulating inequality on the other, are also to be found within the gentle civilising project. These ideological mechanisms were placed at the heart of the abolitionist campaigns and even the invention of the term 'white slave trade' was the product of the 1870s liberal feminist abolitionist manifestations:

Beginning in 1875, reformers in Great Britain founded what would eventually become the liberal feminist International Abolitionist Federation, which worked to abolish the state regulation of prostitution around the world. Later, in 1899, purity reformers founded the International Bureau for the Suppression of the White Slave Traffic, which eventually changed the latter part of its name to the Traffic in Women and Children, and then to Traffic in Persons. Both of these international voluntary associations sought to address what was originally called the 'white slave trade', a term meant to evoke sympathy toward and similarities with the earlier abolitionist movement against black slavery by alluding to what were understood to be the coercive and exploitative aspects of commercial sex in European brothels of the time.⁹⁰

From about the beginning of the 20th Century until the World War I the campaign was at its height, although its influence is considered to have extended far beyond this period. The campaigners were quite successful in bringing about major legal provisions against certain aspects of sex work. This provided the basis for future national and international legislation on prostitution and heralded a new era of sexual politics within and outside the legislative arena. Even more importantly, the notion of young women traded as 'white slaves' caught the imagination of many people for many years to come.⁹¹

⁹⁰ Limoncelli, (2010), 6.

⁹¹ P De Vries, 'White Slaves' in a Colonial Nation: The Dutch Campaign against the Traffic in Women in the Early Twentieth Century', *Social & Legal Studies* 14, no. 1 (2005), 39, 40-1.

Contemporary Debates and ‘Combat’

As a matter of sex, trafficking has been identified either as a problem of sexual slavery or as a perplexing issue pertinent to the regulation of sex work.⁹² As such, the administration of gender has been registering two opposing stereotypes. On the one hand, the stereotype of women regarded as victims of sexual slavery and, on the other, the stereotype of women as migrant sex workers. Both these representations attempt to produce polarised gender statements, and have therefore been sustaining ideologically loaded gender regimes, along with all the hierarchies they imply.

As a starting point, any legislative attempt to regulate trafficking has been understood as an attempt to bring gender into the vocabulary of international law and has been inscribing the promise to bring about ‘gender equality and justice’ at all levels.⁹³ To a certain extent then the use of the word ‘gender’ is used as a metonym to actually indicate ‘women’, in opposition to normative analyses of international law, which proclaim to provide more neutral reflections of its subjects. This stance has often been criticised for the silencing of particular voices, and is therefore considered to be responsible for the abjectification of particular subjects.⁹⁴ So once ‘women’ were clearly reflected in the international legal regulation of trafficking, particular issues were identified as linked to a certain gender baggage.

⁹² See, e.g., L M Agustín, *Sex at the Margins. Migration, Labour Markets and the Rescue Industry* (London & NY: Zed Books, 2007a), 38-9; C Aradau, 'Politics out of Security: Rethinking Trafficking in Women' (PhD Dissertation, The Open University, 2006), 39.

⁹³ See, F David, 'ASEAN and Trafficking in Persons: Using Data as a Tool to Combat Trafficking in Persons', (Geneva: IOM, 2007), 33.

⁹⁴ Carline and Pearson, (2007), 98.

The first issue is in fact criminological and has arguably ‘influenced the course of thinking more deeply than those of any other criminologists’.⁹⁵ Reflected in a long influential tradition of biological determinism, the Lombrosian ‘scientific’ criminological discourse has maintained that men have been the primary agents of crime, capable of making free decisions about aspects of life from work and migration to being violent and capable of committing crime.⁹⁶ Women, however, are depicted by Cesare Lombroso and Guglielmo Ferrero as ‘madonnas but also prostitutes’, and in that view, any women who are criminal are unnatural, ‘lacking maternal feelings and carrying virile stigmata’.⁹⁷

The second issue, even though it comes from migration directly, connects with the preceding point and maintains that ‘women are more often conceived as objects of trafficking’ specifically for the purposes of sex.⁹⁸ Meanwhile, men are more often conceived as agents, as being capable of making decisions such as to migrate and enter a smuggling contract.⁹⁹ Prominent authors have offered a more grounded way to approach the issue and have argued that it is actually the conditions of poverty combined with female role socialisation to create vulnerability that makes young girls and women susceptible to procurers. Also social attitudes ‘that tolerate the abuse and enslavement of women are reinforced by governmental neglect, toleration or even sanction’.¹⁰⁰

Thirdly, certain analyses have shown that gender makes a difference when it comes to combating trafficking. On the one hand, the stereotype of women as

⁹⁵ H Mannheim, *Comparative Criminology (Vols 1 & 2)* (London: Routledge & Kegan Paul, 1965), 213.

⁹⁶ See, e.g., F Heidensohn, *Women and Crime* (London: Macmillan, 1996).

⁹⁷ C Lombroso and W Ferrero, *The Female Offender* (London: T. Fisher Unwin., 1985), 151; Heidensohn, (1996), 113-5.

⁹⁸ I Van Liempt, 'Trafficking in Human Beings: Conceptual Dilemmas' in *Trafficking and Women's Rights*, C Van Den Anker and J Doomernik eds. (London & NY: Palgrave Macmillan, 2006), 35.

⁹⁹ *Ibid.*

¹⁰⁰ K Barry, *Female Sexual Slavery* (NY: New York University Press, 1984), 67.

victims complies with certain gender norms and makes victim identification relatively easy. On the other hand, when stories of victimisation are not stereotypically ‘straightforward’, and when women are both victims of trafficking but also maintain a good deal of control over their working and living conditions, and therefore fail to fit into neat categories of conceptualisation, the workings of anti-trafficking and gender are much more complex.¹⁰¹

The following paragraphs investigate the complexities articulated in a rather important manifestation of anti-trafficking feminist politics. Hence, it becomes evident that gender constructions are fundamental to the workings of the relevant literature.

Victimisation and Sex Work: conflicts and new feminist becomings

The narrative prior to the signing of the UN 2000 Anti-Trafficking Protocol, widely registered by much of the contemporary literature on trafficking in women, describes a two-year battle that took place at the UN Centre for International Crime Prevention in Vienna (Crimes Commission).¹⁰² This ideological ‘combat’ has been considered as essential to the construction of the category of ‘women’ in anti-trafficking, exemplary of the narrow gender manifestations in this context. Subject to conflict, the approaches to trafficking in women are presented as deeply divided by the articulation of two apparently conflicting narratives, both framing their approaches to trafficking in their own, as they maintain, ‘feminist terms’. The

¹⁰¹ See, e.g., D Brennan, 'Selling Sex for Visas: Sex Tourism as a Stepping-Stone to International Migration' in *Global Woman: Nannies, Maids and Sex Workers in the New Economy*, B Ehrenreich and A R Hochschild eds. (London: Granta Books, 2002), 154-60.

¹⁰² J Doezema, 'Abolitionism, and the Possibilities for a Rights-Based Approach to Trafficking', 2007 [last accessed: 17/04/11] [http://www.isiswomen.org/index.php?option=com_content&task=view&id=381&Itemid=142]; J Doezema, *Sex Slaves and Discourse Masters: The Construction of Trafficking* (London & NY: Zed Books, 2010), 27; O'Connell Davidson and Anderson, 'The Trouble with 'Trafficking'', 14; Agustín, (2007a), 38-9; Aradau, 'Politics out of Security: Rethinking Trafficking in Women', 39.

points of conflict have focused on the relationship between ‘trafficking in women’ and ‘consent’,¹⁰³ establishing a platform of what the workings of gender could be in this context.

Specifically, during the UN 2000 Anti-Trafficking Protocol negotiations, one of the lobby groups formally activated the view that prostitution in itself is a form of violence, and therefore, trafficking legislation could potentially be used to establish the criminalisation of prostitution (reflected in the ideological stance of the Coalition Against the Trafficking in Women - CATW). This reconfirmed the assumption that women involved in sex work must always be coerced.¹⁰⁴ Meanwhile a non-sexual-service-specific definition that conceives sex work as legitimate labour was expressed by a configuration of transnational lobby groups known as the Human Rights Caucus (comprised of the Global Alliance Against Trafficking in Women - GAATW, the International Human Rights Law Group – IHRLG, and the Asian Women’s Human Rights Council - AWHRC). This reconfirmed the assumption that women are autonomous and free to consent or not in defining and responding to their migration and sex work.¹⁰⁵ Both camps, however, agreed on the size and scope of the problem. Thus, their ideological constructions, even though diametrically opposed, were in fact two proposals for the reform of global anti-trafficking structures, and as such, their mutually protected interest has been conveyed by the promise to eliminate trafficking in women.

This ideological clash has been of particular importance, according to critiques, since it had a direct impact on the clarity of the UN 2000 Anti-

¹⁰³ Doezema, (2010), 27.

¹⁰⁴ Munro, (2005), 95-7.

¹⁰⁵ For a detailed analysis, see, Munro, (2006); Doezema, (2010), 27-9.

Trafficking Protocol, which has often been criticised for its lack of clarity.¹⁰⁶ When this battle was taking place government delegates to the negotiations failed to agree on the common meaning of statements such as ‘other forms of coercion’,¹⁰⁷ ‘abuse of power’ or of ‘position of vulnerability’.¹⁰⁸ Others drew on this lack of clarity and saw behind this ideological ‘combat’ the opportunity to articulate sweeping generalisations about the overall value of feminism, its current, as they put it, degrading state of affairs and perhaps, though more hesitantly, to put forward their suggestion that feminism is dead.

However, this dynamism (life–death, ‘combat’ and ‘struggle), evident in the preceding narrative, is exemplary of the political continuum within which feminism has emerged in order to articulate political demands, rather than as static methodology with preset aims and methods: ‘[f]eminism can never fully know its subject and should not foreclose different articulations’.¹⁰⁹ The extent to which these claims can continuously reinvent themselves through diverse ideological paths proves that feminist thinking is continually engaging in intensified battles; trafficking in women is then only a snapshot of these battles. Through these workings new subjectivities are registered, feminist arguments become more effective, fragmented and ‘combative’ and this is perhaps one of the most valuable gender instalments towards the potential invention of a new language beyond criminalisation imperatives.

¹⁰⁶ O’Connell Davidson and Anderson, ‘The Trouble with “Trafficking”’, 13-4.

¹⁰⁷ Art. 3 ‘Use of terms’ (a).

¹⁰⁸ *Ibid.*

¹⁰⁹ Carline and Pearson, (2007), 98.

Conclusions in Theory and Problems

My reading of the current literature is profoundly sceptical of the production of atemporal truths, insofar as these truths have articulated the gender(s) of anti-trafficking, seemingly dislocated from the historical conditions and social apparatuses that produced them. The subsequent tensions have largely been addressed by scholars who have sought to offer their own understanding and political assessment of the formulation and implementation of global governance in the area of women's rights. Overall, it is the result of two opposing camps working together: one camp has been advocating against women's victimisation, and has been using the vocabulary of victimisation to meet its aims, while the other has been advocating in favour of women's autonomy. The importance then is twofold. On the one hand, it is the investigation of women's representations through anti-trafficking discourses, and mostly, the productive and constitutive gendered effects of these representations.¹¹⁰ On the other hand, it is the undoing of discourses that have mainly been preoccupied with the regulation of sex (sex work) and the criminalisation of sexual victimisation (sexual slavery). In the different narratives that have produced speech and silences about sexual slavery and about sex work, I set out to trace strategies that underlie and permeate legal, policy and everyday anti-trafficking knowledge.

My analysis shows that much of the literature has been persuaded by the expressed aims of anti-trafficking to secure the rights and welfare of women. Meanwhile others put forward more critical understandings about the extent to which contemporary anti-trafficking is really concerned with the security and

¹¹⁰ This investigation draws on Butler, (1993), 27-31.

welfare of subjects.¹¹¹ Considering the expected variations in the desirability of anti-trafficking measures, conceptions of class, sex, ethnicity and race are inscribed in the contemporary literature. Ultimately, the threats investigated earlier also appear to be ‘gendered’ and ‘sexed’.¹¹²

Questions: anti-trafficking penalty and gender-formation

My questions have a twofold target: on the one hand, the investigation of the formation of anti-trafficking penalty; on the other, the result of gender formation processes in the evolution of anti-trafficking. Firstly, my investigation focuses on the use of anti-trafficking language and mobilises a set of questions in relation to the emergence and evolution of anti-trafficking, in both the review of the relevant theory and through qualitative research. I observe how the regulatory crafting of the tripartite anti-trafficking promise has been articulated through criminalisation, security and human rights, and I seek to investigate what discursive tools each concept hides in its armoury. By mobilising this tripartite construction what are the particular orthodoxies of each concept that are being called into question?

Secondly, I question the formation of gender(ed) subjectivity reflected in anti-trafficking texts. I ask what the gender investments in anti-trafficking are. And in particular, what are the gender investments in the official representation of women as victims of trafficking? Like the issues of penalty, the gendered body is part of the wider political project that crafts anti-trafficking language in order to naturalise and legitimate particular sexualised subjects. In this way the fantasy of

¹¹¹ I borrow this conceptualisation of the issues at stake from Elena Loizidou, see, E Loizidou, *Judith Butler: Ethics, Law, Politics* (London & NY: Routledge-Glasshouse, 2007), 3.

¹¹² Aradau’s analysis shows how crucial this can be, since certain dynamics abjectify and exclude people in the articulation of the promise of security, see, Aradau, (2008), 62.

gender norms is being stabilised and reproduced.¹¹³ Ultimately, I join these two points together and I ask: what are their common investments in discipline and penal imagination?

As examined in the previous section, the anti-trafficking language often turns against its language in order to engage with battles and new becomings; it is its breathing through multiple texts (legal, policy, media) that embodies the struggle. These texts offer a spectrum of anti-trafficking knowledge, of the folded struggles and of their social implications beyond anti-trafficking. In posing the above questions to these texts I utilise two mechanisms of undoing/deconstructing knowledge. The first is the analysis of documentary sources that I obtained during the research I conducted at the Greek anti-trafficking structures during the years 2008–2009. The second is the conceptual framework of ‘imaginary penalties’ introduced in the criminological work of Pat Carlen.

Methodology: Greek case study and ‘imaginary penalties’

Case Study

The preceding discussion has laid down to some extent the meaning of discourses, and allows me to describe my methods aimed at grasping these discourses.¹¹⁴ To conduct my research, I chose the flexible methodological tool of case studies.¹¹⁵ This research strategy aimed to map out the views of anti-trafficking actors, police and victims’ services, as communicated predominantly through official documents. The real-life, empirical element is then mostly related to the nature of

¹¹³ See, Loizidou, (2007), 23-4.

¹¹⁴ I followed the prevailing currents of discourse analysis elaborated in the work of E Laclau and C Mouffe, *Hegemony & Socialist Strategy* (London & NY: Verso, 1998). Also, see, D Howarth, A Norval, and Y Stavrakakis, eds., *Discourse Theory and Political Analysis. Identities, Hegemonies and Social Change* (Manchester & NY: Manchester University Press, 2000).

¹¹⁵ R K Yin, *Case Study Research: Design and Methods* (Beverly Hills: Sage Publications, 1984).

the documentary sources – their inevitable affiliation to anti-trafficking actors. Official documents and archival material have been used, as sources of qualitative and, in rare occasions, quantitative data.¹¹⁶ My very first point of departure has been the investigation of international and Greek national¹¹⁷ legal developments, with their preparatory and explanatory reports and the parliamentary discussions that preceded these developments. Reports issued by governmental bodies, IOs and NGOs have also been used, as well as media representations. It is then my readings of this vast area of documentary sources that have offered a series of interpretations.

Official Documents

To investigate the Greek anti-trafficking mechanisms, I visited Greece six times during the years 2008 and 2009, and established communication with actors in the field of anti-trafficking with a view to obtain documentary sources relevant to my research.¹¹⁸ Specifically, I initially established communication with the Hellenic Police in order to gain access to descriptions of the way that the anti-trafficking mechanisms have been set up in Greece. This initial communication with the Hellenic Police required a formal application, which I submitted during the first year of my study. This process of requesting official permission to contact the Hellenic Police is considered an obligation to which researchers should normally adhere as a principle for guiding their conduct in the Greek context; it is

¹¹⁶ See, Methodological Note, Part 2, and Chapter 7.

¹¹⁷ For the reasons that determined my focus on the Greek context, see the Methodological note at the beginning of Part 2.

¹¹⁸ For the investigation of the Greek anti-trafficking actors, see also, G Papanicolaou and P S Bouklis, 'Sex, Trafficking and Crime Policy in Greece' in *Crime and Punishment in Contemporary Greece: International Comparative Perspectives*, L K Cheliotis and S Xenakis eds. (Oxford: Peter Lang Publishing Group, 2011).

mandatory for the release of any information, including statistics, to researchers.¹¹⁹ My inquiry was approved and during that first year I had two meetings with Police officials in Athens from the relevant divisions. Since this first ‘entry point’, my interaction with the field and actors in the field has been focused on collecting archival material and documentary sources in relation to anti-trafficking structures and victims’ services.

For all the documents that I obtained and used in my research I have been responsible for translating the sources and, in two instances, I decided to share my translations with the issuing actors as a sign of gratitude for their hospitality and for sharing their archives, press releases, advertising brochures or information booklets with me. Predominantly, during the years 2008–2009, I gained access to material that is publicly available; however, in some instances the material has not been easily accessible, since specific appointments had to be booked in advance with individuals that were responsible for managing the archival material. In other cases, the archives were in electronic form and documentary material was sent to my personal email account during my visit to the organisation’s premises.

Due to my previous affiliation to the Panteion University in Athens, I already had some valuable contacts that facilitated the process of obtaining this material. Also, my previous experience at Panteion University in conducting qualitative research – skills pertinent to discourse analysis and ethnography – were utilised in this research and gave me the advantage of gendered self-consciousness.¹²⁰ By this

¹¹⁹ See, G Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing' (PhD Dissertation, University of Edinburgh, 2008a), 25. In my case, I considered this process as the most ethical and respectful for the research and for the anti-trafficking actors, as it guaranteed that all actors in the field knew about my identity as a researcher and therefore achieving informed consent, even for interacting at the level of obtaining archival material, was ensured.

¹²⁰ Field work conducted in 2003 – 2004 at Panteion University, see, P S Bouklis and P Koustas, 'Women's LGBT Activism in Athens' (BSc Dissertation, Panteion University, 2004b).

I mean that throughout this research and in the material that I obtained, I have been conscious of the discursive changes the word ‘women’ has undergone and the historical temporalities of ‘women’: ‘once again no ordinary, neutral and inert “woman” lies there like a base behind the superstructural vacillations’.¹²¹ In this sense, my methods were designed to embrace the discursive categories of criminalisation (criminal law, penalty, punishment), security, human rights (victims’ rights and victimhood) and women. I thus employed the category of ‘women’ as a variable that cuts across other discursive categories. With this specific utilisation of the term ‘women’, my research findings aim to infer that the notion of gendered policies or services, which has been influential in the emergence of anti-trafficking structures, has actually limited applicability in areas of controversy in which state interests come to the surface.

During my interaction with all the actors that facilitated the collection of archival material, the principles of confidentiality and anonymity were respected at all times.¹²² Also, I understand that archive materials are one form of unobtrusive material, and those that I specifically gained access to have all been official, either state or NGO documents. In this respect, I had no doubt at any point that these were authentic, credible, representative and meaningful (comprehensible) sources of data.¹²³ Besides, being in a position to cross-check documents across actors, has enabled me to verify the accuracy of the information. Throughout the years of my research, I was keeping my funding institution, the

¹²¹ D Riley, "Am I That Name?" Feminism and the Category of "Women" in *The Language, Discourse, Society Reader*, S Heath, C MacCabe, and D Riley eds. (London & NY: Palgrave Macmillan, 2004), 140.

¹²² See, L Noaks and E Wincup, *Criminological Research. Understanding Qualitative Methods* (London & New Delhi: Sage Publications, 2006), 48-9.

¹²³ See, A Bryman, *Social Research Methods*, 2nd ed. (Oxford & NY: Oxford University Press, 2004), 380-1.

Alexander S. Onassis Public Benefit Foundation, updated of my methodological steps and of my trips to Greece.

Media Sources

In order to extend my analysis to the wider spectrum of social representations, I also make reference to media sources. This draws on my previous experience of analysing media items in the context of criminological research.¹²⁴ Previous criminological investigation has highlighted that, since the introduction of the new legislation in Greece, the media representations of trafficking in women for sexual purposes has become increasingly frequent.¹²⁵ To preserve the focus on documentary, archival sources and to provide an accurate description of the secondary role of media representations, when reference is made to media sources I maintain a distinction between the offences reported and the media item (e.g. newspaper article or other).¹²⁶

Imaginary Penalties

Finally, at the stage of post-design and writing up I have used the innovative trajectory, in the field of trafficking, of 'imaginary penalties'.¹²⁷ The selection of texts on which I focused represent to a large extent the collections of texts that

¹²⁴ See, e.g., P S Bouklis, 'Social Representations of the Prison. A Criminological Analysis of 'the Women's Wing in Athens' Korydallos Prison Complex' by Sofia Argyriou-Kyritsi' (BSc Dissertation, Panteion University, 2003); P S Bouklis and P Koustas, 'Social Representations of Crime: The *Spices* Case' (BSc Dissertation, Panteion University, 2004a).

¹²⁵ P S Bouklis, 'Female Sex Trafficking in Europe and the Feminist Debate. Greece as a Case Study on Policy Implementation and the Role of Feminists' (MSc Dissertation, London School of Economics, 2007); Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 27.

¹²⁶ See, Bryman, (2004), 194-5.

¹²⁷ For a stratification of the stages in sociological qualitative research see, M W Bauer and B Aarts, 'Corpus Construction: A Principle for Qualitative Data Collection' in *Qualitative Researching. With Text, Image and Sound*, M W Bauer and G Gaskell eds. (LA, London & New Delhi: Sage Publications, 2007), 19.

established legal knowledge on the issue of trafficking in women. These were determined in advance by the selected methodological tools of my research design, which were utilised during the first year of the present analysis. Since then, a corpus of material was collected with (inevitable) arbitrariness, on which I set out to trace specific textual signifiers of breadth, variation and structure that would ultimately respond to the very questions that my research has been seeking to answer, with particular focus on the polemic dialectics (criminalisation–human rights, past–future, fragmentation–continuity).¹²⁸ In parallel with the legal texts, the utilisation of national knowledge illuminated that anti-trafficking materials had multiple applied symbolic functions. My inquiry does not attempt to export or even compare the experience of the case study with the international experience. That would have entailed placing one discursive cartography next to the other, one history next to the other. It does, however, aim to test articulations and hence unfold one within the other and perhaps again as a dialectic schema against it.

Anti-Trafficking Imagination

‘[W]e “feel free” because we lack the very language to articulate our unfreedom’
Slavoj Žižek¹²⁹

Pat Carlen’s thesis on *Criminological Imagination* and on *Imaginary Penalties*,¹³⁰ along with the prominent exploration of *Official Discourse*,¹³¹ form the theoretical foundations of this present inquiry. The central term in Carlen’s vocabulary of

¹²⁸ These methodological principles are grounded in theoretical investigations. See, in particular, M Antonopoulou, *Theory and Ideology in the Sociological Classical Thinking* (Athens: Papazisis Publications, 1991), focusing on the Chapters 'Marxism: Society as Economy', 70-100, and 'Karl Marx: The Historicity of Society', 11-39.

¹²⁹ S Žižek, *Welcome to the Desert of the Real* (London & NY: Verso, 2002), 2.

¹³⁰ Carlen, ed. *A Criminological Imagination: Essays on Justice, Punishment, Discourse*; P Carlen, ed. *Imaginary Penalties* (Devon & Oregon: Willan Publishing, 2008).

¹³¹ F Burton and P Carlen, *Official Discourse: On Discourse Analysis, Government Publications, Ideology and the State* (London: Routledge & Kegan Paul, 1979).

‘imaginary penalties’ aims to draw connections between the rhetoric of criminological knowledge (of diverse jurisdictions), and reality. In fact, ‘[t]he concept of imaginary penalties presupposes that the rhetoric has become the reality’.¹³² The concept maps out the sphere of both global and local modes of crime and security governance and instigates further discussion on the attributes usually ascribed to ideological forms of knowledge.

Today’s imaginary penalties, according to Carlen, inhere in almost-hidden structures of cultural and penal governance, in micro-structures facilitating the bureaucratic routinisation of knowledge, and in the creation of acquiescence in official discourses on crime, law-breaking and risk. So, imaginary penalties form a web of imaginaries; this looks like a penalty-spider that silently builds up the social auditing and penal programming machinery. The implicit promise of imaginary penalties is that crime, social risk and inequalities can ultimately be abolished.¹³³ To sustain this promise a series of official claims, action plans and laws are invented and in that way promises are made necessary, desirable, and at the same time, impossible: ‘[i]maginary penalties contradictorily imply that “crime” can be abolished at the same time as defining more and more behaviours as illegal – thus creating the conditions for both their impossibility and their perpetuation’.¹³⁴

In the context of anti-trafficking, I examine the legal framework and the construction of an ‘anti-trafficking promise’ that aims to eliminate trafficking through criminalisation, security and human rights – as the contradictions in and tensions between the terms imply, ‘thus creating the conditions of both their

¹³² P Carlen, 'Imaginary Penalties and Risk-Crazed Governance' in *Imaginary Penalties*, P Carlen ed. (Devon & Oregon: Willan Publishing, 2008), 5 [emphasis in the original].

¹³³ *Ibid.*, 10.

¹³⁴ *Ibid.*, 12.

impossibility and their perpetuation'.¹³⁵ Acknowledging the value of disciplinary investments, therefore, I set out to investigate how official law and order, crime and punishment discourses are articulated as simultaneously necessary, desirable and yet impossible.¹³⁶

Imaginary penalties involve ideological political battles over the manufacture and policy-harnessing of crime, risk and security knowledges:¹³⁷ '[b]ut, more specifically, its [the *Imaginary Penalties* thesis] focus is upon the micro-politics of selected dimensions and sites of the many imaginary penalties presently dominating local, national and international responses to criminal threat'.¹³⁸ As such, examining the documentary sources through the lens of imaginary penalties is aimed at 'contributing rich and analytic descriptions of how global trends and national policies are realised in imaginary form at local level'¹³⁹ and have particular effects on the ways that justice is conceptualised nationally and internationally.

Influenced and inspired by Carlen's conceptualisation of imaginary penalties, I trace anti-trafficking as an imaginary penalty, and in doing so I am not (entirely) restricted by previous uses and applications of the concept.¹⁴⁰ Besides, my understanding of imagination is mediated through Castoriadis' *Imaginary Institution of Society*, according to which social phenomena are the unceasing and essentially undetermined (social-historical and physical) creation of figures/forms/images, on the basis of which alone there can ever be a question of

¹³⁵ *Ibid.*

¹³⁶ Carlen, 'Imagine', xiii-xxv.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ See, also, J Young, *The Criminological Imagination* (Cambridge: Polity, 2011), 39-41.

‘something’. ‘What we call “reality” and “rationality” are its works’.¹⁴¹ In this respect, the institution of the imaginary is not merely symbolism. Discourses, according to Castoriadis, are something other than mere symbolism: ‘it is a *meaning*, which can be perceived, thought or imagined’.¹⁴²

The current application of ‘imagination’ then seeks to communicate official criminalisation, security and human rights anti-trafficking discourses and interpret their reality. Insofar as security is imagined in anti-trafficking as the flexible fabric that stretches out to enfold criminalisation and human rights and merge the two, then security needs to be contested further. By unraveling security constructions, it becomes evident that security is the force that actually animates the tripartite anti-trafficking promise. In this process, I critically use the concepts of ‘imagination’ and ‘performativity’, as methodological tools to help disentangle and decipher security constructions.¹⁴³ What I see in security is then not so much the promise of anti-trafficking *per se* but an indefinite and utterly unspecified commitment to balance.¹⁴⁴ The balance between criminal law and human rights principles, which then articulates the conditions of the materialisation of the anti-trafficking promise: once these diverse elements are balanced, stabilised and properly calculated, trafficking can be abolished.

Lastly, the vocabulary I use and the epistemological assumptions that lie therein are relevant to the deconstructionist, genealogical approach to knowledge, or to ‘the ways of knowing’ informed by the work of Michel Foucault. One of the ways of knowing, therefore, applies to the utilisation of documentary sources and

¹⁴¹ C Castoriadis, *The Imaginary Institution of Society* (Cambridge & Malden: Polity Press, 2005), 3, 135-9.

¹⁴² *Ibid.*, 139 [emphasis in the original].

¹⁴³ See, e.g., L Bialasiewicz et al., ‘Performing Security: The Imaginative Geographies of Current US Strategy’, *Political Geography* 26, no. 4 (2007), 405.

¹⁴⁴ See, M Neocleous, ‘Security, Liberty and the Myth of Balance: Towards a Critique of Security Politics’, *Contemporary Political Theory* 6, no. 1 (2007), 131.

of specific anti-trafficking statements. As with all historical modes of governance, the anti-trafficking structures see and reveal all they can within the conditions relating to statements: '[n]othing is every secret, even though nothing is ever immediately visible or directly readable'.¹⁴⁵ Hence, visibility and knowledge apply to both anti-trafficking discourses and technologies.

To this extent, when reference is made to technologies,¹⁴⁶ structures, regimes and the heterogeneity of discourses, I draw, again, on the Foucauldian paradigm: '[t]he apparatus is precisely this: a set of strategies of the relations of forces supporting, and supported by, certain types of knowledge'.¹⁴⁷ In principle, I apply Foucault's 'network' of power schema, and I read social formations as processes of legitimation and neutralisation of dominant strategic functions.¹⁴⁸ Specifically pertinent to the discussion of trafficking, Aradau's analysis has focused on security as a governmental *dispositif* (apparatus) of representations and interventions that serve the purposes of the government of subjects.¹⁴⁹ In this respect, the 'birth' of the Greek anti-trafficking structures is read as the 'urgent' emergence of practices and mechanisms (both linguistic and nonlinguistic – juridical, technical and so forth) that install multiple processes of governance.

Hence, theorising trafficking around the categories of slavery, migration, organised crime and sex work is pertinent insofar as it draws connections between

¹⁴⁵ G Deleuze, *Foucault* (London & NY: Continuum, 2004), 59.

¹⁴⁶ I am mostly interested in the panoptical installations, see, Chapters 3 and 6.

¹⁴⁷ G Agamben, *What Is an Apparatus? And Other Essays* (Stanford: Stanford University Press, 2009), 2.

¹⁴⁸ In the context of trafficking, and more widely, in the context of risk, Claudia Aradau has deployed the Foucauldian notion of 'dispositif', in order to shed light on the heterogeneous practices that have been stabilised as the 'war on terror', see, C Aradau and R van Munster, 'Governing Terrorism through Risk: Taking Precautions, (Un)Knowing the Future', *European Journal of International Relations* 13, no. 1 (2007), 89; Aradau, 'Politics out of Security: Rethinking Trafficking in Women'.

¹⁴⁹ Aradau, 'Politics out of Security: Rethinking Trafficking in Women', 120.

policing patterns and the governability of trafficking. By ‘governability’,¹⁵⁰ reference is not made simply to the juridical and political forms that define trafficking and organise the state’s anti-trafficking response to it. The term primarily aims to depict the motor behind the process that sets into action the desirability of the transnational anti-trafficking regime. With these thoughts in mind, I consider that the construction of the interlinked categories of organised crime, trafficking and sex work, actually, involves the construction of a regulatory agency. In this respect, and with reference to the regulation of sex and sexuality, I find it rather naïve to assume that the use of regulation in the area of sex work is an illustrative case of democratic deliberation and its success.¹⁵¹

Gendered Becomings

In an open dialogue with the ‘security’ application of performativity, in this section I turn to gender performativity and draw some preliminary connections between the functions of gender and the constitution of anti-trafficking imaginations. This is of upmost importance for the mechanics of my argument; gender is not merely an added layer of analysis. According to Foucault, contemporary criminal justice functions and justifies itself only by perpetual reference to something other than itself, by the unceasing re-inscription of punishment in non-judicial systems. There is, however, nothing extraordinary in this, ‘that is part of the destiny of the law to absorb little by little elements that are alien to it’.¹⁵² But what is odd about modern criminal justice is that penal

¹⁵⁰ I borrow the term from the concept of ‘disciplinary governability’ elaborated by Michael Hardt and Antonio Negri, in Hardt and Negri, (2001), 240-59.

¹⁵¹ See, e.g., M Foucault, *The Will to Knowledge: The History of Sexuality Volume 1* (London & NY: Penguin Books, 1998).

¹⁵² Foucault, (1991), 22.

operation has absorbed these non-judicial elements in order to stop this operation being simply a legal punishment.¹⁵³ Its ultimate target is to reach the heart of its subjects. Within the development then of social intersections like class, gender, ethnicity and race, it is possible to read a whole series of both ‘repressive’ and ‘positive’ effects of punishment as a political tactic that mobilises networks of discourses and technologies.¹⁵⁴

For the investigation of gender discourses and technologies, I follow Loizidou’s take on Butler’s concept of ‘gender performativity’.¹⁵⁵ Loizidou’s reading inscribes the notion that performativity in itself is a method. In fact, a method of ‘writing’ history, as bodies and language become mutually constitutive. The materiality of bodies then can only be read in the ‘writing’ of histories. The upshot is to bring into focus the imaginary penalties at the centre of anti-trafficking histories, while also suggesting the possibilities for contesting and transforming their subjects and fields of operation. Subject-formation and fields of operation can no longer be conceptualised as separate; the histories of anti-trafficking cannot but provide gender histories.

This thesis opens up the conceptual map of future critical engagement. Gender, race, class and ethnicity in anti-trafficking imaginations are to be radically re-imagined.¹⁵⁶ By this I pull the strings back to Hardt and Negri and read gender as an indispensable tool of the ideological conditions imposed by the biopolitical fabric of the existing state of affairs. Contemporary gender forms are then presented as natural (with no temporal boundaries) and not as transitory expressions in the movement of history. As such, I see ‘gender’ as the regulatory

¹⁵³ *Ibid.*

¹⁵⁴ For the materialisation of the right to punish through technologies of power, see, *ibid.*, 130-1.

¹⁵⁵ Loizidou, (2007), 17-43.[Chapter 2 ‘Gender Performativity as method’].

¹⁵⁶ See, e.g., D Cornell, *Transformations. Recollective Imagination and Sexual Difference* (London & NY: Routledge, 1993).

inscription of norms giving meaning to and gaining meaning from imaginary penalties.

Central Argument and Contribution

Trafficking in women is the injustice which initially triggered the current inquiry. But it is not a singular injustice. Even the most critical thinkers in this research area have acknowledged that ultimately ‘our’ discussion is about injustices. Trafficking in women, as an imaginary penalty, has been suffocating under its own normativity, due to our, in Žižek’s terms, lack of the very language to articulate our unfreedom. I seek then to offer an account of the injustices embedded in the construction of anti-trafficking as an imaginary penalty. I do so, by dismantling contemporary criminalisation–security–human rights articulations in the context of trafficking in women, and examine the possibilities of transmitting a code for re-imagining.

Mapping Out the Chapters

The plan of this thesis reflects the tripartite construction of criminalisation, security and human rights on which my main argument is positioned. Part 1 examines the international structures of anti-trafficking and the subsequent criminalisation, security and human rights articulations in this context. Part 2 investigates the domestic anti-trafficking structures of the Greek case study.

Keeping in mind these broad lines between Parts 1 and 2, Chapter 2 of Part 1 draws attention to the very fundamental formation of anti-trafficking criminalisation(s). It looks into the meaning of criminalisation and by reviewing the legal framework it seeks to explain what is ultimately to be criminalised. From

there it reflects on contemporary anti-trafficking debates that have given such urgency to the issue of trafficking, and evaluates the workings of policy-assessment initiatives in order to respond to the critical question posed earlier: what does the formation of anti-trafficking penalty entail?

With these points in mind, Chapter 3 turns to security and traces the functions of security in balancing criminalisation and rights articulations. Security is then the third term that emerges from the initial antithesis between criminalisation and human rights. But what is the meaning of security in this context? Through the examination of risks and threats in the transnational constructions of trafficking in women, and within certain ideological conditions, the ‘war on trafficking’ emerges and boosts a series of intelligence mechanisms.

As a reaction to these conditions, Chapter 4 features the articulation of human rights, figured as tampering with or correcting the criminal law and as inscribing the humanistic, if not humane, face of security. The powerful imagery of victimhood is then used either as a political tool to convey particular demands, or as the scapegoat, the Other who is to be excluded and abjectified.

Turning to Part 2, my focus sharpens. The Greek case study extends beyond the comparison between national and international anti-trafficking structures. This is because, importantly, the entire international (or indeed) global anti-trafficking structure has been designed based on the recognition of national structures. Hence, my investigation of the Greek anti-trafficking discourses and technologies aims to juxtapose national and international anti-trafficking systems. Through criminalisation, security and human rights discourses, the Greek case study contextualises the knowledge and apparatuses, examined in Part 1, against the emergence of the Greek anti-trafficking regime in the early 2000s. The aim is to

illuminate how and why these juridical norms emerged and what this added to ‘our’ contemporary understanding of trafficking in women. To facilitate discussion a detailed methodological note is included at the beginning of Part 2. Through the Greek case study I attempt to draw some broader understandings of the relation between domestic and international and the unfolding of the one imaginary penalty into the other. To this extent, Chapter 5 examines again the re-articulation of criminalisation discourses voiced by the Greek anti-trafficking actors. The specific conceptualisation of anti-trafficking structures in the Greek case study shows that anti-trafficking and victims’ services are inseparable.

Correspondingly, Chapter 6 examines the national security conceptualisations and the absence of a constructive ‘women’s security’ dialogue, and suggests that security has played a central role in materialising these particular anti-trafficking technologies. With national security narratives lying at the core of these technologies, I focus on tracing the specific national security discourses that again link organised crime and terrorism with trafficking in women. This link, however, becomes intelligible when based on the specific national structures.

Immediately after security, Chapter 7 observes how anti-trafficking victims in Greece are interpreted in the context of ‘periphractic’ spaces, as Others. Techniques of neutralisation of the harm caused, as well as the strategic responsibilisation of victims are discussed. I review the work of some major actors in the field of services for victims and I trace what a ‘human rights’ approach could denote in this context. Diverse ideological modes inform the actors, therefore producing diverse understandings of what is the crime, who is to be protected and what constitutes a ‘right’ are articulated.

Finally, Chapter 8 offers a critical account of the issues at stake and opens up the conceptual map of future critical engagement in relation to structural inequalities and imaginary penalties. I suggest a radical re-imagination of the subjects and fields of operation of anti-trafficking as an imaginary penalty and I put forward the example of an alternative articulation that highlights the infinite potential of re-imagination and re-articulation.

Part I

Chapter 2

Imaginary Anti-Trafficking: Criminalisation

Introduction

It is well-known that the antithesis between a criminalisation and a human rights approach in the context of trafficking in women has been considered a highly contested issue. This antithesis, however, has relied on the fundamental assumption that trafficking, as a gender-specific crime, can be eradicated if states and transnational institutions implement the correct technical policies. Consequently, a mechanical connection has been imagined between institutions and these policies. This chapter, however, takes a step back from this established anti-trafficking logic, which is interested in ‘what works’¹⁵⁷ in anti-trafficking (‘criminalisation *or* human rights?’). It breaks down the antithesis (‘criminalisation *versus* human rights’) and asks: what does a criminalisation approach to trafficking in women entail?

In considering this question I draw on criminological literature. I do so because one of the primary workings of criminalisation is to officially construct the crime; the institutional and scientific knowledge about the criminal offence. It is immediately after this fundamental construction of the offence that criminalisation seeks to offer punitive solutions to the trafficking phenomenon. The construction of the offence, in this respect, is vital. Primarily this construction entails the stabilisation of knowledge about the subjects who violate legal rules and the damage they cause to wider society, and, in particular, to the victims of

¹⁵⁷ See, Carlen, 'Imaginary Penalties and Risk-Crazed Governance'.

crime. Secondly, it lays down the ‘war on crime’, the ‘war on trafficking’, as a set of official discourses of anti-trafficking practice (technologies). This ‘war’, then, sets out the specific goals of punishment, which will be explored further. This is the first step towards investigating *how* the initial dilemma between criminalisation and human rights has been conceptualised, and *what* the promised, and false, implications of imaginary penalties are in the context of trafficking in women.

As the investigation of criminalisation unfolds, a process is presented through which anti-trafficking, as an imaginary penalty, has made claims about the possibilities of reducing crime, rather than merely punishing it.¹⁵⁸ As such, under criminalisation, anti-trafficking legislation, technologies and programmes have been primarily interested in ‘what works’ in anti-trafficking with a view to ‘combat crime’, rather than merely to punish trafficking. In the development of criminalisation I trace the content of these claims, which have made the development of anti-trafficking measures desirable and possible, and how they have been translated into trafficking-reduction technology and have intensified law enforcement.

I show that in this context, criminalisation has been articulated as a significantly revolutionised, ‘advance’ and desirable version of punitive structures. This development has been institutionally organised and reflected in legal instruments and diverse ‘inter-agency’ structures. The specific anti-trafficking version of criminalisation has, then, mobilised a rather indirect intervention-at-a-distance, by dividing responsibility between different legal instruments, agencies and individuals. As such, anti-trafficking has been subject to a broader regulatory

¹⁵⁸ See, Introduction; *ibid.*, 12, 18-21.

project and part of complex assemblages, composed of agents, knowledge, techniques and practices. Anti-trafficking's inclusion in this broader regulatory project does not mean that the purpose of anti-trafficking has not been to punish traffickers *per se*, but it underlines the fact that the 'war on trafficking' is linked to a broader *threat*-management initiative. Simultaneously, at a discursive level, it has been persistently reaffirmed that punishment *is* the most effective – if not the only – tool to bring crime under control.

The threats are multiple and they are all attributed to organised criminality: trafficking in women, trafficking in its other forms, illegalised migration, smuggling, sex work, corruption, exploitation of and violence against women – to mention only a few. Insofar as these various threats appear to be linked to criminalisation, to criminalise a specific conduct serves multiple functions. Effectively, this new punishing regime justifies its existence through these multiple threats. One of the most prominent legitimating functions, I argue, is the focus on women and on women's representations as trafficking victims. This focus presents anti-trafficking penalties as a necessary evil, because they can frighten people away from crime. In other words, the prospect and infliction of punishment promises to have a deterrent effect on criminals. At the same time, as long as society believes that the deterrent effect on criminals has a direct effect on the protection of victims, methods are selected that aim to extract reparation for the harm caused to victims of trafficking. However, I find these unproblematic associations between criminalisation and protection, and between traffickers, trafficking and victims, rather problematic in this context. Thus, I set out to investigate in a greater detail the assumptions entangled in these associations.

To this end, I examine discourses that contribute to legitimating the ‘war on trafficking’ criminalisation response to trafficking. Also, I look into the construction of ‘zero tolerance’ policies for violence against women, and I offer an account of the particular type of criminality that these discourses evoke. As ‘only concrete systems of punishment and specific criminal practices exist’,¹⁵⁹ I set out to explore how the political fluidity between the interconnected threats and the criminal practices, and between criminalisation and protection, ultimately amplify the imaginary punitive capacity of the system and its activity to manage threats in a highly complex and fluid context.

Gradually, criminalisation becomes constitutive of a security contract. Harsher punishments are invoked and these institute an official promise: not only do they declare that certain kinds of conduct are denounced as public wrongs, but they also assert that the protection and restitution of victims can be achieved by harsher punishments. Crucially, this promise is controversial in, firstly, the particular kind of conduct that is denounced as a public wrong, and secondly, in constructing the political economy of victimisation as a vehicle for harsher punishment.

This chapter is structured as follows: it begins by considering the history of criminalisation as an ideological apparatus, and its present as a type of expanded administrative, managerial, economic activity. Secondly, the criminalisation process, in the context of trafficking in women, is explored, particularly its links to other threats. This covers both legal instruments and specific inter-agency structures, as two constitutive parts of official anti-trafficking knowledge. Thirdly, I locate the connections between criminalisation and the areas where victimisation

¹⁵⁹ G Rusche and O Kirchheimer, *Punishment and Social Structure* (New Brunswick & London: Transaction Publishers, 2009), 5.

appears not only to be linked to but also intertwined with criminality. I maintain a persistent focus on criminalisation and on the multiple ways that subjects are deemed to be ‘illegalised’. This investigation shows that criminalisation has increasingly relied on security discourses. The final section examines public anxieties inherent in the anti-trafficking project and reveals the gendered aspects of the construction of contemporary, revolutionised anti-trafficking as an imaginary penalty.

What is Criminalisation and What Ought to be Criminalised?

The Emergence and Growth of the New Punitive State of Anti-Trafficking

Criminalisation in the context of trafficking in women has been examined as a ‘good’, useful, grounded, effective approach that prioritises clear and just aims. From the beginning of the process, such as recruitment and transport, to ‘the last link in the human trafficking chain, the consumer – but only for the purpose of sexual exploitation’¹⁶⁰ criminalisation involves punishing persons at all stages of trafficking. Even at the very last stage, when traffickers fraudulently present individuals as victims ‘for the “consumption” of the victim’s services’,¹⁶¹ criminalisation has been presented as a reliable, fair and secure approach to trafficking in women. The results of this approach have also been considered as measurable and of vital political importance: once security measures are fortified, then inevitably the number of convictions will increase and states’ interests will thus be safeguarded against security threats.

¹⁶⁰ C Morehouse, *Combating Human Trafficking. Policy Gaps and Hidden Political Agendas in the USA and Germany* (Wiesbaden: VS Research, 2009), 164.

¹⁶¹ *Ibid.*

However, states' capacities to implement anti-trafficking legislation and moreover to enforce the competent laws vary.¹⁶² It has been widely represented that some states' responses are weak and inconsistent when it comes to law enforcement, due to corruption and organised crime.¹⁶³ These representations hold that the corrupting, infiltrating influence of organised crime groups has an erosive effect on the foundations of democratic states and on their law enforcement capacities.¹⁶⁴ Consequently, corruption 'oils' the global trafficking industry by rendering law enforcement weak. A robust application of criminalisation is therefore considered not only as an effective approach to justice but also as a clear sign of 'healthy', incorruptible democratic governance.

Criminalisation as an Ideological Apparatus

The critical antecedents

Criminalisation practices, as an ideological apparatus for crime control, have a long institutional and discursive tradition.¹⁶⁵ The theses offered by Georg Rusche and Otto Kirchheimer on punishment and social structure (1939), by Michel Foucault on the birth of the prison (1975) and by Erving Goffman on the characteristics of 'total institutions' or prison-like institutions (1961), have changed 'our' perceptions of crime and punishment.¹⁶⁶ In addition, these works have changed 'our' understanding of the 'modes of production' embedded in

¹⁶² S Cameron, 'Trafficking of Women for Prostitution' in *Trafficking in Humans. Social, Cultural and Political Dimensions*, S Cameron and E Newman eds. (Tokyo & NY: United Nations University Press, 2008), 103-4.

¹⁶³ V Malarek, *The Natashas. The New Global Sex Trade* (London: Vision Paperbacks, 2004), 121-56.

¹⁶⁴ *Ibid.*, 144-9.

¹⁶⁵ See, e.g., D Melossi and M Pavarini, *The Prison and the Factory: Origins of the Penitentiary System* (London: Macmillan, 1981); S Cohen, *Visions of Social Control* (Cambridge: Polity Press in Association with Blackwell Publishers Ltd., 2005); D Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press, 2006); N Lacey, *The Prisoners' Dilemma: Political Economy and Punishment in Contemporary Democracies* (Cambridge & NY: Cambridge University Press, 2008).

¹⁶⁶ Rusche and Kirchheimer, (2009); Foucault, (1991); Goffman, (1991).

institutions or technologies of punishment. Agencies of punitive power, which initially seem to be detached and disconnected from fields as varied as state mechanisms (e.g. industrial production, imprisonment, and prisons, military facilities, asylum camps) to scientific knowledge (e.g. legal, juridical, medical), appear through the prism of these readings to be actually merged and interconnected. Hence, when focusing on states (their elements, resources and forces), the actual focus is on knowledge (the turning of bodies into knowledge). States, the ‘body politic’, are a set of material elements and techniques (or technologies) that serve as both weapons and knowledge networks which ‘invest human bodies and subjugate them by turning them into objects of knowledge’.¹⁶⁷ The prison, for instance, at the turn of the 19th Century marked a significant moment in the perceptions of justice, as it became an ‘essential element in the history of penal justice: its access to humanity’,¹⁶⁸ while it was at this very moment that it put ‘correction’, discipline and specific class interests at the core of justice.¹⁶⁹

But it is also an important moment in the history of those disciplinary mechanisms that the new class power was developing: that in which they colonised the legal institution. At the turn of the century, a new legislation defined the power to punish as a general function of society that was exercised in the same manner over all its members, and in which each individual was equally represented: but in making detention the penalty *par excellence*, it introduced procedures of domination characteristic of a particular type of power. A justice that is supposed to be ‘equal’, a legal machinery that is supposed to be ‘autonomous’, but contains all the asymmetries of disciplinary subjection, this conjunction marked the birth of the prison, ‘the penalty of civilised societies’.¹⁷⁰

¹⁶⁷ Foucault, (1991), 28.

¹⁶⁸ P Rabinow, *The Foucault Reader. An Introduction to Foucault's Thought* (London & NY: Penguin Books, 1991), 214.

¹⁶⁹ Useful arguments on the connections between inequality and state punishment, drawing on Marx, Foucault and many others comprising a rich theoretical basis, are inspiringly deployed by Loïc Wacquant, see L Wacquant, *Punishing the Poor. The Neoliberal Governments of Social Insecurity* (Durham & London: Duke University Press, 2009). Also, see, D Garland, *Punishment and Society: A Study in Social Theory* (Chicago: Chicago University Press, 1990).

¹⁷⁰ Rabinow, (1991), 214-5.

Criminalisation then perhaps holds much more complex ideological functions than the initial fairness, clarity and goodness that it claimed to bring in the context of trafficking in women.

Criminalisation considerations in 'security contracts'

Historically, in addition to their intended purposes of punishing offenders, a great number of these practices have also generated an important imagery. The imagery of the conduct that is a (moral or other) public wrong and should not be done, and of the goods or persons or ideas that should be protected. To criminalise a certain kind of conduct is, then, to mobilise criminal justice processes in order to declare that a conduct is *wrong*, to institute a threat of punishment in order to supply a pragmatic reason for not doing it, and to censure those who nevertheless do it.¹⁷¹

Conceptualised at an international level, legal instruments have sought to tackle criminality and reaffirm universal values. In securing states' commitment to legal norms, international instruments have sought to set international standards, reciprocal rights and legal obligations on matters that were once regarded as excluded from international scrutiny by the notion of domestic jurisdiction.¹⁷² In effect, international crimes have a practical result in imposing obligations on states to tackle crime. Their symbolic purpose is to reflect that the international order is under attack and ought to be protected.¹⁷³ Appearing as a response to the emergence of security discourses and technologies,¹⁷⁴ contemporary rationalities

¹⁷¹ A Ashworth, *Principles of Criminal Law*, 6th ed. (Oxford & NY: Oxford University Press, 2009), 22.

¹⁷² Charter of the UN, 26 June 1945, article 2(7). For an analysis of the gendered aspects of international law, problems, inefficiencies and advantages, see H Charlesworth and C Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000), 96-123.

¹⁷³ R Higgins, *Problems and Process. International Law and How We Use It* (Oxford: Oxford University Press, 2004), 58.

¹⁷⁴ See, *securitisation*, Chapter 3.

for the international and transnational governance of crime have come forward to fiercely suggest that new laws, new criminological knowledge, improved technologies, harsher punishments, new agencies and new inter-agency agreements hold the potential to finally engage in a battle against criminality, eradicate crime, and consequently, stabilise secure conditions. Insofar as these secure conditions are contingent upon the implementation of a set of criminalisation and intelligence technologies, then criminalisation sets out the conditions of a security contract.

But does this contract come at a price? The obvious point to make is that too much criminalisation imposes stricter security controls and, in turn, too much security poses a threat to our freedom. However, I will set this point aside for the time being as it is extensively investigated in Chapter 3, which focuses on security. For the purposes of facilitating the current discussion, I will investigate the implicit contractual terms that give rise to criminalisation obligations and to a different set of considerations: it is widely accepted today that the scale and intensity of criminalisation and the salience of criminal justice policy, as an index of governments' competence, have developed in worrying ways.¹⁷⁵ And yet, criminalisation is being legitimated and constantly redeployed as a governmental strategy. Why? What purposes does it serve? I argue that the use of punishment as an index of efforts to eradicate criminality within democratic states is actually key to the security contract for two reasons; both these reasons offer invaluable insights in the context of anti-trafficking.

Firstly, as explained earlier, the underlying logic that has sustained today's harsher punishments reaffirms that once particular measures are enforced, violent

¹⁷⁵ Lacey, (2008), xv.

criminality can and will be eradicated. Based on Pat Carlen's conceptualisation, 'imaginary penalties create aims and objectives that bind criminal justice agencies into performance criteria that, despite their commonsensical appearance are, for the most part, unattainable and immeasurable'.¹⁷⁶ The assertion then that governmental initiatives and properly enforced laws alone can reduce crime and thereby create community safety is one such imaginary.¹⁷⁷ Moreover, state efforts to mobilise this imaginary through research on trends in crime and punishment, and to produce a seemingly factual reasoning, have been severely scrutinised,¹⁷⁸ to the extent that the constructed autonomy between the two spheres of science and politics can no longer be sustained, even when the discussion concerns evidence-based policy criteria.¹⁷⁹ Then, insofar as political measures are promulgated as anti-crime measures, they inscribe a certain imaginary about the capacities, intentions and functions of the state rather than a factual basis for governmental efforts.

Secondly, punishment as an index of governmental efforts stabilises a dominant understanding of crime, which is central in evaluating the 'price to pay' that comes with criminalisation. To the extent that the effectiveness of governmental efforts against crime is evaluated by the number of officers thrown into the battle and by the firm application of 'zero tolerance' policies, there is a certain understanding of the causes, effects and solutions to crime that legitimates these policies. This understanding of crime, which sustains these presumptions, needs to be interrogated further.

¹⁷⁶ T Hope, 'The First Casualty: Evidence and Governance in a War against Crime' in *Imaginary Penalties*, P Carlen ed. (Devon & Oregon: Willan Publishing, 2008), 45.

¹⁷⁷ *Ibid.*, passim.

¹⁷⁸ See, *ibid.*, 51.

¹⁷⁹ *Ibid.*, 59.

I trace a preliminary evocation of ‘zero tolerance’ policies articulated in conformity with ‘Broken Windows’ criminological theory.¹⁸⁰ In very broad terms, ‘Broken Windows’ theory has sought to explain criminality in opportunistic terms. The main idea of the theory moves away from deterministic understandings of crime. In doing so, it shifts the focus from the biologically ‘abnormal’ individual to ‘abnormal’ expressions of behaviour that have been wrongly tolerated by the police due to an apparent underestimation of their erosive effect and inherent risk.¹⁸¹ A key theme in the ‘Broken Windows’ thesis is the ways in which minor deviations from the norm are considered to be criminogenic:¹⁸²

[R]outine minor incivilities and disorder (such as vandalism, graffiti and litter) are the basis of a vicious circle. It is argued that increasing fear of crime related to disorder leads to a growing reluctance among many citizens to use public space, which in turn reduces natural surveillance in local areas, which then heightens the risk of further increases in disorder and eventually, of more serious crimes.¹⁸³

These ‘abnormal’ behaviours have been highlighted as fragmenting the social tissue and causing disorder, to the extent that they create broken windows through which criminality can infiltrate and contaminate the healthy social fabric. Similarly, pertinent to the infrastructure imaginary, threats have been conceptualised as targeting the healthy social infrastructure/building, and therefore, to a certain extent the narrative has guided us to imagine that crime poses a threat to our house and family life, our treasured *oikos*.¹⁸⁴

¹⁸⁰ See, Wacquant, (2009), 266-9. Also, for an exemplary analysis of how ‘Broken Windows’ theory has been used as a significant justification for anti-homeless laws and for demonizing and criminalising homelessness, see, R Amster, 'Patterns of Exclusion: Sanitizing Space, Criminalizing Homelessness', *Social Justice* 30, no. 1 (2003), 195, 207-10.

¹⁸¹ T Newburn and T Jones, 'Symbolising Crime Control: Reflections on Zero Tolerance', *Theoretical Criminology* 11, no. 2 (2007), 221, 225.

¹⁸² Wacquant, (2009), 268.

¹⁸³ Newburn and Jones, (2007), 225.

¹⁸⁴ J Q Wilson and G L Kelling, 'Broken Windows. The Police and Neighborhood Safety', *The Atlantic Online*(1982), [last accessed: 07/07/11] [<http://www.theatlantic.com/doc/198203/broken-windows>].

Consequently, this second point shows that the underlying assumption of the dominant punishment narrative is that crime poses a threat to us and to that extent ‘we’ (the constructed solidarity of and by the punitive state) are responsible for making the right political decisions. It is finally asserted that the more we allow social windows to be broken through lack of surveillance, the more serious criminal attacks we will inevitably suffer. To this extent, what ‘zero tolerance’ and ‘broken windows’ do not address is the underlying poverty that motivates crime and produces the economy of ‘broken windows’ in the first place.¹⁸⁵

Contemporary Overcriminalisation and the ‘War on Crime’

The existing literature has voiced its concerns about contemporary criminalisation. Either as ‘overcriminalisation’¹⁸⁶ or the criminological concept of ‘governing through crime’,¹⁸⁷ important commentators have voiced their concerns about the relentless rise of the politics of crime. These concerns have exposed the products, functions and harm of discursive constructions such as the ‘war on crime’ in the post-9/11 political imagination of the United States. These conditions, which have cultivated the notion of wars, have introduced the contemporary grammar of criminalisation, characterised by the ‘incarceration binge’ and the increasing

¹⁸⁵ D Otto, 'Making Sense of Zero Tolerance Policies in Peacekeeping Sexual Economies' in *Sexuality and the Law. Feminist Engagements*, V Munro and C Stychin eds. (Abingdon & NY: Routledge-Cavendish, 2007), 261.

¹⁸⁶ D Husak, *Overcriminalization. The Limits of the Criminal Law* (Oxford & NY: Oxford University Press, 2008); P Ramsay, 'Overcriminalisation as Vulnerable Citizenship', *New Criminal Law Review* 13, no. 2 (2010), 262.

¹⁸⁷ J Simon, *Governing through Crime. How the War on Crime Transformed American Democracy and Created a Culture of Fear* (Oxford & NY: Oxford University Press, 2007).

vulnerability of private and public spheres of life, as the new crime control mentality.¹⁸⁸

Consequently, to introduce a contingent array of measures as a response to emerging threats has often been considered as an adverse investment: the intersection of ‘armed justice’ and ‘us’, the threatened people.¹⁸⁹ In particular, when the emerging threats are depicted within a war paradigm,¹⁹⁰ the increasing importance of intelligence and enforcement has attested that it is perhaps an impossible task to attempt to balance, on the one hand, surveillance mechanisms, and on the other, the fundamental rights of individuals. In practice, the ‘collateral damage’ of the expanded artillery of justice manifests itself in human rights violations, arbitrary detentions and expulsions, ‘disappearances’ and fatal accidents during the deployment of highly specialised action plans.¹⁹¹ Thus, the actual cost of introducing inter-state legal developments and inter-agency policy structures underlines that not only does intense criminalisation ‘cost’ the democratic structures of our society enormously, but also its promised benefits have not been proven to outweigh the risks, with their subsequent economic burden, that it poses.¹⁹²

As Nicola Lacey has pointed out, in the context of globalisation, and notwithstanding significant national differences, we are currently witnessing the inexorable rise of the prison population, amid a ratcheting up of penal severity

¹⁸⁸ *Ibid*; I O'Donnell, 'Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear, by Jonathan Simon. Review.', *British Journal of Criminology* 48, no. 2 (2008), 247, 247-8.

¹⁸⁹ Foucault, (1991), 73.

¹⁹⁰ Simon, (2007), *passim*.

¹⁹¹ See, e.g., Human Rights Watch, 'The EU's Dirty Hands. Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece', Human Rights Watch, 2011 [last accessed: 07/01/12] [http://www.hrw.org/sites/default/files/reports/greece0911webwcover_0.pdf].

¹⁹² R Surtees, 'Second Annual Report on Victims of Trafficking in South-Eastern Europe', (Geneva: International Organisation for Migration, 2005), 143.

which seems unstoppable in the face of popular anxiety about crime.¹⁹³ Reflecting and representing popular anxiety about crime, criminalisation, crime control and criminal justice outline a complex set of practices and institutions, ranging from the conduct of householders locking their doors to the actions of authorities enacting criminal laws, from community policing and inter-state/global policing to punishment in prison and all the processes in between.¹⁹⁴ Then, not only does the intensification of criminalisation come from the ‘outside’, but it also denotes a certain widespread and intense emotional investment in crime, encompassing elements of fascination and inscribing anxieties within subjects.¹⁹⁵

Despite important considerations concerning costs, criminalisation discourses are highly pertinent to the evolution of historical time and institutional space. This suggestion is neither obvious nor trite. As a powerful rhetorical device, criminalisation has triggered a new rationality for the governance of crime and criminal justice. Today’s dominant criminalisation discourse is organised around economic forms of reasoning, in contrast to the social and legal forms that predominated for most of the 20th Century. By using the term ‘economic’ and not simply ‘value-for-money’, fiscal considerations are injected into the reasoning of the ‘war on crime’. Importantly, the term ‘economic’ points to the increasing reliance on an analytical language of risk analysis, rewards, rationality, choice, probability, targeting, demand and supply, consumption and, finally, balance.

Consequently, this ‘war’ language relies on the increasing importance of setting institutional objectives, such as compensation, cost-control, crime-reduction and, to some extent, harm-reduction. In addition, the political economy

¹⁹³ *Ibid.*

¹⁹⁴ D Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford & NY: Oxford University Press, 2001).

¹⁹⁵ *Ibid.*, 163.

of crime and the more novel political economy of victims have been building on the knowledge of the efficiency and effectiveness of these institutional objectives to give a more firm credibility to the ‘war on crime’ and, as investigated here, anti-trafficking investment.¹⁹⁶ The increasing resort to technologies such as intelligence, hi-tech forensic tools, ‘smart’ weapons, improved management, new innovative operations, and the subsequent market competition for the production of these technologies have transformed crime prevention into a reinvented, dynamic concept: a commercial and insurance-based thinking about crime control.¹⁹⁷ Paradoxically, increasingly punitive structures are the outcome of seemingly victim-centred policies, and trafficking in women is a rather illustrative theoretical case study.

Anti-Trafficking: what is to be criminalised?

“‘Double deviance’ described how many women found themselves twice punished for deviant behaviour: both by the criminal justice system and by informal sanctions from family and society’.
Frances Heidensohn¹⁹⁸

A global plague

Trafficking in persons has been depicted since the early 1990s as a global plague.¹⁹⁹ The most prominent attempt to offer official global statistical data on the persons who are held in forced labour, provided by the International Labour Organisation, has estimated that out of 12.3 million forced labour victims

¹⁹⁶ See, Chapter 4.

¹⁹⁷ D Garland, 'Governmentality' and the Problem of Crime: Foucault, Criminology, Sociology', *Theoretical Criminology* 1, no. 2 (1997), 173, 175-7.

¹⁹⁸ F Heidensohn, 'New Perspectives and Established Views' in *Gender and Justice*, F Heidensohn ed. (Devon & Oregon: Willan Publishing, 2006), 2.

¹⁹⁹ See, e.g., Batstone, (2007).

worldwide, approximately 2.4 million are trafficked.²⁰⁰ The figures, evaluated over a period of ten years, present a conservative assessment of actual victims at any given point in time.²⁰¹ The ‘gendered’ reality of trafficking is striking, as almost 56 per cent of all persons in forced labour are women and girls. With the capacity to increase every year, at least 700,000 persons are trafficked each year across international borders, over 80 per cent of whom are women trafficked for sexual purposes.²⁰² The contribution of this crime to organised crime annual profits is at least US\$32 billion, posing an added burden to the global economy and the current financial crisis.²⁰³

Copious criticism has focused on the construction of knowledge based on these data and on the perceived need to ascertain ‘trends’ in crime by measuring, recording or, in this case, estimating criminal behaviour. Further reference will be made to these critiques later in this chapter and in Chapter 7. For the time being, let us just assume that, based on the social constructionist work of writers such as Peter Berger and Thomas Luckmann,²⁰⁴ the knowledge produced by these statistics is part of a social control mechanism that involves the denial of meaning and imposes a deterministic essence on debates about crime.²⁰⁵ In this respect one is bound to perceive these statistics as social constructions and retain a critical

²⁰⁰ ILO, 'Action against Trafficking in Human Beings', (Geneva: International Labour Organisation, 2008), 3.

²⁰¹ ILO, 'The Cost of Coercion: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles at Work. International Labour Conference, 98th Session, Report I(B)', (Geneva: International Labour Organisation, 2009).

²⁰² US, 'Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report', US Department of State, 2001 [last accessed: 26/10/08]

[<http://www.state.gov/j/tip/rls/tiprpt/2001/>], 4; US, 'Trafficking in Persons Report 2007', US Department of State, 2007 [last accessed: 15/03/09]

[<http://www.state.gov/j/tip/rls/tiprpt/2007/index.htm>].

²⁰³ See, e.g., US, 'Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report'.

²⁰⁴ See, their pioneering work on the institutionalisation of knowledge, and on the construction of meaning/reality through social interaction, in P Berger and T Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (London & NY: Penguin Books, 1966).

²⁰⁵ See, Young, (2011), 20.

view of the knowledge produced. But how can we explain the ‘gendered’ reality of trafficking? And indeed, if we accept the social constructionist approach, how does the ‘gendered’ reality expand beyond numbers?

Dominant representations have also played a decisive part in reconstructing trafficking as a serious criminalisation issue. In the UK, for instance, important representations have projected trafficking as a ‘top priority’ issue for the Serious Organised Crime Agency.²⁰⁶ This has resulted in increasing demand for international police cooperation, while the attention to victims has somehow been a more thorny issue. Giving advantages to victims has given rise to speculation about creating grounds for a ‘pull factor’. As such, media representations have indicated that provisions pertinent to victims of trafficking and relevant to controlling migration (illegalised or not) have actually been competing policy areas. This constructed dilemma: ‘protection or criminalisation’ has then served to enforce criminalisation provisions and give priority to the control of illegalised migration.²⁰⁷ These representations have encouraged us to listen to victims’ stories with some caution. According to these narratives, in fact, individuals may take advantage of victim-friendly, human rights-oriented legal provisions and claim victims’ rights to which they are not entitled. In this view, individuals may see these provisions as an opportunity to make false claims of being trafficking victims in a bid to remain in the country.²⁰⁸

The media surveyed has also covered cases in which trafficking victims face removal despite their having to face severe hardship as a result.²⁰⁹ These narratives

²⁰⁶ See, e.g., House of Commons, ‘Human Trafficking: UK Responses’, SN/HA/4324, 16/03/2012.

²⁰⁷ Morehouse, (2009), 162.

²⁰⁸ See, e.g., BBC, ‘Tories Demand Trafficking Action’, BBC News Online, 03/01/2007 [last accessed: 02/10/11]

[http://news.bbc.co.uk/1/hi/uk_politics/6227705.stm].

²⁰⁹ Morehouse, (2009), 162.

are highly pertinent to the 'Broken Windows' theory examined earlier, as they provide opportunistic explanations that give rise to criminalisation enforcement. Simultaneously, the language of criminalisation in the context of victims is being repeatedly deployed. I will therefore trace some commonalities between official (statistics) and media representations and I set out to explore their common grounds a little further.

Paradoxically, while the figures quoted above have been extensively utilised in support of anti-trafficking structures combined with 'media panic' formulations, they have at the same time been criticised for not capturing the real scale of trafficking. Most prominently, the EU Ministerial Conference Towards Global EU Action Against Trafficking in Human Beings,²¹⁰ the UNODC Human Trafficking Act²¹¹ and Anti-Slavery International²¹² have severely criticised the lack of accurate statistics, and, in particular, national statistics, to the extent that this lack of a real and concrete statistical basis is now considered commonplace. This creates a knowledge gap and poses important problems at an epistemological level. On the one hand, it reaffirms that the international instruments: a) not only rely on statistics, but also utilise them as a decisive part in the construction and validation of knowledge, particularly the links between trafficking and other threats, such as organised crime; and b) claim to prioritise trafficking in women as

²¹⁰ European Commission, 'EU Ministerial Conference Towards Global EU Action against Trafficking in Human Beings', [last accessed: 17/10/11] [http://www.iomvienna.at/index.php?option=com_content&view=article&id=396%3Aeu-ministerkonferenz-qtowards-global-eu-action-against-trafficking-in-human-beingsq&catid=101%3Aemenschenhandel&Itemid=116&lang=en].

²¹¹ UNODC *Human Trafficking Act* 3.

²¹² E Pearson, 'Human Traffic, Human Rights: Redefining Victim Protection', (London: Anti-Slavery International, 2002), 97.

a gendered crime. To do so, they put forward demands for better understanding, and subsequently, ‘combat’ of or ‘war’ on it.²¹³

On the other hand, it suggests that the international instruments, often counting on national structures:²¹⁴ a) construct ambiguous knowledge, following a common trend in the (under-)reporting and (lack of) monitoring of violence against women;²¹⁵ as a result, this enforces the view that: b) their interest on women is limited to sensationalist media representations of the vulnerability and disempowerment of women, implicitly assuming that women’s victimisation may be an individual problem suffered by deviants in particular contexts, rather than a social problem in need of wider remedies.²¹⁶

This is highly significant as, in both cases of knowledge-construction, it is implied that criminalisation is managed through the utilisation of the ‘dark figure’ of criminality.²¹⁷ As a concept, the ‘dark figure’ of criminality traditionally indicates the silences around crimes, hidden types of crime and unreported criminality. As a result, it is often used to point out the limitations of crime surveys and the extent to which crime statistics are capable of producing valid scientific knowledge. Hence, the ‘dark figure’ of criminality places under scrutiny the notion and practices of ‘recorded crime’.²¹⁸ In this context, however, the

²¹³ See, e.g., OSCE, 'Mission Directive 52. Prohibiting the Promotion or Facilitation of Prostitution and Trafficking in Persons. Read in Conjunction with the Mission Manual. 02/08/2002', (Organisation for Security and Cooperation in Europe, 2002), 1; OSCE, 'Proposed Action Plan 2000 for Activities to Combat Trafficking in Human Beings, 11/1999', (Warsaw: Organisation for Security and Cooperation in Europe, 1999).

²¹⁴ See, E Kelly, 'Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe, No. 11', (International Organisation for Migration, 2002).

²¹⁵ H Johnson, 'Rethinking Survey Research on Violence against Women' in *Rethinking Violence against Women*, E Dobash and R Dobash eds. (Thousand Oaks & New Delhi: Sage Publications, 1998), 23-6.

²¹⁶ E Dobash and R Dobash, *Women, Violence and Social Change* (London & NY: Routledge, 1992), 32.

²¹⁷ M Maguire, 'Crime Statistics: The 'Data Explosion' and Its Implications' in *The Oxford Handbook of Criminology*, M Maguire, R Morgan, and R Reiner eds. (Oxford: Oxford University Press, 2002), 348-9.

²¹⁸ *Ibid.*, 359-60.

mutually reinforcing interplay between official statistics and media representations serves to legitimate knowledge.

Most importantly, it serves to establish that there is nothing ‘wrong’ with scientific, anti-trafficking knowledge, even when it contradicts itself and even when official mechanisms explicitly question its validity. Thus, institutional ‘needs’ stabilise more ways for investigating and representing the ‘crime situation’, despite the weaknesses or impossibility of this task. As depicted by Mike Maguire, the issues pertinent to the ‘dark figure’ of criminality have, for many years, not attracted much interest besides that of a few academics and statisticians. In the final analysis, they have not been considered as important: ‘policy-makers, practitioners, and, indeed, many less theoretically-minded criminologists, would simply acknowledge the problem of the so-called “dark figure” of crime, but then proceed as though it did not matter’.²¹⁹

Moreover, when it is officially admitted that statistics do not work properly, institutional practices put forward the demand to ‘upgrade’ controls in order to gain a better view of the problem. Hence, stricter measures and controls are required as mandatory steps towards the improvement of reporting and evaluating accurate crime rates. In other words, either by putting aside the problems of official knowledge or by installing these problems as mandatory steps towards upgrading knowledge of the system, the process of knowledge-construction is ultimately translated into a problem of stricter controls.²²⁰ The interplay between official institutional knowledge and its representations therefore produces not the

²¹⁹ *Ibid.*, 348.

²²⁰ Urging States for ‘reliable data’ is a common, recurring reference to all US Department of State *TIP Reports*, see, e.g., US, ‘Trafficking in Persons Report 2010’, US Department of State, 2010 [last accessed: 03/01/12] [<http://www.state.gov/j/tip/rls/tiprpt/2010/index.htm>]; US, ‘Trafficking in Persons Report 2011’, US Department of State, 2011 [last accessed: 07/01/12] [<http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm>].

known but the unknown, and it builds on its force, on its absence, on the silences and incomplete information, on the weaknesses of the system of knowledge-construction, in order to blur the limits of precise control and articulate a mechanism of further enforcement.²²¹

Legal Framework and Criminalisation

Women-Centred Responses

The avenues for *knowing* trafficking and, in particular, the official construction of knowledge, are useful for controlling and punishing trafficking. Controlling trafficking in women, contrary to other trafficking offences, such as drug trafficking, which is a so-called ‘victimless crime’,²²² is crucial because of its victims.²²³ ‘Women-centred’ legal responses have been gaining ascendancy alongside criminalisation principles. Women’s experiences are being reflected in political and legal discourse, and in effect, women’s lives invoke particular understandings of both gender and sexual differences, which in turn construct the ‘realities’ of international law.²²⁴ The identified need for gender appropriate programming, since the very first anti-trafficking legal development, is remarkable, as it shows that the specific risk, need and responsivity factors for this particular imaginary penalty constitute a longstanding institutional commitment.²²⁵ As a highly specialised area of criminalisation, therefore, anti-

²²¹ What Lyotard calls ‘fracta’, the incomplete information, catastrophes, and pragmatic paradoxes, see, J F Lyotard, *The Postmodern Condition: A Report on Knowledge* (Manchester: Manchester University Press, 1984), 60.

²²² See, E M Schur, *Crimes without Victims: Deviant Behaviour and Public Policy, Abortion, Homosexuality, Drug Addiction* (NJ: Prentice Hall Inc, 1965).

²²³ For the position of women in society and trafficking see, L Shelley, ‘The Trade in People in and from the Former Soviet Union’, *Crime, Law and Social Change* 40, no. 2-3 (2003), 231, 233-5.

²²⁴ Charlesworth and Chinkin, (2000), 4.

²²⁵ For the construction of ‘gender responsivity’ in the context of Carlen’s *imaginary penalties*, see, K Hannah-Moffat, ‘Re-Imagining Gendered Penalties: The Myth of Gender Responsivity’ in *Imaginary Penalties*, P Carlen ed. (Devon & Oregon: Willan Publishing, 2008).

trafficking constructs representations of gender; meanwhile, at the level of representations, gender is constructed through violence.²²⁶

It is of the utmost importance, then, that anti-trafficking as an imaginary penalty draws on the historical discourse of the sexual exploitation of women, which reveals a great deal about the ways in which women's bodies are represented and perceived in our society.²²⁷ This creates even more powerful possibilities than the explicit purpose of criminalisation, with its underpinning demands to eliminate or end trafficking.²²⁸ In particular, at the level of subject-formation, it creates the potential to mobilise re-imagined conceptions of gender and criminalisation and project ways out of current dilemmas; I will explore these ways further.

Historical Anti-Trafficking Antecedents: slavery and sex work

Historically, anti-trafficking discourses are positioned at the core of gender-specific international legal responses and have attempted to decisively influence the position of women in society. However, the main conceptual avenue used is the criminalisation approach. An indicative element of this criminalisation tendency is the fact that even though all international developments include criminalisation provisions (both pertinent to trafficking and sex work), the inclusion of protection provisions such as victims' identification, rehabilitation

²²⁶ L Kelly and J Radford, 'Sexual Violence against Women and Girls. An Approach to an International Overview' in *Rethinking Violence against Women*, E Dobash and R Dobash eds. (Thousand Oaks & New Delhi: Sage Publications, 1998).

²²⁷ G Lazaridis, 'Trafficking and Prostitution: The Growing Exploitation of Migrant Women in Greece', *European Journal of Women's Studies* 8, no. 1 (2001), 67.

²²⁸ J Halley et al., 'From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism', *Harvard Journal of Law & Gender* 29, no. 1 (2006), 335, 337.

and access to legal residence has had a very non-linear development in the evolution of legally defining and controlling trafficking.

Keeping this imbalance in mind, trafficking in women has been criminalised by international treaties for almost 200 years. A model was essentially shaped when women were refused the right to participate in the World Anti-Slavery Convention in London in 1840; as a response, they decided to organise their political action outside the formal meetings.²²⁹ Since then, international women's groups were established in the late nineteenth and early twentieth centuries with a variety of aims, including equal access to education and training and women's suffrage.²³⁰ The movement is broadly referred to as 'first-wave feminism', mostly focused on *de jure* inequalities and the right to vote (on gaining women's suffrage) rather than on the official recognition of different social layers of oppression.²³¹

During the same period, numerous international instruments came into force with a view to establish anti-trafficking policies that had the potential to combine both a prosecution aspect and a victim protection aspect. However, the victim protection parameter has often been interpreted as the capacity to monitor policies and prosecute or deter traffickers, 'by signalling that governments are serious about detecting and prosecuting responsible institutions and individuals'.²³² In the paragraphs that follow, I set out to investigate these instruments.

Firstly, (1) the International Agreement of May 1904 for the Suppression of the White Slave Traffic²³³ was primarily adopted due stagnant economic conditions in Europe, which led to the sale of women 'destined for an immoral

²²⁹ D Stienstra, *Women's Movements and International Organisations* (London: Macmillan, 1994), 47-8; Charlesworth and Chinkin, (2000), 14-5.

²³⁰ Charlesworth and Chinkin, (2000).

²³¹ J Evans, *Feminist Theory Today: An Introduction to Second-Wave Feminism* (London, Thousand Oaks & New Delhi: Sage Publications, 1995), 8-9.

²³² Morehouse, (2009), 52.

²³³ 24 UKTS 1.

life²³⁴ into the 'White Slave Traffic'.²³⁵ While it evokes a certain resemblance to the slave trade from Africa to Europe and America,²³⁶ the 'white slave trade' described female factory workers in England and, later on, the exploitation of women in the European sex trade.²³⁷ This first legal development laid the foundations for governmental responsibility to actively detect and dismantle human trafficking operations and to 'free victims from this non-institutional form of slavery'.²³⁸ In principle, it acknowledged women's experiences and, to that extent, the 1904 Anti-Trafficking Treaty emphasised regulating the personal security of victims,²³⁹ even though the main focus was actually on detecting and dismantling trafficking rings. It was, however, inapplicable to men and to non-white women, which reflects the boundaries of institutional protection at the intersecting social categories of gender and race.²⁴⁰ Due to its lack of law enforcement provisions, it has been considered as practically ineffective, even though it played some part in gathering intelligence on white slave trafficking rings and in monitoring agencies that offered work to female foreign nationals.²⁴¹

Secondly, (2) the International Convention of 4 May 1910 for the Suppression of the White Slave Traffic²⁴² was considered a harsher tool in the criminalisation of the offence, as: a) it rendered women's consent irrelevant, b) it made the offence punishable 'notwithstanding that the various acts constituting the offence may have been committed in different countries' (article 1), and c) it laid

²³⁴ Article 2, 24 UKTS 1.

²³⁵ M D Beckman, 'The White Slave Traffic Act: The Historical Impact of a Criminal Law Policy on Women', *Georgetown Law Journal* 72, no. 3 (1984), 1111, 1112-3.

²³⁶ See, Hardt and Negri, (2001), 'The Crisis of Colonial Slavery', 120-4.

²³⁷ Obokata, (2006), 14.

²³⁸ Morehouse, (2009), 52.

²³⁹ Articles 3 and 4.

²⁴⁰ N Tavakoli, 'A Crime That Offends the Conscience of Humanity: A Proposal to Reclassify Trafficking in Women as an International Crime', *International Criminal Law Review* 9, no. 1 (2009), 77, 89.

²⁴¹ Morehouse, (2009), 52.

²⁴² 20 UKTS 269.

down the proposal of a political process for international cooperation in which information exchanged between governments was defined, with a vision to establish cooperation between authorities involved in prosecution. Harsher in nature, the 1910 Anti-Trafficking Convention did not contain any provisions for monitoring employment or transport agencies with the view to prevent trafficking victimisation. Therefore, it was still criticised for its limited scope, particularly because of its reluctance to deal with the regulation of sex work, allowing it to be a matter of domestic jurisdiction.²⁴³ Moreover, the 1910 Anti-Trafficking Convention included no rehabilitation measures for victims, a sign of the international community's neglect towards addressing further this aspect of anti-trafficking policy, demonstrating a disconnect between fostering the rehabilitation of victims and effective anti-trafficking policies.²⁴⁴

In the meantime, women's groups attempted to play some role in the peace settlement negotiations at the end of World War I. They lobbied the national delegations negotiating the establishment of the League of Nations and the International Labour Organisation. The League's responsibility for supervising agreements on trafficking in women and children was the result of women's deputations to the Paris Peace Conference in 1919.²⁴⁵ Under the auspices of the League of Nations, two important international agreements on trafficking were consequently adopted. Thirdly, (3) the International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children,²⁴⁶ which endorsed the International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, reaffirmed the link between trafficking, sex work and the

²⁴³ United Nations Department of Economic and Social Affairs, 'Study on Traffic in Persons and Prostitution', (ST/SOA/SD/8, 1959).

²⁴⁴ Morehouse, (2009), 45.

²⁴⁵ Charlesworth and Chinkin, (2000), 15.

²⁴⁶ 9 LNTS 15.

sexual exploitation of women; in principle it was a prosecution-oriented development. The discursive shift that it established was related to the addition of ‘children’ as potential victims of trafficking. To this limited extent, the ‘white slavery’ restrictions upon the protected population were modified according to the perceived gender and age of trafficking victims. In doing this, it opened the debate to broader understandings of gender and age, although leaving priorities related to race intact.

Subsequently, (4) the International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age²⁴⁷ reaffirmed the focus on ‘immoral purposes’ (though no explicit reference was made to sex work and sexual exploitation),²⁴⁸ regardless of whether these acts occurred with the consent of the women. However, the regulation of sex work was still regarded as a matter of domestic jurisdiction, and therefore, there was no explicit reference to criminalising prostitution *per se*.²⁴⁹ The 1933 Treaty did not include any additional victim identification or rehabilitation clauses, though it did stress the importance of diplomatic and intelligence cooperation between contracting states, providing evidence of the political anxiety in this specific historical context.

The League of Nations through these provisions, particularly, the 1904 International Agreement, provided for the establishment of a national machinery to coordinate information relating to the procurement of women and girls for ‘immoral purposes’. States’ parties were pressured to take concerted measures to

²⁴⁷ 150 LNTS 431.

²⁴⁸ Article 1, 150 LNTS 431.

²⁴⁹ It did, however, criminalise ‘procurement’, for regulation and criminalisation of sex work, see, J Outshoorn, 'Introduction: Prostitution, Women's Movements and Democratic Politics' in *The Politics of Prostitution. Women's Movements, Democratic States and the Globalisation of Sex Commerce*, J Outshoorn ed. (Cambridge & NY: Cambridge University Press, 2004), 8.

detect persons involved in the trafficking and to repatriate its victims.²⁵⁰ In this respect, the League of Nations recognised that prostitution was a root cause of and a contributing factor to trafficking. It also recognised that prostitution should not merely be a matter of domestic jurisdiction, and a draft convention was prepared in 1937, which was to be concluded in 1940.²⁵¹ However, the convention was never adopted, due to the outbreak of World War II. This process was resumed after the war, and it led to the adoption of (5) the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949, which consolidated previous conventions.²⁵² In many respects, the latter is considered to be a benchmark in the history of anti-trafficking. Like previous developments, the UN 1949 Anti-Trafficking Convention made explicit reference to the linkage between trafficking and sexual exploitation, addressing measures to rehabilitate 'victims of prostitution'.²⁵³ It also removed the explicit reference to women, reaching out to a broader spectrum of gendered forms of trafficking, and covered instances of men's victimisation. Lastly, it made reference to domestic trafficking and to trafficking across borders, conceptualising the criminalisation of a much broader and complex set of actions.

To a considerable extent, the UN 1949 Anti-Trafficking Convention contributed significantly to the protection of victims, and it exceeded the criminalisation expectations that were repeatedly laid down by previous provisions. However, again due to its primary engagement with criminalisation, the UN 1949 Anti-Trafficking Convention reflected that, for the most part, human rights protections of trafficked persons are pursuant to more rights-oriented

²⁵⁰ L Reanda, 'Prostitution as a Human Rights Question: Problems and Prospects of United Nations Action', *Human Rights Quarterly* 13, no. 2 (1991), 202, 207.

²⁵¹ Obokata, (2006), 16; Reanda, (1991).

²⁵² 96 UNTS 271.

²⁵³ Article 16, 96 UNTS 271.

developments, such as the Convention on the Elimination of All Forms of Discrimination Against Women, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Protection of the Rights of Migrant Workers and Members of their Families, the Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, International Labour Organisation Convention No. 29 concerning Forced Labour, and No. 105 concerning the Abolition of Forced Labour.²⁵⁴

Overall, the most striking criticism that one can offer is that the 1949 Convention sought to prohibit trafficking and criminalise acts associated with the regulation of sex work, though not sex work itself. In doing so, it conveyed mixed messages about its purposes and its ultimate focus on the gendered aspects of trafficking. For instance, criminalisation was not extended to all the links in the trafficking chain, particularly the customers. Its manifest intent to abolish prostitution established ‘a *fear* that by doing so the prohibition would drive prostitution underground and that the attempt to punish both clients and prostitutes would only be enforced against the latter’.²⁵⁵ It has been noted that its failure to provide a valid definition of trafficking was also related to its focus on the regulation of sex work and sexual exploitation exclusively. As such, it proved

²⁵⁴ R Coomaraswamy, 'Integration of the Human Rights of Women and the Gender Perspective. Violence against Women. Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, on Trafficking in Women, Women's Migration and Violence against Women, Submitted in Accordance with Commission on Human Rights Resolution 1997/44, 29 February 2000', (E/CN.4/2000/68, 2000). See, also, Chapter 4.

²⁵⁵ Obokata, (2006), 17; Outshoorn, 'Introduction: Prostitution, Women's Movements and Democratic Politics', 8-9.

ineffective in protecting the rights of trafficked women, and inadequate as a human rights instrument, as ‘it does not take a human rights approach’.²⁵⁶ It thus failed to represent women as independent actors endowed with rights and reason; rather, it portrayed women as vulnerable beings in need of protection from the ‘evils of prostitution’.²⁵⁷ Crucially, by confining the definition of trafficking to trafficking for sex work, it significantly minimised its scope, increasing women’s marginalisation and vulnerability,²⁵⁸ limiting and silencing the range of women’s experiences. Lastly, it portrayed a limited ‘gendered’ picture, as it only represented women being trafficked for prostitution. By doing so it concealed men’s experiences and it reaffirmed, at an international level, certain sexual possibilities that could be associated with forms of official social control.

To recapitulate, the early criminalisation of trafficking established discursive links between women, slavery and prostitution. ‘White slave traffic’ is distinguished from the roots of slavery and the African slave trade through the posing of distinct gender and race problematisations. Importantly, none of the legal developments examined so far acknowledged forced non-sexual labour or trafficking in human organs; as such the legal instruments evoked very specific intersectional – gender, class, race and ethnicity – criminalisation concerns.²⁵⁹ However, the extensive legal production of instruments merging women, slavery and the regulation of sex work demonstrates that gender stereotypes and the

²⁵⁶ Coomaraswamy, 'Integration of the Human Rights of Women and the Gender Perspective. Violence against Women. Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, on Trafficking in Women, Women's Migration and Violence against Women, Submitted in Accordance with Commission on Human Rights Resolution 1997/44, 29 February 2000', 11-2. For an analysis of human rights instruments, see Chapter 4.

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*

²⁵⁹ For the underlying theory informing an intersectional model of feminism, see, A Burgess-Proctor, 'Intersections of Race, Class, Gender, and Crime. Future Directions for Feminist Criminology', *Feminist Criminology* 1, no. 1 (2006), 27.

intensification of controls can convey much broader discursive functions. I will now examine the final, sixth, international anti-trafficking instrument as well as more recent European anti-trafficking developments.

Contemporary Anti-Trafficking

The contemporary criminalisation of trafficking reflects the history of anti-trafficking and operates as a continuation of earlier debates. The discursive power of diverse legal developments continually renews the ‘anti-trafficking promise’ and reaffirms that once the correct formula is found – somewhere between criminalisation and the inclusion of victims – trafficking can be eliminated. Nonetheless, considering that the knowledge and practices of criminalisation have evolved, contemporary anti-trafficking appears to be significantly advanced, incorporating the language of transnational policing and mobilising the discursive potential for a global civil society. New actors have moved the relevant debates forward and have introduced new discursive formations pertinent to the construction of: 1) national and international security, and 2) human security and rights. These two discursive formations have been most prominently represented in the ‘new slavery’ discourse, the organised crime imagery, and the links between trafficking, smuggling and illegalised migration.²⁶⁰

These, on the one hand, have heightened the importance of an ongoing, persistent effort to improve the position of women at an official level and through international legal instruments. They have thus served as the driving force for global harmonisation, as well as the achievement of national criminal justice

²⁶⁰ See, e.g., Aradau, (2004).

endeavours.²⁶¹ On the other hand, they appear to have upheld larger criminalisation incentives.²⁶² Effectively, this has instituted the notion that a more ‘across-the-board’ and adequate anti-trafficking approach would, in practice, establish a model that could potentially increase criminal convictions. Criminal convictions, which still remain low and are non-existent²⁶³ in some countries, are consistently deployed as an index of governments’ competence. Governments, in turn, mobilise the discursive construction of ‘criminal convictions’ to serve diverse interests and goals; in this context, the line between victims and criminals can be, and often is, transgressed,²⁶⁴ reaffirming contemporary anxieties related to criminalisation.

It has been argued that an important implication of anti-trafficking for the international legal system is the fact that trafficking has been conceptualised as a transnational crime and, hence, it is criminalised under transnational criminal law. It has therefore often been regarded as only one of the crimes committed against trafficked persons, among a series of human rights violations.²⁶⁵ Often, other crimes have been associated to trafficking, such as crimes committed to ensure the compliance of victims, to maintain control or to protect trafficking networks and

²⁶¹ C E Dettmeijer-Vermeulen, 'Trafficking in Human Beings, Fifth Report of the Dutch National Rapporteur', (Bureau of the Dutch National Rapporteur on Trafficking in Human Beings, 2007), 22.

²⁶² M Segrave, S Milivojevic, and S Pickering, *Sex Trafficking. International Context and Response* (Devon: Willan Publishing, 2009), 7.

²⁶³ Lack of convictions persist even within the pressures exercised by the EU external dimension see, M Gramegna, 'Tackling the Root Causes of Trafficking in Human Beings through the EU External Dimension: Opportunities and Challenges' (paper presented at the EU Ministireal Conference Towards Global EU Action against Trafficking in Human Beings - The Third EU Anti Trafficking Day, Palais d'Egmont, Brussels - Belgium, 19-20 October 2009).

²⁶⁴ Y Ertürk, 'Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Yakin Ertürk : Addendum : 15 Years of the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, (1994-2009): A Critical Review', (A/HRC/11/6/Add.5, 2009), 14.

²⁶⁵ See, Chapter 4.

maximise profits.²⁶⁶ The offences are not limited to the initial methods of establishing control over victims, but extend to violence and threats of violence, deception, imprisonment, collusion, debt bondage, isolation, and to the binding use of religious, cultural or other beliefs.²⁶⁷ In effect, transnational criminal law and international human rights law, initially viewed as two parallel approaches, can be seen to interact via the extension of criminalisation provisions to issues that expand solid understandings of the rather flexible limits of the trafficking offence.

Trafficking as a contemporary form of slavery has been the most prominent linkage between the past and present of anti-trafficking. In 1983 the Special Rapporteur on the Suppression of Traffic in Persons and the Exploitation of Prostitution analysed prostitution as a form of slavery.²⁶⁸ Further, the Subcommission on Prevention of Discrimination and Protection of Minorities created a working group in 1975 to review developments in the law against slavery. Within its remit, the group identified economic, sexual and other forms of exploitation, alongside corruption. The element of corruption was described as an ‘inescapable element’ in contemporary slavery.²⁶⁹ Also, the 1998 report of the Special Rapporteur, Ms Gay J. McDougall, on slavery, stresses that sexual slavery encompasses situations where women and girls are forced into marriage, domestic servitude or other forced labour that ultimately involves forced sexual activity as well as ‘forced prostitution’.²⁷⁰ The report is of vital importance, as it advanced

²⁶⁶ K Touzenis, *Trafficking in Human Beings. Human Rights and Trans-National Criminal Law, Developments in Law and Practices* (Paris: UNESCO Migration Studies 3, 2010), 62.

²⁶⁷ See, e.g., UNODC, 'Anti-Human Trafficking Manual for Criminal Justice Practicioners. Module 4: Control Methods in Trafficking in Persons', (Vienna: United Nations Office on Drugs and Crime, 2009).

²⁶⁸ D Weissbrodt and M Dottridge, 'Abolishing Slavery and Its Contemporary Forms, Hr/Pub/02/4', (NY & Geneva: Office of the United Nations High Commissioner for Human Rights, 2002).

²⁶⁹ Charlesworth and Chinkin, (2000), 237.

²⁷⁰ *Ibid*; G J McDougall, 'Special Rapporteur on Contemporary Forms of Slavery, Systematic Rape and Slavery-Like Practices. UN Doc. E/Cn.4/Sub.2/1998/13', 22/06/1998.

policy and practical recommendations related to the underlying humanitarian law prohibition of enslavement and rape, and made specific suggestions to guide investigation, prosecution and prevention in the field of sexual violence.

The UN 2000 Anti-Trafficking Protocol

In conjunction with the ‘new slavery’ discourse, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime (UN 2000 Anti-Trafficking Protocol, or Palermo Protocol)²⁷¹ contributed substantially to re-imagining contemporary anti-trafficking structures. Firstly, it encompasses ‘slavery or practices similar to slavery’ and ‘servitude’ (in article 3). However, it maintains a distinction between trafficking and the international crime of slavery, mainly due to the racial and gender assumptions within the term slavery.²⁷²

Secondly, though still present, the discourse on the regulation of sex work has gradually shifted. In consequence, the relevant, intersecting gender, race and age categories examined earlier appear to have opened up the conceptual map of what exploitation might mean within transnational criminal law. With particular reference to sex workers’ human and labour rights’ analysis, instruments and statements made by actors, UN agencies and special rapporteurs have supported the de-linking of the regulation of sex work and trafficking.²⁷³ Under the UN 2000 Anti-Trafficking Protocol, trafficking takes place regardless of the exploited

²⁷¹ A/RES/55/25 (2000).

²⁷² Tavakoli, (2009), 78. Tavakoli *International Criminal Law Review*, 2009: 78.

²⁷³ J G Raymond, ‘Guide to the New UN Trafficking Protocol’, Coalition Against Trafficking in Women, 2001, 6-7. For an overview of the relevant heated debates see, Doezeema, (2005); J Bindman and J Doezeema, *Redefining Prostitution as Sex Work on the International Agenda* (Anti-Slavery International, 1997); Munro, (2006); Limoncelli, (2010).

person's (adult or child) consent to the committed act of exploitation. Meanwhile, the nature of the offence may vary from forced labour or services to servitude or the removal of organs.

Thirdly, it decisively classifies trafficking as a form of transnational organised crime. The drafting of the Anti-Trafficking Protocol was set in motion when the United Nations General Assembly adopted a resolution establishing an ad hoc committee to develop instruments on organised crime, including trafficking and people smuggling. This resulted in the United Nations Convention against Transnational Organised Crime (2000), and Trafficking and Smuggling Protocols. This classification, however, has been criticised mainly for the following three reasons.

Primarily, because the UN 2000 Anti-Trafficking Protocol is the first modern international instrument on trafficking and is being elaborated in the context of crime control – transnational police cooperation, rather than with a focus on human rights.²⁷⁴ A clear indication of criminalisation priorities in the UN 2000 Anti-Trafficking Protocol is the dependence of victims' right to residence (and often to protection) on the victims' judicial cooperation.²⁷⁵ In principle, the initial conceptualisation of trafficking, in the context of transnational organised criminality, attests that competent authorities prioritise transnational organised crime (in the forms of drug trafficking, illicit manufacturing of and trafficking in firearms, smuggling, money-laundering, terrorism and corruption). So, even if it assumed that a certain balance between protection and criminalisation could be

²⁷⁴ Coomaraswamy, 'Integration of the Human Rights of Women and the Gender Perspective. Violence against Women. Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, on Trafficking in Women, Women's Migration and Violence against Women, Submitted in Accordance with Commission on Human Rights Resolution 1997/44, 29 February 2000', 7.

²⁷⁵ See, also, Chapters 4 and 7.

achieved, the conceptualisation of trafficking as one more variant of organised criminality limits our vision with regard to the complexity of the offence and its causes.

Further evidence regarding the criminalisation nature of the development is the fact that the UN 2000 Transnational Organised Crime Convention is an international cooperation instrument. As such it has been designed to promote: a) inter-state police cooperation to combat transnational organised crime, and b) ‘elaboration, as appropriate of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea’.²⁷⁶

Secondly, in the imaginary penalty of anti-trafficking, the UN 2000 Anti-Trafficking Protocol was imagined as a tool to promote a certain security agenda. Its necessity then as a legal framework mainly lies in the criminalisation and fusion of diverse security threats set under the provisions to combat diverse criminal activities which may include, *inter alia*, ‘money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage and the growing links between transnational organised crime and terrorist crimes’.²⁷⁷ At the level of imagination, trafficking consequently becomes visible in the global political agenda as part of a criminalisation and security

²⁷⁶ UN General Assembly, 'Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organised Crime on the Work of Its First to Eleventh Sessions, 02 November 2000', (A/55/383, 2000), 2-3.

²⁷⁷ *Ibid.*, 23. General Assembly resolution 55/25, of 15 November 2000, UN Convention against Transnational Organised Crime, *Preamble*, paragraphs 6, 7 (links between organised crime and terrorism), article 8 (criminalisation of corruption).

continuum linking organised crime, illegalised migration, trafficking in arms and drugs, corruption, money-laundering and terrorism.²⁷⁸

Last but not least, trafficking being discursively constructed as an organised crime development indicates that action plans and police cooperation must consider: a) the perpetrators in cases of trafficking as links to a broader range of organised criminal activities, potentially corruption, terrorism and illegalised migration. In any other case, the perpetrators do not match the profile of the alleged perpetrators that ‘we look for’. And, in direct connection, b) that victims are recognised in accordance with article 4 of the UN 2000 Anti-Trafficking Protocol, ‘when the offences described are transnational in nature and involve an organised criminal group’.²⁷⁹ However, unlike the criminal provisions, which are obligatory on States, the provisions pertinent to the protection of victims are discretionary.²⁸⁰

Subsequently, provisions for the repatriation of the victims, compensation and pertinent services to assist them, such as appropriate housing, counselling, medical, psychological and material assistance, are only vaguely stipulated in the UN 2000 Anti-Trafficking Protocol. Article 6(3) very loosely reaffirms that ‘each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organisations, other

²⁷⁸ See, also, links between corruption, money-laundering and cybercrime, *Explanatory Report – Action against Trafficking in Human Beings*, CETS No. 197, 16.V.2005: 30-1, 48, 57. For an analysis of discursive connections, see, Aradau, (2004), 7.

²⁷⁹ Also, explicit reference made to victims of transnational organised crime, under article 24 ‘protection of witnesses’, paragraph 4; article 25 ‘assistance to and protection of victims’, paragraph 3 and article 18, paragraph 27, of the *UN 2000 Convention*. And, article 6 ‘assistance to and protection of victims of trafficking in persons’, particularly paragraph 2(b) ‘assistance to enable their views and concerns to be presented and considered at appropriate states of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence’.

²⁸⁰ See, also, Pearson, ‘Human Traffic, Human Rights: Redefining Victim Protection’, 2.

relevant organisations and other elements of civil society ...'.²⁸¹ This seems to assume that there has been a pre-existent harmonisation process among states, which has already ensured that there are explicitly laid out common, or at least comparable, levels of civil society developments. Crucially, the 2000 UN Anti-Trafficking Protocol (article 10(b)) maintains that it is within the jurisdiction of the national authorities to determine whether individuals 'crossing or attempting to cross an international border ... are perpetrators or victims of trafficking in persons'. Utilising again the 'transnational crime' classification and exemplifying that the instruments appear indifferent to and, to a certain extent, apprehensive of reflecting important international testimonies supporting that states and civil society organisations have responded to violence against women within a law and order paradigm, prosecutorial procedures are prioritised as foreseen in criminal law rather than the protection of victims, with important practical implications for victims' identification and protection.²⁸²

Overall, the 'transnational crime' classification reaffirms that the connection between transnational organised crime, trafficking and smuggling (with direct links to illegalised migration) can trigger complex interpretations of vague definitions establishing the identity of the alleged victims and/or the alleged perpetrators. Also, the classification redistributes the responsibility to national criminal justice mechanisms, which are then to determine the appropriate status (innocent victims or perpetrators).²⁸³ To complicate matters further, the

²⁸¹ The reference made to victims' protection is distinct from protection of victims' human rights, covered by the United Nations High Commissioner, under recommended principles and guidelines on human rights and human trafficking.

²⁸² Ertürk, 'Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Yakin Ertürk : Addendum : 15 Years of the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, (1994-2009): A Critical Review', 33; Greek Ombudsman, 'Annual Report', (Athens 2007).

²⁸³ This in turn secures the construction of binaries see, R Adrijasevic, 'Trafficking in Women and the Politics of Mobility in Europe' (PhD Dissertation, University of Utrecht, 2004), 48.

identification of alleged victims is dependent upon the problematic use of the terms ‘exploitation’ and ‘consent’.²⁸⁴ This point will be elaborated further in the investigation of the intersections between trafficking in women and smuggling.

Trafficking and Smuggling

The International Organisation for Migration (IOM) surmises that approximately 4 million people are smuggled across borders every year.²⁸⁵ In the United States alone, there may be as many as 12 million illegalised migrants, with approximately 4,000 illegal border crossings every day. Meanwhile, the United Kingdom estimates that over 75 per cent of its illegal entrants used the services of smugglers.²⁸⁶ It is believed that ‘half of all illegal migrants have some interaction with smuggling or trafficking networks – a global industry that generates approximately \$10 billion per year’.²⁸⁷ Following the crackdown on the United States–Mexico border post 9/11, the demand for smuggling appears to have decreased, with the recognition that interdiction is more likely. In response, smugglers are reported to have ‘slashed prices by half for a trip across borders’.²⁸⁸ Therefore, the discursive constructions, once we enter smuggling ‘territory’, are vividly contributing to conceptions of harsher punishments and the linkage between trafficking, smuggling and illegalised migration.

Even though the two Protocols on trafficking and smuggling were introduced together, accompanying the UN 2000 Transnational Organised Crime Convention, it is important to recognise that trafficking is different to smuggling and distinct

²⁸⁴ Munro, (2005), 97.

²⁸⁵ F Adamson, 'Crossing Borders: International Migration and National Security', *International Security* 31, no. 1 (2006), 165, 174.

²⁸⁶ United Kingdom Home Department, 'Secure Borders, Safe Haven: Integration with Diversity in Modern Britain'. Document Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, February 2002, CM 5387, (2001).

²⁸⁷ IOM, 'World Migration', (International Organisation for Migration, 2003), 58-61.

²⁸⁸ *Ibid.*, 60.

from illegalised migration.²⁸⁹ Besides, the adoption of the UN 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air²⁹⁰ indicates that there must be a clear difference between the two. According to article 3 of the Smuggling Protocol, smuggling is '[t]he procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of illegal entry of a person into a State Party of which the person is not a national or permanent resident'. The key elements emerging from this definition are: firstly, smuggling, unlike trafficking, is a voluntary act; secondly, smuggling entails the illegal entry of a person and the act is considered fulfilled once the person has illegally entered a national territory. Subsequently, there is no further control exercised over the person once they arrive in their destination, while trafficking involves the exploitation of a person within the destination country as well as during transit and departure (a *continuum* of violence). Thirdly, smuggling makes reference to movement across international borders, while trafficking can take place both within and across borders – with different criminalisation implications when the offence takes place across borders. Lastly, 'smuggled' denotes any 'illegal migrant who has willingly and knowledgeably undertaken to enter a given country without appropriate authority'.²⁹¹ The smuggled individual is therefore conceived as an accomplice in illegalised migration and smuggling offences, eligible for immediate removal. Even in cases where the migrant has experienced exploitation subsequent to their illegal arrival or during their journey, there is little scope to permit a re-evaluation

²⁸⁹ David, 'ASEAN and Trafficking in Persons: Using Data as a Tool to Combat Trafficking in Persons', 3.

²⁹⁰ A/RES/55/25 (2000).

²⁹¹ Munro, (2005), 97.

of their status to recognise them as victims of abuse, trafficking victims or asylum seekers.²⁹²

According to the UNHCR Recommended Principles and Guidelines on Human Rights and Trafficking (Guideline 2: Identification of trafficked persons and traffickers), the critical factor that distinguishes trafficking from migrant smuggling ‘is the presence of force, coercion and/or deception throughout or at some stage in the process – such deception, force or coercion being used for the purpose of exploitation’.²⁹³ While establishing a clear distinction is highly desirable – given that the purpose behind the clause is to distinguish victims from illegalised migrants who are smuggled into a national territory – there is, however, considerable doubt concerning the extent to which the problematic concept of the ‘purpose of exploitation’ is able to elucidate the imagined distinction between the two instruments.²⁹⁴ Even though the use of the terms ‘coercion’ and ‘deception’ is meant to convey that, regardless of whether they have entered legally or illegally, victims of trafficking are entitled to protection, it could potentially complicate the debate further and implicitly challenge the right of women to self-determination, and pose a threat to their autonomy and free choice.²⁹⁵

Besides, exploitation can be considered to be an element that exists in all contexts: trafficking, smuggling, the sex industry and illegalised migration. Similarly, in an everyday context, particular gendered identities manage violence

²⁹² *Ibid.*

²⁹³ UN Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 2002.

²⁹⁴ Munro, (2005); Munro, (2008); Doezema, (2010). For links to choice, autonomy and freedom, see, C Fabre, *Whose Body Is It Anyway? Justice and the Integrity of the Person* (Oxford & NY: Oxford University Press, 2006).

²⁹⁵ J Doezema, 'Loose Women of Lost Women?: The Re-Emergence of the Myth of 'White Slavery' in Contemporary Discourses of 'Trafficking in Women', *Gender Issues* 18, no. 1 (2000), 23; Agustín, (2007a); G Garofalo, 'Towards a Political Autonomy of 'Trafficking' in *Trafficking and Women's Rights*, C. Van Den Anker and J Doomernik eds. (London & NY: Palgrave Macmillan, 2006).

and negotiate danger within environments where ‘violence’ or ‘exploitation’ appear to be naturalised.²⁹⁶ Therefore, exploitation can be susceptible to various interpretations and functions, which can then lead to its (ab)use in the context of serving various interests and political agendas.²⁹⁷ As Munro has noted, to establish that trafficked persons must be seen as victims involved difficult negotiation in the drafting stages of the trafficking and smuggling protocols; not only with regard to ‘who counts as a trafficked person and ... what level of assistance is appropriate, but also ... who is responsible for the provision and financing of this support’.²⁹⁸

Finally, the attempts to crystallise a distinction meant that, even at the level of conceptualisation, a strict distinction between trafficking and smuggling would be difficult to comprehend and apply, only in terms of who could be regarded as a victim,²⁹⁹ but also, in terms of how the competent authorities would be able to manoeuvre to achieve enforcement, criminalisation or other targets. Crucially, at an imaginary level, the attempt to enforce the distinction between the two legal terms has effectively subverted it, transforming the identification process into an arbitrary decision of ‘who is the proper subject of criminal sanctions and who is a victim deserving protection’, determined by instruments of law enforcement.³⁰⁰

²⁹⁶ E Stanko, *Everyday Violence: How Women and Men Experience Sexual and Physical Danger* (London: Pandora, 1990).

²⁹⁷ S Marks, 'Exploitation as an International Legal Concept' in *International Law on the Left: Re-Examining Marxist Legacies*, S Marks ed. (Cambridge, NY & Melbourne: 2008).

²⁹⁸ Munro, (2006), 325.

²⁹⁹ O'Connell Davidson, (2006).

³⁰⁰ E Guild and P Minderhoud, eds., *Immigration and Criminal Law in the European Union: The Legal Measures and Social Consequences of Criminal Law in Member States on Trafficking and Smuggling in Human Beings* (The Hague: Martinus Nijhoff, 2006), 3.

Criminalisation Qualitative and Quantitative Evaluations: the US Department of State reports

One of the most prominent and perhaps the most consistent instruments performing research, monitoring, comparing national efforts and exercising political pressure globally, in the field of anti-trafficking action, is the US Department of State annual report on trafficking. This was initiated in 2001 as part of wider US anti-trafficking and development programs, in order to ‘assist countries [to] combat this ever-growing phenomenon’.³⁰¹ The reports reflect US policies that have been applied since 1994, when the issue began to be covered in the department’s annual Country Reports on Human Rights Practices.³⁰² While giving rise to serious concerns about promoting hegemonic ideologies in the field of transnational policing,³⁰³ the reports have achieved remarkable international cooperation among prominent structures (UNICEF, UNHCR, IOM, Human Rights Watch, Amnesty International, Protection Project) and states, as well as recognition by both practitioners and academics.³⁰⁴

The initiatives taken within the US Trafficking in Persons (TIP) reports’ remit demonstrate that for the first time a tripartite commitment/solution was introduced, at an official level, to *prevent* persons from becoming victims of trafficking; *protect* the victims of trafficking; and *prosecute* traffickers. This is well-known as the three ‘Ps’ approach. Further elaborated in the Greek context, the US Department Reports established a four-tier system, with the purpose of

³⁰¹ US, ‘Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report’, 3.

³⁰² *Ibid.*

³⁰³ G Papanicolaou, *Transnational Policing and Sex Trafficking in Southeast Europe: Policing the Imperialist Chain* (London: Palgrave Macmillan, 2011).

³⁰⁴ For the importance of the Reports, as well as recommendations for their improvement, see, A Wooditch, ‘The Efficacy of the Trafficking in Persons. A Review of the Evidence’, *Criminal Justice Policy Review* 22, no. 4 (2011), 471.

categorising global state anti-trafficking efforts: from Tier 1 (fully compliant with the US's minimum standards) to Tier 4 (non-compliant), with the additional feature of 'Watchlist', including states threatened with demotion. The reports were installed in the global anti-trafficking arena in 2001 – following the UN 2000 Anti-Trafficking Protocol – and since then have shaped perceptions, trends, efforts and priorities in the areas of criminalisation and protection of victims.

Even though the reports have received important criticism for reflecting both a pervasive lack of reliable intelligence and a potentially divisive conflict of interests among relevant stakeholders,³⁰⁵ they are still a unique mechanism for exercising anti-trafficking and broader political pressure. In particular, due to their power to inflict restrictions upon states or to even disqualify them from receiving assistance via USAID or other agencies,³⁰⁶ we must attribute to the reports the utmost significance, as a mechanism for the potential re-imagination of anti-trafficking conceptions. This is because it is inscribed in the logic of these reports that punishment or the threat of punishment is useful as a vehicle for exercising official control.

Women in the UN 2000 Anti-Trafficking Protocol and the Council of Europe Anti-Trafficking Convention

Before we proceed to examine the next anti-trafficking instrument, we need to step outside the narrative of international legal thought and issue a crucial reminder: contemporary legal instruments tend to construct the category of women in a similar way to the construction of criminalisation and securitisation. However, here, 'women' is a discursive category which becomes constitutive in this sense:

³⁰⁵ Munro, (2005), 43.

³⁰⁶ See, e.g., Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing'; Doezema, (2010).

that the other categories could not operate without it. For instance, early instruments were prohibitive of trafficking in women but not in men, which is indicative of the complex functions inherent in the organised 'permissiveness' that sustains the fantasy of criminal law and criminalisation.³⁰⁷ Thus, women, even though appearing to be silenced or neglected, constitute a *sine qua non* within the productive constraints of certain gendered regulatory schemas.³⁰⁸ In this sense, the subjects of international law become intelligible as victims and/or perpetrators, as articulate figures – mainly producing gendered images. This is an articulation that takes place throughout the legal texts, and it is then reproduced. Liz Kelly, for instance, has pointed out that there is a common stereotype according to which traffickers are male and victims are female.³⁰⁹ However, to counter these gendered claims, contemporary trends in law enforcement have shown otherwise.³¹⁰

Media stories have tended to sensationalise the narratives when common stereotypes are subverted, particularly when women are the criminals. As Frances Heidensohn has critically pointed out, there is an intrinsic fascination in the intersection between women and crime: '[s]ex differences in criminality are so sustained and so marked as to be, perhaps, the most significant feature of recorded crime'.³¹¹ Within media imaginings women either appropriate their role as 'innocent' victims, or subvert assumptions about victims and importantly, gender, by transgressing pre-set categories of victimhood. At the same time, they function as a map of the materiality of the body and the performativity of gender even

³⁰⁷ See, E Loizidou, 'Criminal Law and Punishment. Indexical Permission', *Punishment and Society* 6, no. 3 (2004), 303, 307.

³⁰⁸ Sex as reiteration of hegemonic norms, this reiteration can be read as performativity. Butler, (1993), 107-11.

³⁰⁹ Kelly, 'Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe, No. 11', 42.

³¹⁰ Statement by the Hellenic Police, Head of the Hellenic Police Sex Trafficking Unit, at The International Herald Tribune, 'In Greece, a New Twist in Sex Trade', IPPF, 30/01/2008.

³¹¹ Heidensohn, (1996), 11.

within legal discourse formations.³¹² I hold these diverse readings of gender in tension with one another, as diverse antithetical criminalisation and human rights provisions also clash in the official narratives. This is crucial at this stage, in order to elucidate the reading of 'gender' under the next legal development, the Council of Europe 2005 Anti-Trafficking Convention.

The Council of Europe 2005 Anti-Trafficking Convention

According to EUROPOL approximately 500,000 people enter into EU member states each year, half of whom are 'assisted' by traffickers such as organised criminal groups.³¹³ The most common course of trafficking in women within Europe is from east to west, which is closely related to the economic transition in Eastern Europe and the subsequent structural adjustments.³¹⁴ Unlike the international instruments examined earlier, which form a long transnational anti-trafficking tradition, in the context of Europe, European Union Directives,³¹⁵ Framework Decisions and joint action plans emerged after the entry into force of the 1993 Treaty of the European Union (Maastricht Treaty).³¹⁶ As a result, the joint European action against trafficking began its process of development under the influence of three dominant action plans: 1) The Stop Program (Council Joint Action of 29 November 1996), which established an anti-trafficking incentive and the basis for information exchange in this context, 2) the Council Joint Action of 16 December 1996, extending the mandate given to the Europol Drugs Unit to

³¹² *Ibid.*

³¹³ W Bruggeman, 'Illegal Immigration and Trafficking in Human Beings Seen as a Security Problem for Europe', in *EU/IOM STOP European Conference on Preventing and Combating Trafficking in Human Beings: Global Challenge for the 21st Century (18-20 September 2002)*. (Brussels 2002).

³¹⁴ Charlesworth and Chinkin, (2000), 277.

³¹⁵ Concerning the prevention and combating of trafficking, see, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA.

³¹⁶ See Chapter 3.

anti-trafficking, and 3) the Council Joint Action of 24 February 1997 concerning action to combat trafficking in human beings and the sexual exploitation of children.³¹⁷ Within this context, the Council of Europe 2005 Anti-Trafficking Convention³¹⁸ was largely embraced by most member states.³¹⁹

In the United Kingdom, for instance, the Shadow Home Secretary David Davis, on 3 January 2007, made particular reference to one of the striking features of the EC 2005 Anti-Trafficking Convention, the ‘recovery and reflection period’ (article 13), and he praised the fact that

[T]he European Convention Against Human Trafficking covers a range of measures including the one to provide temporary, 30-day residence permits to victims to recover from their ordeal and reflect on whether they will help police prosecute offenders.³²⁰

Indeed, this provision is considered to be representative of the nature of this instrument. One of the Council of Europe’s major achievements in its 60 years of existence, the EC 2005 Anti-Trafficking Convention, is considered to be perhaps the most important European human rights treaty of the last decade.³²¹ Essentially, it sees trafficking as a matter of gender equality. It explicitly acknowledges that the design of strategies to prevent victimisation and protect trafficking victims ought to guarantee gender equality (articles 1a and 1b). Therefore, contrary to the Convention on the Establishment of the European Police Office (Europol Convention),³²² which envisages a strong criminalisation element in the construction of the EU anti-trafficking regime under an ‘illegal migration’ inspired

³¹⁷ For a detailed analysis of the relevant action plans, see, Morehouse, (2009), 180.

³¹⁸ CETS No. 197.

³¹⁹ H Askola, *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union* (Oxford & Portland: Hart Publishing, 2007), 157.

³²⁰ BBC, ‘Tories Demand Trafficking Action’.

³²¹ EU Ministerial Conference, ‘The Council of Europe’, in *EU Ministerial Conference Towards Global EU Action against Trafficking in Human Beings - The Third EU Anti Trafficking Day, 19-20 October 2009* (Palais d’Egmont, Brussels - Belgium 2009), 50.

³²² See ‘Convention Based on Article K.3 of the Treaty on European Union, on the Establishment of a European Police office’ (Europol Convention), OJ EU C 316/2, 27 November 1995.

framework,³²³ the EC 2005 Anti-Trafficking Convention is an institutional attempt to establish ‘a proper balance between the human rights of victims and the interests of prosecution, and to set up a comprehensive legal framework for the protection of and assistance to victims and witnesses with specific and binding measures’.³²⁴ Insofar as gender equality awakens the vision of balance between two opposite sexes, and insofar as anti-trafficking has been conceptualised as the antithesis between criminalisation and human rights, then the EC 2005 Anti-Trafficking Convention promises to achieve a dual balance.

The ongoing debates about the regulation of sex work, reflected in previous instruments, are still present here.³²⁵ As with previous instruments, the EC 2005 Anti-Trafficking Convention upholds that the consent of victims shall be irrelevant where it can be established that the following means have been used: ‘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’.³²⁶ Crucially, for those states that subscribe to the convention, assistance to victims is not conditional on the victim’s willingness to cooperate with the authorities and act as a witness in the prosecution of their traffickers. To this extent, the EC 2005 Anti-Trafficking Convention has exercised considerable pressure on states to prioritise the needs, safety and security of victims.³²⁷

³²³ See, e.g., W Bruggeman *Illegal Immigration and Trafficking in Human Beings Seen as a Security Problem for Europe*, (Conference Paper from the EU/IOM STOP European Conference on Preventing and Combating Trafficking in Human Beings, Brussels, 18-20 September 2002).

³²⁴ Askola, (2007), 157.

³²⁵ Under article 4 ‘Definitions’ a) and b).

³²⁶ Article 4 ‘Definitions’ a).

³²⁷ Regarding issues of witness protection from retaliation, see the illuminating analysis offered by Morehouse, (2009), 192-3.

In the area of criminalisation, one of the most significant achievements of the EC 2005 Anti-trafficking Convention was to trigger, on 1 February 2008, the setting-up of its monitoring mechanism, which is now fully operational. The monitoring mechanism consists of two pillars, the Group of Experts on Action against Trafficking in Human Beings (GRETA), which is a technical body composed of independent and highly qualified experts, and the Committee of the Parties, a more political body composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of parties who are non-members of the Council of Europe.³²⁸ Cooperation between the Council of Europe and the European Union in the field of action against trafficking in human beings has always been on the agenda of the two organisations on the basis of a shared security plan.

Criminalisation, materialised through security plans, and human rights, inserting the language of protection in the criminalisation plans, appear then to be only two of the political elements of the rather fragmented and extensively instrumentalised EU anti-trafficking core. More to the point, the Council of Europe Convention became in May 2007 an integral part of the shared priorities of the organisations listed in the Memorandum of Understanding between the Council of Europe and the European Union.³²⁹ Hence, at present it appears that there is an opportunity for achieving greater synergy in combating trafficking in human beings, mentioned as one of the Common Objectives in the Communication by the European Commission on 'An area of freedom, security

³²⁸ See, e.g., Council of Europe, 'Action against Trafficking in Human Beings, Monitoring Bodies', n.d.

³²⁹ Council of Europe and European Union, 'Memorandum of Understanding between the Council of Europe and the European Union', 2007.

and justice serving the citizens'.³³⁰ In this document, action against trafficking in human beings is placed under the general heading of 'Fight against international organised crime'.³³¹ In addition, some references to trafficking are made in parts concerning the protection of vulnerable groups, such as children, as well as parts concerning 'irregular migration'.³³² Therefore, the initial promised balance between criminalisation and human rights appears to have produced the current, rather fragmented field of anti-trafficking political divisions.

In opposition to the criminalisation objectives evident in the Communication by the European Commission, the Memorandum of Understanding places cooperation between the two organisations to fight trafficking in human beings under the heading of 'Human rights and fundamental freedoms'.³³³ This confirms that trafficking is seen as a human rights violation, and hence, not always related to international organised crime or to irregular migration. However, this statement lacks theoretical and practical clarity, especially in grounding a human rights claim to a more specific victim-oriented response for all EU member states.³³⁴

Still, the Council of Europe welcomed the adoption by the European Commission on 25 March 2009 of the Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting the

³³⁰ European Commission, 'Communication from the Commission to the European Parliament and the Council', (COM (2009) 262, 10/06/2009). See, also, Chapter 3.

³³¹ It is widely accepted that the European Commission focuses on law enforcement, judicial cooperation and processes of criminalisation. In contrast, the Council of Europe and the European Parliament that have adopted a more 'victim-centred' approach, see, J Goodey, 'Sex Trafficking in Women from Central and East European Countries: Promoting a 'Victim-Centred' and 'Woman-Centred' Approach to Criminal Justice Intervention', *Feminist Review*, no. 76 (2004), 26, 30. See, also, Chapter 4.

³³² European Commission, 'Communication from the Commission to the European Parliament and the Council', 19.

³³³ Council of Europe and European Union, 'Memorandum of Understanding between the Council of Europe and the European Union', para 21.

³³⁴ For the lack of clarity in the human rights discourses, see, Munro, (2008).

victims,³³⁵ which contains provisions mainly on criminal and procedural matters. Given the fact that it is predominantly preoccupied with criminalisation concerns, in order to achieve a more balanced approach it must be read in conjunction with Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal migration, who cooperate with the competent authorities. Taken together, these two legal instruments, to a large extent, correspond to the provisions contained in the Council of Europe Convention. Thus, a certain tension between these two approaches is evident and seen as a continuous striving for balance. As Aradau has noted:

Despite an apparent logical incompatibility between these humanitarian and security discourses, they are now happily married in the European Union (EU) policies for the prevention of trafficking. While promoting women as bearers of human rights was initially devised as an NGO counter-strategy to the EU security discourse, a coalition of NGOs and EU actors coupled the two discourses and endorsed them as logically related and mutually reinforcing.³³⁶

Although it builds bridges between protection and assistance, slavery and the new slavery discourse,³³⁷ in its Preamble it implies that trafficking in human beings is distinct from slavery, though it ‘may result in slavery for victims’. In the field of organised crime, it reiterates that trafficking may be a form of organised crime (article 24 – Aggravating circumstances). However, it extends its remit to all forms of trafficking, whether or not these are connected to organised crime (article 2). In this sense, from protection and the language of rights and slavery to organised crime and the language of criminalisation, the EC 2005 Anti-Trafficking

³³⁵ Commission of the European Communities *Proposal for a Council Framework Decision on Preventing and Combating Trafficking in Human Beings, and Protecting Victims, Repealing Framework Decision 2002/629/JHA*, Brussels, 25/03/2009, COM (2009) 136 2009/0050(CNS).

³³⁶ Aradau, (2004), 253.

³³⁷ Particularly under article 4 (a).

Convention envisaged that, by transforming these antithetical languages into mutually reinforcing synergies, trafficking could be abolished.

Further, the protection of victims was discursively placed at the centre of the instrument, conveying the promise that this time victims will be prioritised, insofar as the balance can be maintained. This fails to be fulfilled as the EC 2005 Anti-Trafficking Convention adds little in terms of hard obligations to protect and assist victims. Even its most praised feature, the ‘recovery and reflection period’ (article 13,1.), serves criminalisation interests.³³⁸ The purpose of the ‘recovery and reflection period’ is stated as being ‘to recover and escape the influence of traffickers and/or take an informed decision on cooperating with the competent authorities’.³³⁹ This has notably been criticised as a common state practice, used to promote criminalisation ideologies and motives, and recognised as the ‘cooperation in exchange for protection’ practice.³⁴⁰

Returning to the commentary mentioned earlier, Shadow Home Secretary David Davis concluded that ‘no-one should be under any illusion unless we introduce identity management and ID cards, we will not be able to effectively fight human trafficking or for the matter identity fraud, organised crime or illegal immigration’.³⁴¹ This reaffirms that broader criminalisation initiatives may be mobilised in the context of anti-trafficking, and indeed, in the context of trafficking victims’ protection.

³³⁸ Article 13, paragraph 3, ‘The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly’.

³³⁹ Article 13, paragraph 1.

³⁴⁰ See Chapter 7.

³⁴¹ BBC, ‘Tories Demand Trafficking Action’.

Trafficking and Migration

The considerable confusion between trafficking and smuggling exemplifies the proximity between constructions of trafficking and illegalised migration.³⁴² The International Organisation for Migration stipulates that within the annual flow of migrants (legalised or not), trafficking victims are also included:

The annual flow of migrants is now somewhere between 5 and 10 million people, including undocumented migrants. If we take the upper limit as a basis, it represents roughly one-tenth of the annual growth in world population. Of this number, according to estimates published by the US Justice Department in 1998, between 700,000 and 2 million women and children were estimated to be trafficking victims.³⁴³

Therefore, the common element of movement across borders, which may be applicable to both trafficking and migration, appears to be linking the two in an inseparable discursive unity. Again, according to the IOM, in some cases traffickers arrange authentic travel documents and visas. For instance, it has been well-established that many trafficking victims have been entering Cyprus legally. The authorities have been issuing 'artiste' entry permits 'without giving it second thought'.³⁴⁴ As a result, the victims, who were given false promises prior to their arrival, realise upon arrival that the nature of work and/or the conditions of work have been altered.

Since the beginning of the 1980s, efforts had been made by the authorities to introduce a stricter regime in order to guarantee effective immigration monitoring and to limit the 'well-known and commonly acknowledged phenomenon of women who arrived in Cyprus to work as artistes'. However, a number of the measures had not been implemented due to objections from cabaret managers and artistic agents.³⁴⁵

³⁴² Obokata, (2006), 22.

³⁴³ IOM, 'World Migration', 6.

³⁴⁴ For a comprehensive archive on the issue, see, GVNET.com, 'Human Trafficking & Modern-Day Slavery', n.d.

³⁴⁵ See, Paragraph 83, *Rantsev v. Cyprus and Russia*, Application no. 25965/04, Council of Europe: European Court of Human Rights, 7 January 2010.

Similar cases have also been reported in Belgium, the Netherlands, Switzerland, Italy and Greece.³⁴⁶ In the latter, to make their claims appear more plausible, traffickers would also force the women to enter into legal agreements with them and recognise their children; as a result they would appear as migrants within a family union.³⁴⁷

The US Department of State Reports have, importantly, set out seven criteria that should be considered as indicia of what are considered ‘serious and sustained efforts to eliminate trafficking’.³⁴⁸ Among these is ‘whether the government monitors immigration and emigration patterns for evidence of trafficking, and whether law enforcement agencies respond appropriately’.³⁴⁹ It is acknowledged, however, that in some countries, based on criminal sanctions targeting migration, the victims themselves are prosecuted and jailed for ‘violating immigration or other laws’.³⁵⁰

As for the legal instruments, the most significant element that ties together trafficking and illegalised migration is that some states preferred not to implement new legislation but to utilise existing sections of the criminal code and immigration law.³⁵¹ For example, the Government of Canada actively investigates cases and prosecutes traffickers using sections of its criminal code and immigration law.³⁵² On a practical level, immigration and border officers, customs and police departments are usually at the very front line of monitoring and

³⁴⁶ IOM, 'Trafficking and Prostitution: The Growing Exploitation of Migrant Women from Central and Eastern Europe, May 1995', (International Organisation for Migration, 1995). European Parliament, 'Directorate-General for Research, Working Paper, Trafficking in Women', ed. C Galiana (Brussels: LIBE 109 EN, 2000).

³⁴⁷ See, e.g., Eleutherotypia, 'Prostitution and Trafficking Arrests in Thessaloniki', 12/02/2010.

³⁴⁸ US, 'Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report', 6.

³⁴⁹ *Ibid.*

³⁵⁰ *Ibid.*, 2.

³⁵¹ *Ibid.* See, also, Chapter 5.

³⁵² *Ibid.*, 17.

screening. The whole anti-trafficking structure of the present, and most of the enactment of protection schemes,³⁵³ relies on their training and skills to detect trafficking-related criminal activities and identify victims.

With particular reference to women migrants, it is well-known that ‘forced movement accounts for an unknown but significant number of women migrants’.³⁵⁴ What ‘forced’ might mean in this context, however, appears to be open to debate and contingent upon socioeconomic conditions creating the demand for cheap labour. Laura María Agustín has distinguished three basic types of labour that are still considered to be the typical labour market for ‘migrant women and transgender people from the “third world” or from Central and Eastern Europe and countries of the former Soviet Union’.³⁵⁵ These types of labour, according to Agustín, are relevant to domestic work (cleaning, cooking, housekeeping), caring for people in their homes (children, the elderly, the sick), and providing sexual services. Agustín’s analysis then links these areas of family, sex and consumption and contends that the concepts of ‘public and private’ sphere are still pertinent to contemporary ‘liberated’ societies and, unsurprisingly, our world of services is founded upon gender inequalities.³⁵⁶ Finally, Agustín upholds that insofar as unequal gender conditions remain unaltered, our focus on trafficking or on sensationalised ‘horror’ stories of victimisation in general is utterly unproductive (if not poisonous), as it masks the wider exploitative conditions within which these debates operate.³⁵⁷

³⁵³ J Apap and F Medved, 'Protection Schemes for Victims of Trafficking in Selected EU Member Countries, Candidate and Third Countries', (Geneva: International Organisation for Migration, 2003), 11.

³⁵⁴ UNFPA-IOM Expert Group Meeting, 'Female Migrants: Bridging the Gaps Throughout the Life Cycle, 2-3 May 2006', (NY: International Organisation for Migration, 2006), 4.

³⁵⁵ L M Agustín, 'A Migrant World of Services', *Social Politics* 10, no. 3 (2003), 377, 377-8.

³⁵⁶ *Ibid.*

³⁵⁷ This is a rather limited interpretation of Agustín’s complex engagement, her analysis also offers invaluable insights on the ‘rescue industry’, see, Agustín, (2007a), 152-90.

It is also well-established that there is still a considerable amount of research that needs to be conducted in the area where gender, migration and trafficking intersect, as the fact that they intersect is not only a mere manifestation of ‘migration “gone” bad’.³⁵⁸ Both the feminisation of poverty and the secondary positioning of women are key factors underpinning much of the dominant representations of trafficking,³⁵⁹ with the demand for women migrants represented as being constantly high and growing.³⁶⁰ At the same time, the recognition that discriminatory barriers, coupled with inadequate human and labour rights protections, have made governments recognise that the equitable management of migration means that measures adopted should not further penalise women, who have already been rendered vulnerable due to systematic inequality.³⁶¹ Due to women’s position in society, inequality, exclusion and limited alternatives, to migrate is often distinct from liberal conceptions of choice. In the linkage between migration and trafficking in women, numerous documented tensions exist in establishing a clear definition of choice, and the related concepts – in this context – of freedom, consent and coercion.³⁶² As Chandra Talpade Mohanty points out, what needs to change is the very concept of work/labour, as well as the naturalisation of heterosexual masculinity in the definition of ‘the worker’, which ultimately dominates imaginings of women’s migration and labour.³⁶³

³⁵⁸ UNFPA, 'State of World Population 2006. A Passage to Hope. Women and International Migration', (United Nations Population Fund, 2006), 2.

³⁵⁹ See, e.g., C Corrin, 'Transitional Road for Traffic: Analysing Trafficking in Women from and through Central and Eastern Europe', *Europe-Asia Studies* 57, no. 4 (2005), 543.

³⁶⁰ See, e.g., *ibid.*

³⁶¹ UNFPA, 'State of World Population 2006. A Passage to Hope. Women and International Migration', 3.

³⁶² See, e.g., Munro, (2008); Agustín, (2007a).

³⁶³ C T Mohanty, 'Women Workers and Capitalist Scripts: Ideologies of Domination, Common Interests and the Politics of Solidarity' in *Feminist Genealogies, Colonial Legacies, Democratic Futures*, C T Mohanty and M J Alexander eds. (NY: Routledge, 1997), 11.

Even if the current imaginings have been ineffective in fully grasping the thorny issues at stake, mainstream literature has often tried to re-shape old concepts instead of inventing new ones. Issues of difference, in a way that avoids the tendency to exclude the ‘Other’ and to privilege dominant perspectives, have often been neglected.³⁶⁴ Openness to the unknown and uncertainty have proved to be rather ‘difficult’ qualities, predominantly within the realm of legal production,³⁶⁵ and yet necessary in order to contribute to the recognition of the diversity of women’s experiences. Ratna Kapur questions dominant representations of women’s experiences: ‘why should we, and how can we, disrupt the script that represents women in a developing context as victims constantly in need of rescue and rehabilitation ...?’³⁶⁶ And why do women need to carry a strategically invoked culture/‘baggage’, which often occupies a space, no matter how far they travel from their point of departure; in order for the women to be re-inscribed as another Other?³⁶⁷ Lastly, how can all these be achieved without compromising the feminist past, present and future? By this I mean without compromising the fights that have already been fought successfully.

To conclude, one could consider that a large number of moral panics surrounding the construction of trafficking victims would be balanced by a clearly established distinction between criminalisation and victimhood at an official level. However, specific states have emphasised the commonalities between the two and have sought to: a) limit the scope of trafficking to trafficking across borders – international movement; by doing so they diminish the importance of domestic

³⁶⁴ Carline and Pearson, (2007).

³⁶⁵ For the potential to negotiate, contest and reconstruct identity and experience, *culture* and *sexuality*, in law through ambivalence and hybridity, see, R Kapur, 'A Love Song to Our Mongrel Selves': Hybridity, Sexuality and the Law', *Social & Legal Studies* 8, no. 3 (1999), 353, 362-3.

³⁶⁶ *Ibid.*, 354.

³⁶⁷ *Ibid.*

trafficking; and b) enforce criminal sanctions applicable to illegalised migrants and trafficking victims. Thus, imposing criminal sanctions on illegalised migrants is being legitimated and naturalised, and even encouraged, as long as it reflects the reality of migration and not the reality of trafficking, and as a means to distinguish between ‘real’ victims and ‘real’ criminals. Most importantly, by establishing the ‘promise’ that illegalised migrants, on the one hand, and trafficking victims on the other are separable and easily identifiable, it reaffirms that by expanding security and by investing in criminalisation, the goal to separate the two is attainable.

Conclusions

From the antithesis between a criminalisation and a human rights approach to trafficking in women, this chapter has sought to ‘autonomise’ criminalisation discourses. In doing so it has attempted to cut an incision in the antithetical narrative (criminalisation–human rights) and has focused on the language of criminalisation. From the mobilisation of broad punitive, ‘zero tolerance’, law and order contemporary discourse on crime and punishment to the articulation of specific anti-trafficking anxieties, I have investigated the functions of criminalisation in the construction of anti-trafficking as an imaginary penalty.

Anti-trafficking as an imaginary penalty relies largely on its ambiguities. ‘What works’ when it comes to trafficking has posed important questions for governments; the answers, however, have been rather ambiguous and vague. An extensive legal anti-trafficking tradition provides sufficient evidence to illustrate that the right formula to the ‘trafficking problem’ has not yet been found. Even though initially ‘tough on crime’ responses have been unproblematically associated with crime reduction, the mechanics that constructed the desire for

punitiveness have unravelled rather uncertain results. Moreover, evidence-led crime prevention and prosecution have been promising to eliminate trafficking whilst allaying public fears about victimisation. However, under closer scrutiny, victim's rights have rarely been prioritised in legal anti-trafficking responses. Ultimately, it has been reaffirmed that a criminalisation approach could be effective, because punitive structures, policing plans (international cooperation in criminal matters) and the competent legal mechanisms would become efficient. This desirable efficiency was imagined as the development of the international legal model and its unobstructed introduction into domestic contexts. The criminalisation approach then aimed to fortify security measures promising that individuals would be safe, once the trafficking threat would be eliminated. Consequently, this clearly reflects the dogma: 'harsher penalty is a better penalty'.

The current anti-trafficking model then is taken as 'further proof' that governmental responses to trafficking have actually been normalising and legitimating more violence: harsher border controls, deportation mechanisms and suspicion regarding victimisation claims. In this respect, the objects of violence were not the traffickers *per se* but diverse gendered subjects that could easily be 'illegalised' in this context. Through the examination of the connections between trafficking, organised crime, smuggling and illegalised migration, and while someone might have expected to come across a rather fragmented narrative, criminalisation has shown that diverse threats can be interlinked in somehow harmonious associations.

Prominent understandings have rejected criminalisation and have explored other solutions. These other solutions are perhaps more successful when it comes

to acknowledging the intersecting categories of gender, class, race and ethnicity that ultimately shape our (mis)conceptions of the field. Recalling the lessons of Aeschylus, as Judith Butler would encourage us to do, to refuse ‘this cycle of revenge in the name of justice, means not only to seek legal redress for wrongs done, but to take stock of how the world has become formed in this way precisely in order to form it anew, and in the direction of non-violence’.³⁶⁸ Gradually shifting the lens towards non-violence, in the next chapter I investigate security and the contemporary utilisation of security discourses in anti-trafficking. The potential for finding a final answer to ‘what works’ in anti-trafficking through security discourses emerges primarily through the image of balance, the unattainable balance between (inter)national security and human security.

³⁶⁸ J Butler, *Precarious Life: The Powers of Mourning and Violence* (London & NY: Verso, 2004), 17.

Chapter 3

Imaginary Anti-Trafficking Securities

Introduction

This chapter examines security discourses in the ‘anti-trafficking promise’. As previously argued, this promise maintains that a criminalisation anti-trafficking approach could be effective because punitive structures, policing plans (international cooperation in criminal matters) and the competent legal mechanisms would become rigorous and efficient. This desirable efficiency was imagined as the development of the international legal model and its unobstructed introduction into domestic contexts. The criminalisation ‘anti-trafficking promise’ then aimed to fortify security measures and in that respect it imagined a penalty that would induct security: individuals would be safe since the trafficking threat would be eliminated.

In this chapter, however, I challenge the security capacities of anti-trafficking. In doing so I interrogate further the assumption that security measures can eliminate trafficking, which is a crucial point in the construction of anti-trafficking as an imaginary penalty. Its main importance lies in the fact that security is shown to express the contemporary language of criminalisation, crafting a global language of risks and threats as core elements of the post-9/11 ideological conditions in the area of crime control.

Moreover, the conditions posed by ‘rapid social change, new demographics of employment and unemployment, increased individualistic consumerism

alongside a decline in collectivist welfare provision³⁶⁹ have been constitutive of insecurity, vulnerability and victimisation anxieties.³⁷⁰ As we invest more and more in international security and human security, criminalisation – rather than merely punishing – has been making grandiose claims about the possibilities for reducing crime.³⁷¹ Security discourses are then double agents. On the one hand, international security discourses are an essential part in the creation of criminalisation strategies and the mobilisation of punitive agencies. Meanwhile, on the other hand, human security measures appear to have the capacity to increase respect for human rights and to establish a modern, more humane and more effective anti-trafficking strategy that fits nicely with a human rights approach to trafficking in women. In examining these two seemingly conflicting functions of security, I ask how security has been articulated by anti-trafficking actors, and what the nature of these claims is within the larger frame.

My investigation shows that security emerges as an instrument or intermediary between the desirable catalyst for harsher anti-trafficking measures and the barometer of justice. In principle security discourses have been shaping the dogma ‘harsher penalty is a better penalty’, while insecurity discourses have been crafting the vulnerable subjects, those in need of rights protection. As such, security structures have been mobilising rights discourses towards stricter punitive practices. Insofar as security appears to be an agent of welfare, it promises to be the alleviator of victims’ suffering, and for the rest of us, the guarantor of our freedom.

³⁶⁹ Carlen, 'Imaginary Penalties and Risk-Crazed Governance', 13.

³⁷⁰ See Chapter 2, section: ‘Criminalisation as an Ideological Apparatus’, paragraph: ‘Criminalisation Considerations in “Security Contracts”’, and the discourse on risk under the criminological theory of ‘Broken Windows’.

³⁷¹ My argument here is based on Carlen’s analysis of risk-crazed governance of crime, see, Carlen, 'Imaginary Penalties and Risk-Crazed Governance', 12-8.

Traditionally the issues of security and criminalisation are usually treated quite separately from the issue of human rights. However, in my investigation anti-trafficking discourses and technologies reflect a crafted continuity between human rights, security and criminalisation. On the one hand, this development destabilises traditional notions of what constitutes security and criminalisation, and what priorities are secluded. On the other hand, the effort to achieve a balance among diverse and conflicting conceptual traditions, rather than limit much of contemporary oversecritisation and overcriminalisation, may tend to legitimate and enforce them. Thus, a shared structure and grammar of this problem emerges as the pledge of a solution: the end of trafficking/the end of slavery. As long as this promise remains unfulfilled, the need for intensification of controls, criminalisation and security measures is justified, imagined and even celebrated. In this context, the role of human security and, to that extent, human rights emerges without a clear sense of what priorities it is intended for or is likely to achieve and what foreseeable effect it might have in the future. Spatially and politically disoriented, the promise of a human rights solution, especially its fulfilment by the competent anti-trafficking bodies seems neither feasible nor intelligible. The structure, then, of these tripartite arguments is, in many instances, identical across time and space, even among agencies that represent diverse interests and prioritisations.

As the tripartite anti-trafficking structure of criminalisation, security and human rights lays its cards on the table one by one, anti-trafficking imaginations are gradually unfolding. I argue that the independence of each term is actually compromised. So for instance, when examining security, the criminalisation and human rights structures become subordinate to it, and yet an integral part of the

larger unit of security. This is a sobering reminder that the threefold transposition between the different structures investigated in this thesis is intentionally interdependent. As such, international security and human security, instead of putting forward distinct priorities, appear to be tied in an uneasy interdependence. To this extent it is almost impossible to conceive each discursive structure as a separate unit. This is of fundamental importance as it creates a limited vision of the irreducible potential of emancipatory articulations and of the potential for a re-imagined discourse of rights and freedom. Finally, instead of exposing what elements are being masked under this interdependence, these discursive elements comprising the ‘anti-trafficking promise’ ensure that once they are properly enforced, balanced and stabilised, trafficking can be abolished, which in fact achieves their perpetuation.

Focusing on the development of centralised security capacities in Europe, this chapter draws on the complexity of security mechanisms reflected in complex securitisation³⁷² discourses, which appear as the main solution to the trafficking problem by offering the ‘combat’, ‘eradication’ promise. These centralised inter-state agencies cut across a decentralised reliance on the national competent authorities. Recognising the importance that these securitisation forces have acquired, from personal (human) security to national and international securities, this analysis exposes the deficiencies of false promises and the dependency of security controls on human rights and criminalisation discourses for legitimisation and enforcement. Chapters 2 and 3 therefore work together and add one more piece to the puzzle of ‘anti-trafficking action and victim protection’ by mapping out diverse criminalisation interests as they sculpt the surface of anti-trafficking

³⁷² For a comprehensive account of the term ‘securitisation’, see, T Balzacq, *Securitisation Theory: How Security Problems Emerge and Dissolve* (London: Routledge, 2011).

knowledge. By following the penalty dogma, stricter measures of surveillance enforce severe penalties and incarceration rates. The often blurred distinction between victims and illegalised migrants thus becomes a ‘format of control’ for both victims and migrants. This part concludes at Chapter 4 by maintaining that the human rights aspirational discourse arises within security as a counteraction to the managerial punitive *praxis*. Security and human rights then are tools, but what kinds of tools are they and how can we hold them correctly?³⁷³

Whose Security?

The terms international security and human security, in the context of trafficking in women, have been used to describe a whole array of protections.³⁷⁴ The array of protections or ‘securities’ these two strands put forward have criminalisation underpinnings. However, they have also split certain reflections of the inspirational language of rights. They generally seem to share the objective of insulating the capacity of individuals to live their lives with dignity, autonomy, freedom from fear and freedom from want.³⁷⁵ This is linked to broader narratives in the context of security.

The UN Charter, for instance, under article 1, lays down its purposes ‘to maintain international peace and security’.³⁷⁶ Also, it is well-known that the European Convention on Human Rights (ECHR)³⁷⁷ considers security as a mechanism through which freedom and rights are protected. Whose security, what

³⁷³ Reference made to the ideological tools and weapons quote used by Hardt and Negri, (2001), v.

³⁷⁴ M A Clark, 'Trafficking in Persons: An Issue of Human Security', *Journal of Human Development: A Multi-Disciplinary Journal for People-Centered Development* 4, no. 2 (2003), 247.

³⁷⁵ Relevant to ‘human security’ objectives, see, S Tadjbakhsh and A M Chenoy, *Human Security. Concepts and Implications* (London & NY: Routledge, 2007); P Hough, 'Global Steps Towards Human Security', *Security and Human Rights* 19, no. 1 (2008), 15; G Frerks, 'Human Security as a Discourse and Counter-Discourse', *Security and Human Rights* 19, no. 1 (2008), 8.

³⁷⁶ Charter of the United Nations, (1945), 1 UNTS XVI.

³⁷⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms, (1950), 218 UNTS 221, CETS No5.

rights and how security is achieved, however, are recurring themes. Within EU territory, security protects and ensures substantive values or interests. Yet one of the only referents that can be utilised for giving meaning to these values or interests is the legal discourse. This is because security has little independent content.³⁷⁸

In this respect, at an institutional level, reference to security is not limited to article 3 of the ECHR (freedom from torture, inhuman and degrading treatment or punishment), but is also expanded to article 4 (freedom from slavery and forced labour), and to article 5 in the form of a right that is protected (right to liberty and security): '[n]o one shall be deprived of his liberty'. Article 8 makes reference to the limits on interference by a public authority in the right to respect for family and private life. This effectively means to spell out the particular instances that a public authority can interfere with the exercise of this right, 'in a democratic society'. Specifically, reference is made to the instances that state interests (national security, public safety and the economic wellbeing of the country) clash with the right of individuals as stipulated under article 8. Hence, all the above reflect that security can be adopted in relation to a number of values, interests, rights and so forth.

By establishing and strengthening the rule of law, it has been suggested that states are expected to maintain the security of their national borders as well as the security of the individuals residing within these borders.³⁷⁹ International security is then safeguarded as states abide by rights and obligations set out by international law, with the view that individuals enjoy to the maximum the whole range of

³⁷⁸ R L Powell, 'The Right to Security of Person in European Court of Human Rights Jurisprudence', *European Human Rights Law Review*, no. 6 (2007), 649.

³⁷⁹ This reflects specific understandings of security, of who is to be secured and how. For instance, in a Hobbesian world, the state is the primary provider of security: if the state is secure, then those who live within it are also secure, see, Tadjbakhsh and Chenoy, (2007), 41-9.

benefits that come with liberty, peace and progress. The dominant discourse has been aspirational regarding the enabling functions of security; it creates and facilitates the conditions within which individuals can pursue their aspirations and choices in life. Accordingly policy and institutional changes have been suggested in order to enhance security conditions, identify vulnerable populations and potentially constitute an institutional shield that would protect individuals against any hindrance to their capacity to choose freely how they are going to live their lives.³⁸⁰

Hence, juxtaposing international and human security in the context of trafficking would mean that if a woman from non-EU states (a non-EU national) is a victim of transnational trafficking, she would be immediately recognised as a victim by the border control authorities, ‘on the basis of the slightest suspicion’.³⁸¹ Perhaps being a non-EU national constitutes or rather installs, then, some element of these suspicions. At the same time, the perpetrators, members of trafficking rings, would also get instantly arrested and the victim would be referred to the competent protective and rehabilitation services. With prosecution and protection mechanisms in place and properly adjusted and enforced, this mechanism could arguably maintain the secure conditions of the state (with direct and indirect transnational security implications), and of the individual.

On the one hand, then, international and national security protections give priority to border control measures. For example, upon arrest of the trafficking ring the relevant mechanisms are to prioritise issues of criminal investigation. Focusing on international cooperation and reducing the international barriers in prosecuting traffickers would therefore be of high priority considering that the

³⁸⁰ See, e.g., Clark, (2003).

³⁸¹ UNODC, 'Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking', United Nations, 2010, 27.

trafficking crime is actually being defined as an extraditable crime, based on the UN 2000 Transnational Organised Crime Convention of which the UN 2000 Anti-Trafficking Protocol is an integral part. To this extent, the model explained is more or less similar to the criminalisation approach examined earlier. The main difference between a criminalisation and this type of security approach, however, lies in the concurrent prioritisation of victim-related protection.

On the other hand, a human security approach would entail allocating responsibility between (home and host) states with regard to victim identification and rehabilitation, the right to legal residence in the host country, the inclusion of public awareness and all appropriate measures that would ensure that victims have access to adequate economic, legal and social support in order to recover from the consequences of being trafficked.³⁸² A human security approach therefore communicates principles that are acknowledged under the human rights approach.³⁸³

In practice however, the above narrative, according to which both mechanisms of criminal investigation and of victim protection function perfectly and in sync with each other, seems to be obstructed for the time being due to the prioritising of conflicting agendas.³⁸⁴ Either synchronised or mutually exclusive, these elements are the backbone of anti-trafficking as an imaginary penalty; the very mechanism that guarantees its perpetuation. A key point in examining the perpetuation of trafficking in women as a security issue is therefore the question of whose security has been prioritised in contemporary anti-trafficking discourses.³⁸⁵

³⁸² See, e.g., Clark, (2003), 255.

³⁸³ See, Aradau, (2004), 252. See, also, Chapter 4.

³⁸⁴ See, Chapters 2 and 4.

³⁸⁵ Claudia Aradau has suggested that the question of 'whose security' only makes sense if it is formulated as 'against whom are women to be secured', see, Aradau, 'Politics out of Security: Rethinking Trafficking in Women', 81.

And, more to the point, what are the technologies that sustain this anti-trafficking security promise?

Securitisation Processes and Anti-Trafficking Imagination

The Emergence and Evolution of Security in Anti-Trafficking Representations

Imaginary boundaries framing discursive fields were reviewed earlier in the history of the major legal anti-trafficking instruments. Previous anti-trafficking narratives came to be linked to contemporary anti-trafficking, as new structures and technologies have improved and updated the old ones. The main difference between old and new anti-trafficking structures, is that contemporary threats are conceptualised as ‘transnational in nature and involve an organised criminal group’.³⁸⁶ These transnational threats have often been seen as inherent to contemporary changes that brought about globalisation processes, and have been typically organised on the basis of globalisation: global crime, trafficking, corruption, instability in financial markets, spread of disease and transnational conflicts.³⁸⁷ In this context, security anti-trafficking articulations form a rather wide spectrum of insecurities in relation to individuals and states to documents and the content of vessels.³⁸⁸

In this respect, the institutional re-emergence of trafficking in women has been widely accepted as the international community’s response to a global threat and to various insecurities. The exact content of security, however, seems to be mystifying, not only as to whose security as examined above, but also in relation to the threats that target ‘our’ security. On a practical level, the contemporary

³⁸⁶ Article 4 ‘Scope of application’ UN 2000 Anti-Trafficking Protocol.

³⁸⁷ See, e.g., S Fukuda-Parr, ‘New Threats to Human Security in the Era of Globalisation’, *Journal of Human Development* 4, no. 2 (2003), 167.

³⁸⁸ See, e.g., article 12 ‘Security and control of documents’ UN 2000 Anti-Trafficking Protocol, and article 9(b) ‘Safeguard clauses’ UN 2000 Protocol Against the Smuggling of Migrants by Land, Sea and Air.

conceptualisation of trafficking as a global threat targeting our security is reflected in legal instruments. This representation of trafficking in legal documents is crucial as, irrespective of whether trafficking in particular instances actually involves movement across states or not, this initial conceptualisation of trafficking as global brings specific procedural implications to both policing methods and victims' identification.³⁸⁹

This conceptualisation, however, has more than mere procedural implications. For instance, trafficking is an egregious threat according to the UN 2000 Transnational Organised Crime Convention, exactly because criminal groups have been 'embracing today's economy and sophisticated technology that goes with it'.³⁹⁰ This illustration portrays trafficking as a symptom of pathogenic global social conditions, evoking the image of the 'Broken Windows' theory examined earlier. Insofar as the threats are of a global scale, they opportunistically use contemporary global society and mobilise economic structures and technologies in order to cause harm. To eliminate these threats, then, our response should do the same:

If crime crosses borders, so must law enforcement. If the rule of law is undermined not only in one country, but in many, then those who defend it cannot limit themselves to purely national means. If the enemies of progress and human rights seek to exploit the openness and opportunities of globalisation for their purposes, then we must exploit those very same factors to defend human rights and defeat the forces of crime, corruption and trafficking in human beings.³⁹¹

That 'we must exploit' the very same factors that are threatening us in order to respond to security threats suggests that 'we' – whose security is threatened – are the defenders of the rule of law, of progress and human rights. Then, as examined

³⁸⁹ See, Chapter 4.

³⁹⁰ *Foreword* UN 2000 Transnational Organised Crime Convention: iv.

³⁹¹ *Foreword* UN 2000 Transnational Organised Crime Convention: iii.

in the previous section, the risks for ‘us’ are extremely high, because ultimately all the things that are presented as our guarantors to live a ‘good life’ are being threatened. Most importantly, our capacity to choose freely how we are going to live our lives is being compromised. In response, to be sure that our reaction to threats is adequate, the aim is not simply to deploy criminalisation measures but to pose a broader question about the political economy of punishment conflated with a political economy of rights. Thus crime, and trafficking specifically, is fundamentally transformed into questions of human rights and civil liberties.³⁹²

As soon as the threats appear to be broadly stretched, it is not only international or human security that is at stake but also the openness and opportunities of our global society and economic system. Consequently, the matter is simple. It is either that international and human securities are distinct from the openness and opportunities of our global society and economic system, and as such security and systems are both threatened, or it is that security and global systems are actually the same. If so, then international and human securities actually signify and simultaneously become signified by the openness and opportunities of our global society and economic system.³⁹³

Even though these preliminary observations bring some value to our discussion, the exact content of security in anti-trafficking needs to be explored further. In this particular historic context, polemic language is mobilised in various instances by legal discourse. As I will explain later, from 2001 onwards the narratives appear to be immensely and aggressively intensified. In the section that follows it is argued that crime and penal politics have been redefining the

³⁹² My argument here draws on Carlen’s thesis on radical criminology, see, P Carlen, 'Radical Criminology, Penal Politics and the Rule of Law' in *Radical Issues in Criminology*, P Carlen and M Collison eds. (Oxford & NJ: Barnes & Noble Books, 1980), 11-7.

³⁹³ This point aims to draw on the analysis offered in ‘Capitalist Sovereignty, or administering the global society of control’, by Hardt and Negri, (2001), 325-50.

international contemporary security mechanism. Even though security appears to be an overall perceptible and highly significant development of the 9/11 global era, it poses significant questions as to whose security and which particular threats; these to an important extent remain unanswered. Exactly *why* and *how* are questions of crime and punishment so quickly transformed into questions of security that have crucial implications for human rights and civil liberties?³⁹⁴ Reviewing some media representations will help me explain how security comes into play within imaginary penalties.

Media Representations: security and the image of threat

Media representations have contributed to security concerns with their own accounts of trafficking and anti-trafficking virtual realities. There is no doubt, as the investigation of anti-trafficking instruments shows, that yearning for their eradication, security measures aiming to combat trafficking threats reached an unprecedented scale and severity during the last twelve years or so.³⁹⁵ As the following analysis shows, media representations have focused primarily on ‘a panic-stricken production of the real’.³⁹⁶ I find these media accounts or simulations very useful as their workings are essential to the examination of various social sources of anxiety and to the necessary untangling of the changing relationships between criminalisation, security, threats, fear and victimisation. Meanwhile, as I will explain later, the specific motivations behind the establishment of complex international security agencies vary according to the distinct characteristics and scale of each sector. Through the lens of media

³⁹⁴ I expand here Carlen’s argument and I use security as a linkage between punishment and human rights, see, Carlen, 'Radical Criminology, Penal Politics and the Rule of Law', *passim*.

³⁹⁵ See, e.g., Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece'.

³⁹⁶ J Baudrillard, 'The Precession of Simulacra', *Semiotext(e)*, 1983, 4.

representations I explore the emergence of trafficking in women as a gender-specific issue that has required an urgent international security response.

What is security in the context of trafficking in women? Popular television formats affect the experience of trafficking knowledge, as they are employed in cultural contexts to communicate and educate: '[s]ensational news serves as evidence of the real'.³⁹⁷ Interviews with those involved in the 'real' battle against trafficking and testimonies of 'real' victims evoke emotional sensibilities in viewers. Television series and movies are used as a dramatic spectacle and emotions factory,³⁹⁸ the viewer has a feeling that there is something extremely familiar about trafficking in women security threats.

For instance, in the double Golden Globe award nominated series 'Human Trafficking', elements of seduction, vulnerability and violence amalgamate transnational security threats, and define conditions of insecurity and exploitation in this particular context. Threats and danger, according to the representations, obscure the most 'sacred spheres', even love: in the Czech Republic, a romance blossoms between a single mother and a seductive, successful, handsome man who sells her to traffickers in New York. In Ukraine, a girl joins a modelling agency seeking for a better life; she is selected to travel to New York, where she is forced into sex slavery. In South-East Asia, a 12 year-old American girl is abducted by sex traffickers while on holiday with her parents; she is forced into a child brothel, primarily frequented by sex tourists. The victims are all young, beautiful, innocent, and have 'become prey to a dark criminal element specialising in human trafficking – a billion dollar industry where humans are bought and sold

³⁹⁷ Lancaster, (2011), 25.

³⁹⁸ N A Lisus and R V Ericson, 'Misplacing Memory: The Effect of Television Format on Holocaust Remembrance', *British Journal of Sociology* 46, no. 1 (1995), 1.

for the business of sexual gratification'.³⁹⁹ The traffickers are calculating, profit-oriented, cold-blooded, brutal, almost pathologised, individuals, members of international criminal organisations who show no remorse about their crimes. The narratives are all very temporary; they speak to us because they capture the moment of anti-trafficking's emergence within an intelligible spatial and time construction.

Similarly, the TV series 'The Wire'⁴⁰⁰ (season two), written by former police reporter David Simon, features a criminal mastermind known as 'the Greek'. The Greek's smuggling operations include sex and drug trafficking, and involve corrupt police and government officials. The police investigation of the Greek occurs when a container of thirteen dead young women from Eastern Europe, intended for the sex trade, is discovered at the Baltimore docks, triggering a high-profile homicide investigation. The container belonged to the Greek and the women were killed by a crewman, onboard the vessel that had delivered them, by his collapsing the air pipe of the container. The series famously criticises police bureaucratic processes as well as institutional dysfunction and corruption, which contributes to its 'realism' and is perceived as a mass medium being in a position to articulate valid criticism against institutional practices. To do this, and in an effort to enhance the immersive viewing experience, the series provides, in immense detail, extensive coverage of the use of electronic surveillance and wiretap technologies by the police, which is both bleakly and realistically represented.

While the average viewer is unlikely to be familiar with international legislation or the complex security agencies on which these media representations

³⁹⁹ *Human Trafficking: the complete mini-series*, 2005 Slam Dunk Media Ltd.

⁴⁰⁰ *The Wire*, 2002-2008 HBO.

have been based, the picture painted by such stories is further supported by personal narratives of trafficking victims as reported in newspapers. For instance, the *Guardian* reader on Thursday 19 August 2010 is informed that discovering the ‘truth’ about sex trafficking is one of the most pressing economic and political priorities today, as intense as the slave trade of the 18th and 19th Centuries and the genocides of the 20th, and a key factor behind issues from famine in Africa to terrorism and climate change. Millions of victims, mostly vulnerable women, exist today; in places where their sexuality is being sold, their ‘virginity auctioned’ (verbatim); their suffering is, in effect, compared to the Holocaust and a continuation of the slave trade.⁴⁰¹ Like television representations, newspaper representations also strikingly influence contemporary trafficking and anti-trafficking media-saturated perceptions. Perceptions, images and fiction blended with news and fragments of official discourse, manage to shock, scandalise or evoke fear. To some extent, these narratives bring into view what security could mean in this context, and that it has perhaps been women’s security all along upon which media representations have been creating sensational and fictional evidence of the real. Of course, these are only trafficking representations, and no matter how realistic they proclaim to be, they more likely fail to embody reality. Using ‘shock’ and ‘suspense’ techniques, they often exaggerate in an effort to evoke strong emotions. However, while the trafficking-type documentary may exaggerate realities, it does not invent them.⁴⁰²

⁴⁰¹ E Pilkington, 'Half the Sky: How the Trafficking of Women Today Is on a Par with Genocide. The Authors of a New Book, Half the Sky, Say the Slavery and Abuse of Women Is the Greatest Moral Outrage of Our Century', 19/08/2010 [last accessed: 20/04/11] [<http://www.guardian.co.uk/books/2010/aug/19/women-slavery-half-the-sky>].

⁴⁰² In parallel, for the use of caricatures see, Marks, 'Exploitation as an International Legal Concept', 287.

But how do these imaginary threats collide with contemporary security structures? By merging security structures and representations do they have anything concrete to say about security? Or is it that their concurrent emergence is a mere coincidence? Their concurrent emergence is definitely not a coincidence. The *Spectator* on Saturday 5 April 2003⁴⁰³ observed that anti-trafficking, with its real, material and conceptual security technologies, is actually ‘fictional’ in many respects. The article yet again promises the ‘truth’, however this ‘truth’ conflicts with the ‘truths’ of the above media representations. Here the victims are not ‘real’ as international mechanisms have tried to convince us. According to the article, ‘for many who work with these “sex slaves” the women’s accounts are just that – stories’, most of which are suspiciously similar and, most likely, a cover-up. Under the title ‘Happy Hookers of Eastern Europe’, the featured women are categorised as being in a grey area between criminality and victimisation. Hence, we are encouraged by the reporter to face ‘reality’ and accept that these women may be mere links or accomplices in a broader organised crime scenario. They may be mere security threats from Eastern Europe.

The mainstream doctrinal literature on anti-trafficking mechanisms tends to overlook the evocative nature of these representations and their power to construct moral panics,⁴⁰⁴ as it prioritises official discourses rather than media representations of these discourses. Therefore, the value and power of these representations tend to be underestimated or overlooked. However, the sense of what security might be in this context derives from representations of threat and vulnerability, even when threat and vulnerability merge and a new grey area, a

⁴⁰³ P McAleer, 'Happy Hookers of Eastern Europe', *The Spectator*, 05/04/2003.

⁴⁰⁴ S Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers* (Oxford: Basil Blackwell, 1987). Also, for an important discussion on moral regulation and moral architecture, see, S Cohen, 'Ideology? What Ideology?', *Criminology & Criminal Justice* 10, no. 4 (2010), 387.

fusion between the two, is produced. Thus, this section has examined a corpus of media utterances proclaiming to be the ‘true’ subject-matter, while offering sensationalised and dramatised linguistic descriptions. These graphic accounts of violence and first-person testimonies (only a few examples out of thousands produced in the past decade)⁴⁰⁵ shape knowledge, evoke emotions and create a sense of urgency that immediate action is required to ‘combat’ what is assumed to be a global security problem.⁴⁰⁶ They also encourage the erosion of procedural safeguards and the creation of

[S]uspect populations in a number of different contexts, from public health to migration policy. An understanding of such panics is important in understanding how ideas of security, protection and victim rights can themselves generate and perpetuate control mechanisms that undermine rights.⁴⁰⁷

Consequently, the language of combat, policing and criminalisation is gradually injected into the representations, justified by the urgency caused by inhumane violence and the prerequisite of extensive security measures. Always in comparison with another, distinct crime, the threat posed by trafficking in women is multiple. Organised crime, terrorism, illegal sex trade, violence against vulnerable women and slavery are all interconnected threats discursively linked to trafficking.⁴⁰⁸

To surpass the boundaries between security constructions appears, then, as the ultimate representational objective. The criminal networks pose a threat to state and inter-state mechanisms, especially in their capacity to fund other criminal activities with the extreme profits speculated to be made from trafficking. Hence, threat and insecurity is further expanded. How significant is this security

⁴⁰⁵ See, e.g., Doezema, (2010); Bouklis, 'Female Sex Trafficking in Europe and the Feminist Debate. Greece as a Case Study on Policy Implementation and the Role of Feminists'.

⁴⁰⁶ Doezema, (2010), 2.

⁴⁰⁷ International Council on Human Rights Policy, 'Modes and Patterns of Social Control. Implications for Human Rights Policy', 2010.

⁴⁰⁸ See, e.g., Aradau, (2004), 251-77.

expansion? What dilemmas does it pose? In the next section, I focus on discursive constructions of security and its plasticity. This serves a dual purpose: on the one hand, it presents an overview of what we know or do not know about security and trafficking in their various manifestations. From transnational to human security threat, and the ‘security continuum’, trafficking is constructed as a threat, with the power to render victims ‘vulnerable’. On the other hand, it justifies the legal and policy responses that set out to identify, map and counter trafficking and create the anti-trafficking industry, as a governmental, IGO and NGO complex apparatus.⁴⁰⁹

Locating the Securitisation Debates: from transnational to human security

The emergence of security

What do we know about security? It is well-established that security studies enjoyed their ‘golden age’ during the 1950s and 60s, as a subfield of international relations.⁴¹⁰ In most cases, they focused on the security of states, following the trends of security policies on threats to states and on traditional military capabilities. During this time civilian strategists and academics engaged in conceptual innovation, hard research, practical proposals and action-plans for governments. The principles of nuclear war, the structure of armed forces and refining tools of crisis management are a few of the main themes that dominated

⁴⁰⁹ See, also, J Goodey, 'Human Trafficking: Sketchy Data and Policy Response', *Criminology & Criminal Justice* 8, no. 4 (2008), 421.

⁴¹⁰ Three fundamental schools of thought have dominated the history of security studies: ‘Copenhagen’, ‘Aberystwyth’ and ‘Paris’. Even though the categorisation of these schools as a means of theorizing can be extremely useful in locating arguments and strands of theory, however, it has been criticised as misleading and oversimplistic. For the purposes of this thesis, a more sympathetic approach to the concerns raised by critical accounts in the field of security studies and more specifically in the formation of internal security field in Europe and the securitisation of migration in the context of trafficking is utilised. See, e.g., M Neocleous, *Critique of Security* (Edinburgh: Edinburgh University Press, 2008); C Aradau, 'Security That Matters: Critical Infrastructure and Objects of Protection', *Security Dialogue* 41, no. 5 (2010), 491; L Hansen, 'The Little Mermaid's Silent Security Dilemma and the Absence of Gender in the Copenhagen School', *Millennium - Journal of International Studies* 29, no. 2 (2000), 285; C.A.S.E., 'Critical Approaches to Security in Europe: A Networked Manifesto', *Security Dialogue* 37, no. 4 (2006), 443.

security studies. These themes are exemplary in advocating the four Ss: security research agenda of states, strategy, science and *status quo*. The focus on states reflects their assumption that these were the most important agents and referents of security.⁴¹¹

Regarding inter-state mechanisms, the formation of an internal security field in Europe coincided with the emergence of the new social movements of the late 1960s, 70s and 80s. The narrative that sustains this emergence is even today that of contingency: the dissolution of the Soviet Union (1989) redrew Europe's geostrategic map and shifted the definition of security issues, while challenging 'standard' assumptions and dominant narratives of threat.⁴¹² Subsequently, the containment project gradually shifted from the East-West bipolar into the inclusion, cooperation and benevolence project.⁴¹³ In this regard, the clear dividing line between law enforcement and security-intelligence of the Cold War is missing. During the Cold War law enforcement was mostly related to domestic issues, while intelligence was concentrated on geopolitical national security concerns, predominantly military in nature.⁴¹⁴ These concrete distinctions between the two, however, have become blurred in the post-Cold War era.

Reading the history of the US Federal Bureau of Investigation (FBI), for instance, exemplifies the continuous reconfiguration of threats as well as the lack of a clear distinction between security and law enforcement. Throughout its history, the FBI has directed its resources towards diverse security issues from

⁴¹¹ See, e.g., P Williams, ed. *Security Studies: An Introduction* (NY: Routledge, 2008).

⁴¹² See, e.g., Aradau, (2004); J Rovner and A Long, 'Correspondence. How Intelligent Is Intelligence Reform?', *International Security* 30, no. 4 (2006), 196.

⁴¹³ For an account of integration but also vacillations and zigzagging in the process, see, A Rahr, 'Russia-European Union-Germany after September 11 and Iraq' in *Russia's Engagement with the West. Transformation and Integration in the Twenty-First Century*, A Motyl, B Ruble, and L Shevtsova eds. (NY: M.E. Sharpe, Inc., 2005).

⁴¹⁴ P Andreas, 'Redrawing the Line: Borders and Security in the Twenty-First Century', *International Security* 28, no. 2 (2003), 78, 84.

social movements and political threats (anarchism, communism) to wars and national threats.

Founded in 1908, the Bureau inherited subversive domestic political threats, including anarchism and communism, as concerns. Following the U.S. entry into World War I, the Bureau became the principle counterintelligence agency in the United States and, following the war, the investigation of a series of domestic terrorist bombings were the focus of its activities. These activities were eventually eclipsed by the property and violent crimes of the 1920s and early 1930s gangster era. World War II and the subsequent Cold War greatly increased the FBI's role in international affairs and counterintelligence. The Civil Rights Movement and the Vietnam War of the 1960s and early 1970s provoked criminal responses both from reactionary groups, such as the Ku Klux Klan, and antiwar extremists, such as the Weather Underground, respectively. Following strong criticism of FBI domestic security efforts by Congress in the mid-1970s, the Bureau's focus on domestic subversion gave way to new emphasis on organised crime and other criminal matters in the late 1970s and early 1980s.⁴¹⁵

The emergence, then, of social movements, such as the African-American movement during the mid-20th Century, developed as a cultural, ideological and political movement against 'white racial and colonial dictatorship',⁴¹⁶ has been regarded as an effort to achieve civil equality, human dignity and development, but also as a security threat.⁴¹⁷ At the time, state efforts toward integration or segregation and mere legal reform were criticised as unproductive or even harmful as they masked the potential for fundamental transformation: 'Malcolm X stressed that "our people want a complete freedom, justice and equality, or recognition and respect as human beings ... So, integration is not the objective nor is separation the objective. The objective is complete respect as human beings"'⁴¹⁸

In the context of Europe and the United States, social movements for the rights of women have also been regarded as a threat to patriarchy and a struggle

⁴¹⁵ Federal Bureau of Investigation, 'Terrorism 2002-2005', (US Department of Justice: Counterterrorism Division), 34.

⁴¹⁶ A Jalata, 'Comparing the African American and Oromo Movements in the Global Context', *Social Justice* 30, no. 1 (2003), 67, 74-5.

⁴¹⁷ For an analysis of the embeddedness of the African American movement in the social conditions of the capitalist world-system, see, *ibid.*

⁴¹⁸ *Ibid.*, 79.

against the dominant ‘mode of reproduction’ and the dominant model of kinship. Drawing an obvious connection between the movements of black liberation (particularly those of the 1960s and 70s) and black feminism, it is evident that within the aspirational discourses of empowerment and liberation the fight ‘against oppression’,⁴¹⁹ heterosexism and economic oppression under capitalism also emerges.⁴²⁰ As Gayle Rubin suggests, particular forms of gender have been sustaining the gender and sexual systems of production and reproduction. To this extent, feminist struggles, as an attempt to destabilise the balance of reproduction, had particular implications for states, since ‘[e]very mode of production involves reproduction – of tools, labour, and social relations’.⁴²¹

From the emergence of social movements and the expansion of security in order to capture new threats, the analysis shows that the initial distinction between international and human security is not as simple as it initially proclaimed to be, as it entrenches different layers of security discourse. In the context of trafficking in women, then, an analysis that prioritises women’s rights and the security of women is not simply a matter of prioritisation. Ultimately, the question posed to the states is: to what extent can the previously articulated objective, ‘complete respect as human beings’, be contained within the interests of this current historic moment? And, to what extent can these interests be balanced? With regard to Europe, broader global changes in the security domain were further put into effect after the institutionalisation of organisations like the European Commission, the European Central Bank and the European Court of Justice. The emergence of new

⁴¹⁹ The Combahee River Collective, ‘A Black Feminist Statement’ in *The Second Wave. A Reader in Feminist Theory*, L Nicholson ed. (London & NY: Routledge, 1997), 64-5.

⁴²⁰ See, e.g., *ibid.*, 63-70.

⁴²¹ G Rubin, ‘The Traffic in Women. Notes on the ‘Political Economy’ of Sex’ in *The Second Wave. A Reader in Feminist Theory*, L Nicholson ed. (London & NY: Routledge, 1997), 32.

policy competences, such as for policing and migration, and the enhanced cooperation in foreign policy and security, created new policy spaces.⁴²²

The changes that were introduced, to which reference is made in subsequent sections, created new policy spaces and new institutions in the EU system. In very broad terms, these institutions were associated with the exercise of legislative and/or executive power, conceptualised on the basis of an 'institutional balance'. The concept, therefore, originally emerged as a legal principle according to which the pertinent institutions had to act within the limits of their respective powers in the context of a division of powers defined by the relevant treaties.⁴²³ Diverse issues of security, then, gradually became part of this wide-ranging institutional structure.

Post-9/11 Security

From all the above, it comes as no surprise that, since 1987, political conflicts and environmental issues were part of a cooperation plan between the Soviet Union and Western democracies, in an endeavour to strengthen the UN's ability to deal with local conflicts and environmental issues.⁴²⁴ In contrast to the Cold War perception that the pre-eminent threat stemmed from Western and Soviet militant ideology backed by military power and scientific evolution, the new context of security was dominated by a new spirit that nations were to follow a more 'civilised' path to security, influenced by certain common principles, both in their

⁴²² See, e.g., P Turnbull, 'Chapter 10. Policing and Immigration: The Creation of New Policy Spaces' in *The Institutionalization of Europe*, A Stone Sweet, W Sandholtz, and N Fligstein eds. (Oxford Scholarship Online, 2004).

⁴²³ See, e.g., J Monar, 'The European Union's Institutional Balance of Power after the Treaty of Lisbon', n.d.

⁴²⁴ P Bracken and K Gottfried, 'The New Strategic Environment' in *Reforming European Security. From Confrontation to Cooperation*, K Gottfried and P Bracken eds. (San Francisco & Oxford: Westview Press, 1990), 20.

mutual relations and their domestic legislation. This is related to broader changes in the field of international law, particularly the evolution of ‘common aims’ and a well-established shift in the way that state interests were viewed and had to be protected.⁴²⁵ Following the end of the Cold War, security scholars, influenced by liberal ideas and seeking to broaden conceptions of security beyond the military realm, visualised the incorporation of issues such as economics, the environment and health, and aimed to deepen approaches to security through additional levels of analysis.⁴²⁶ Predominantly, it is the sociopolitical and economic aspects of the dissolution of the Soviet Union that sustained, up to 9/11, securitisation processes.⁴²⁷ EU national security debates emerged in that era and replaced realism’s military-focused, state-centred and zero-sum understanding of security.⁴²⁸

Post-9/11, the quest for a global understanding of collective security gained momentum, influenced by legislation that was initially enacted in the US: ‘the government propelled far-reaching antiterrorist legislation through Congress with minimum debate’.⁴²⁹ Based on these developments and with the support of civil society organisations, the US administration gave the domestic intelligence apparatus unprecedented powers that ‘justified racially motivated arrests and curtailment of civil liberties in the name of national security, and created a new federal bureaucracy to combat terrorism’.⁴³⁰

⁴²⁵ M Koskenniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870-1960* (Cambridge: Cambridge University Press, 2002), 11-97, 413-509.

⁴²⁶ K Krause and M C Williams, 'Broadening the Agenda of Security Studies: Politics and Methods', *Mershon International Studies Review* 40, no. 2 (1996), 229; J Lobasz, 'Beyond Border Security: Feminist Approaches to Human Trafficking', *Security Studies* 18, no. 2 (2009), 319, 320-1.

⁴²⁷ See, e.g., Bialasiewicz et al., (2007), 410.

⁴²⁸ C.A.S.E., (2006).

⁴²⁹ T Platt and C O'Leary, 'Patriot Acts', *Social Justice* 30, no. 1 (2003), 5, 6-7.

⁴³⁰ *Ibid.*, 6.

Further shifts re-conceptualised security and an anti-terrorism global agenda was drawn up. As Claudia Aradau and Rens van Munster have noted, we currently live in the post-9/11 world, which is a novel and exceptional world in many respects.⁴³¹ Most prominently, governments conceptualised the terrorist threat as a war, which is waged to protect the rule of law, and ultimately, bring peace. Similarly to the ‘war on drugs’ discourse,⁴³² the ‘war on terror’ was thought to be imposing new conceptual challenges. In the ‘new wars’ there are no clearly

[D]emarcated ‘innocent’ sectors because the sides are no longer distinct and it is difficult to distinguish between combatants and non-combatants. Moreover, insecurity can no longer be contained – violence has a tendency to cross borders not in the form of attacks by foreign enemies but through terrorism, organised crime or extreme ideologies.⁴³³

Within this context, the language of prevention emerged vividly, while the response to terrorism was imagined through criminal law enforcement, as a response to criminal activities, and derived from political discourse and US strategic planning.⁴³⁴ As the idea of an ‘effective response to terrorism’ varied across states, ‘ordinary’ criminal law procedures, with their delicate balances between preserving public order and respecting the rights of individuals, were often abandoned.⁴³⁵ Instead, ‘modifications of the law, including special laws justified only on the basis of an exceptional emergency, have been enacted’.⁴³⁶

⁴³¹ Their analysis draws on the label ‘war on terror’ and offers valuable criticism in many respects. Among the functions of this label is that it encompasses multiple and heterogeneous practices, linked to new technologies and their failure. Failing technologies are then the very motor for perpetuating these practices, see, Aradau and van Munster, (2007), 108.

⁴³² For a stimulating account of how ‘Zero Tolerance’ discourse was initially used in connection with the ‘war on drugs’, see, Newburn and Jones, (2007).

⁴³³ M Kaldor, *Human Security: Reflections on Globalization and Intervention* (Cambridge: Cambridge University Press, 2007), 196.

⁴³⁴ See, e.g., Platt and O’Leary, (2003).

⁴³⁵ C Warbrick, ‘The European Response to Terrorism in an Age of Human Rights’, *European Journal of International Law* 15, no. 5 (2004), 989, 989-90.

⁴³⁶ *Ibid.*

In a crucial *Washington Post* reporting project, 'Top Secret America', information was gathered on how the 9/11-attack has changed America.⁴³⁷ This exposed the fact that the US government has increased the amount spent on intelligence by 250 per cent. The funds have been used for the set up or reconfiguration of 263 organisations 'to tackle some aspect of the war on terror'.⁴³⁸ New intelligence buildings, personnel, equipment and numerous reports are now in place, while approximately 30,000 people are employed exclusively to listen in to phone conversations and other communications. Importantly, the rise of this security domain has entailed a vast expansion in the government's powers.

The remit of governmental powers appears divided: on the one hand, there is international obligations of the state to protect the rule of law against terrorism and enforce anti-terrorist activities and, on the other, the obligation to respect, ensure respect for, and to enforce international human rights and humanitarian law. Both these tasks, interlinked in practice, underline the importance of *emergency* mobilised by governmental actions. However, as they are distinct in nature, international legal cases exemplify the acute conflict between the fight against terrorism and the protection of human rights.⁴³⁹ Significant commentators have crucially questioned this clear distinction between the one task and the other and have maintained that as both 'tactics' use conditions of legitimacy (protection of rule of law, protection of human rights, combatting terrorism), their

⁴³⁷ Washington Post, 'Top Secret America', n.d. [last accessed: 05/01/12] [<http://projects.washingtonpost.com/top-secret-america/>].

⁴³⁸ Washington Post, 'Top Secret America Hidden World Growing Beyond Control', n.d. [last accessed: 02/01/12] [<http://projects.washingtonpost.com/top-secret-america/articles/a-hidden-world-growing-beyond-control/>].

⁴³⁹ H Keller and M Sigron, 'State Security V Freedom of Expression: Legitimate Fight against Terrorism or Suppression of Political Opposition?', *Human Rights Law Review* 10, no. 1 (2010), 151.

interconnections should be investigated further.⁴⁴⁰ For instance, the conditions under which some human lives cease to become eligible for basic or universal human rights are constructed within a gendered, racial and ethnic frame. It is, then, this same governmental power that shapes conditions and exercises judgements regarding who is dangerous and, therefore, not entitled to basic legal rights.⁴⁴¹ Consequently, further investigation would involve the way that both ‘tactics’ have been dynamically re-imagined.⁴⁴² As Senator Hillary Clinton said in the immediate aftermath of the 9/11 attacks: ‘[i]n desperate times like these, you have to think the unthinkable’.⁴⁴³

The unthinkable ‘war on terror’, with its imagery and technologies as a space–time contingent construction, not only made the intended use of discretionary power and suspension of freedom applicable,⁴⁴⁴ but it also captivated the ensuing desirability of a more thorough study of security and its multiple functions. This study was primarily intended to elaborate on the significant potential of adjusting the balance between liberty and enhanced security by utilising the toolkit of meticulous research.⁴⁴⁵ Increasingly critical and relevant to the anxieties of our time, security is today widely accepted as a transnational, often gendered issue,⁴⁴⁶

⁴⁴⁰ See, e.g., N Ferguson, 'Clashing Civilisations or Mad Mullahs: The United States between Informal and Formal Empire' in *The Age of Terror. America and the World after September 11*, S Talbot and N Chanda eds. (Oxford: Perseus Press, 2001); H H Koh, 'Preserving American Values: The Challenge at Home and Abroad' in *The Age of Terror. America and the World after September 11*, S Talbot and N Chanda eds. (Oxford: Perseus Press, 2001).

⁴⁴¹ Butler, (2004).

⁴⁴² P Bracken, 'Rethinking the Unthinkable: New Priorities for New National Security' in *The Age of Terror. America and the World after September 11*, S Talbot and N Chanda eds. (Oxford: Perseus Press, 2001).

⁴⁴³ *Ibid.*, 173.

⁴⁴⁴ F Zakaria, 'What America Has Lost', *Newsweek* 13/09/2010.

⁴⁴⁵ D Dershowitz, 'Should the Ticking Bomb Terrorist Be Tortured?' in *Why Terrorism Works: Understanding the Threat, Responding to the Challenge*, D Dershowitz ed. (New Haven: Yale University Press, 2002).

⁴⁴⁶ See, e.g., Hansen, (2000).

linked to transnational policing,⁴⁴⁷ macro- and micro-structures of security governance, justice and democracy.⁴⁴⁸

The new era of the transnational and inter-governmental ‘fight against terrorism’ has, therefore, been theorised as the foremost ‘compelling instance in the evolution of securitisation practices’.⁴⁴⁹ The term *securitisation* has been mobilised in order to describe the ‘political structuration of certain persons and practices as “threats”’.⁴⁵⁰ Thus, securitisation sustains a strategic practice aimed at convincing a target audience that an oral, potential or perceived threat is indeed, based on what we know about the world, *threatening*. Therefore, this potential or perceived threat requires our immediate policy reaction, as a response and remedy.⁴⁵¹ Relevant literature on securitisation⁴⁵² emphasises how current political discourse transforms certain subjects or objects into threats and collective enemies. Securitisation, ultimately, lifts issues above normal politics, in order to legitimise otherwise disputable policies. Its tools, in this sense, convey distinctive implications for the modes of governance of security in the EU, the most striking characteristics of which are contingent intelligence-led policing and the mobilisation of diverse disciplinary technologies.⁴⁵³ The ‘war on terror’ narrative,

⁴⁴⁷ E.g., Papanicolaou, (2011).

⁴⁴⁸ E.g., T Balzacq, 'The Policy Tools of Securitisation: Information Exchange, EU Foreign and Interior Policies', *JCMS: Journal of Common Market Studies* 46, no. 1 (2008), 75.

⁴⁴⁹ *Ibid.*, 75. For a critical account and the democratic potential of desecuritisation, see, C Aradau, 'Security and the Democratic Scene: Desecuritization and Emancipation', *Journal of International Relations and Development* 7, no. 4 (2004), 388.

⁴⁵⁰ E Guild, S Carrera, and T Balzacq, 'The Changing Dynamics of Security in an Enlarged European Union', in *CEPS Challenge* (Res. Paper 12, 2008), 1-27.

⁴⁵¹ T Balzacq, 'The Three Faces of Securitisation: Political Agency, Audience and Context', *European Journal of International Relations* 11, no. 2 (2005), 171, 172-3.

⁴⁵² E Guild, 'The Uses and Abuses of Counter-Terrorism Policies in Europe: The Case of the "Terrorist List"', *JCMS: Journal of Common Market Studies* 46, no. 1 (2008), 173; D Bigo, 'When Two Become One: Internal and External Securitisation in Europe' in *International Relations Theory and the Politics of European Integration, Power, Security and Community*, M Kelstrup and M C Williams eds. (London: Routledge, 2000); Aradau, (2008); I Loader, 'Policing, Securitisation and Democratisation in Europe', *Criminology & Criminal Justice* 2, no. 2 (2002), 125.

⁴⁵³ In the context of trafficking, see, Aradau, 'Politics out of Security: Rethinking Trafficking in Women', 141.

then, creates a field within which legal mechanisms can be overridden in the face of the political ‘emergency’ of our time.⁴⁵⁴

In consequence, the pragmatic act of security, with the administrative practices of surveillance, detention, control and penalisation, determines strategic and tactical uses of language. Security is redefined, then, not as a monolithic concept, attached to states and military intervention, but as a ‘security continuum’,⁴⁵⁵ which reflects inter-governmental policy priorities, emergencies and tactics. The constructed threats of this transposition align unprecedented threatening complexions along the same axis. As a response, a customised political act must be undertaken immediately and block their development within a specific space–time continuum or social field.⁴⁵⁶ Borders, illegalised migration and the integration of immigrants have been affected by securitisation processes and framed as ‘threats’ or ‘insecurities’ for Western states. Insofar as security is mobilised within imaginary penalties, administrative practices of surveillance, detention, control and penalisation are then necessary and legitimised.⁴⁵⁷

The Emergence of Anti-Trafficking Security

When one reads the UN 2000 Anti-Trafficking Protocol, one does not need to invest any extra effort to look specifically for the gender perspective or to mobilise different means for reading it through the gender lens. This is only because, should one wish to do so, it would actually take quite some effort to read the Protocol by excluding gender workings from security constructions. The question of gender,

⁴⁵⁴ Balzacq, (2008), 96.

⁴⁵⁵ Aradau, 'Politics out of Security: Rethinking Trafficking in Women', 67.

⁴⁵⁶ Balzacq, (2005).

⁴⁵⁷ Guild, Carrera, and Balzacq, 'The Changing Dynamics of Security in an Enlarged European Union', 2-3.

and to that extent the question of inequality and injustice, is central to the UN 2000 Anti-Trafficking Protocol. In fact, the Protocol as a legal and social text becomes culturally intelligible through the vehicle of gender.⁴⁵⁸ Also, when reading it in conjunction with the UN 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, it is evident that women and children are depicted as (potential) victims whose personal security is under threat, while men are seen as illegalised migrants and as agents of threat.⁴⁵⁹

In representations of trafficking in women, security has inevitably been discussed as a gendered problem, predominantly targeting women. Therefore, one would expect that women's security is central to the conceptualisation of the problem and in the subsequent discussion that seeks to find a solution to it. This is not, however, the case. In important analyses gender has been regarded as an added layer of analysis, on which the researcher may or may not focus (and by doing so she perhaps runs the risk of being labelled as gender-biased), as to uphold trafficking as a gendered problem carries both political and practical significance. Choosing, then, to focus on gender (if, indeed, this is a matter of choice), the gender-specific element of trafficking highlights two discursive shifts: a) in the way security has been conceptualised and b) in principal representations of trafficking. Through these shifts, new reflections of security emerge, which expand and restructure anti-trafficking capabilities and re-shape our understanding of trafficking in women as a gender-specific insecurity.

Firstly, the shift in the conceptualisation of security is highly important and involves the post-9/11 political angst surrounding women's issues. It has been

⁴⁵⁸ I draw on Butler's intelligibility in relation to bodies, see, Loizidou, (2007), 23.

⁴⁵⁹ See, e.g., Van Liempt, 'Trafficking in Human Beings: Conceptual Dilemmas'; L M Agustín, 'The Conundrum of Women's Agency: Migrations and the Sex Industry' in *Sex Work Now*, E Campbell and R O'Neill eds. (Cullompton: Willan Publishing, 2006), 126.

highlighted by Yakin Ertürk, UN Special Rapporteur on Violence against Women, that since 9/11 international commitments and the goal of gender justice are at risk of being delayed in the name of other pressing priorities:

Conservative political trends and the response to global terror tend towards policies and measures that restrict civil liberties and encroach upon the universality of basic human rights for women and men. Such trends pose new challenges for the UN gender agenda.⁴⁶⁰

Even though the very discursive construction of the ‘gender agenda’ arguably excludes the direct representation of ‘women’, the UN ‘gender agenda’ has been to a certain extent consistent in underlying the importance of ‘empowering women’⁴⁶¹ in situations of trafficking, criminalisation and commercial exploitation of sex work, as they ‘make women more vulnerable to sexual abuse and increase their inability to seek redress’.⁴⁶² I will return to this point later. For the time being I want, to this limited extent, to consider the ways that the official discourse represents (or renders invisible) women in the security-led approach.

Secondly, regarding the shift in representations of trafficking, and in order to depict and empower women, the UN has also been proactive in identifying new trends in the way that the pertinent issues have been conceptualised. The mandate’s work on trafficking has significantly shifted by gradually de-linking trafficking from sex work (and the moral panics examined earlier) and linking it with (illegalised) migration and labour rights for women migrants, in an effort to

⁴⁶⁰ Y Ertürk, 'The UN Agenda for Women's Rights and Gender Equality', *Perceptions, Journal of International Affairs, Special issue on the United Nations* 10, no. 2 (2005), 91.

⁴⁶¹ Other similar discursive constructions include the ‘promotion and endorsement of advancement of women’. A critical analysis of the term ‘empowerment’ suggests that narrow views of women’s empowerment only limit our vision of female identities and of the transformative potential of gender identities. Also, I am urged to use the term ‘empowerment’ with some caution, as ‘to empower women’ has raised debates as to women’s agency and power, insofar as it masks women’s continued legal and systematic disadvantage. For a relevant discussion, see, E Fegan, 'Recovering Women: Intimate Images and Legal Strategy', *Social & Legal Studies* 11, no. 2 (2002), 155.

⁴⁶² Ertürk, 'Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Yakin Ertürk : Addendum : 15 Years of the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, (1994-2009): A Critical Review', 19.

put the human rights of trafficked women at the centre of approaches to trafficking.

The issue of the security of states is, however, still strikingly present, with the proliferation of multiple ‘threats’ in the context of movement of women within and across borders from South to North and East to West in a globalised market world.⁴⁶³ For instance, the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Sigma Huda, explains how the current legal arrangements for employment between home and host states (required documentation, entry visas, residence and employment permits) reflect that priority is given to states’ interests and not to the workers.⁴⁶⁴ Shifting the focus from one area of rights to the other perhaps conceals the interconnections and aligns with the logic of ‘new trends’,⁴⁶⁵ which only promises a short-term focus on diverse issues, and not a serious commitment ‘to empower’ – this is *even if* we assume that ‘to empower’ has a specific content in this context. With a view to actually expand rather than limit our vision to trafficking being exclusively linked to sex work, new patterns and trends have shown that trafficking serves forced and/or bonded labour, including within the sex trade, forced marriage and other slavery-like practices.⁴⁶⁶

So the above discursive shifts regarding security and trafficking are flourishing in an ever changing and fragmented context, problematising normative

⁴⁶³ *Ibid.*, 19-20.

⁴⁶⁴ S Huda, 'Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Sigma Huda, Mission to Bahrain, Omar and Qatar', (UN General Assembly, A/HRC/4/23/Add.2, 2007), 17. In specific, the section on ‘Recruitment, Transportation, Transfer, Harbouring or Receipt of Persons and “Deceit”’.

⁴⁶⁵ These new trends have been based upon scientific knowledge. Aradau drawing on Agamben has investigated how securitisation processes linked with specific institutional, bureaucratic locales mobilise specific scientific knowledge, which imposes boundaries on contesting state discourses, see, Aradau, (2004), 394-7.

⁴⁶⁶ Ertürk, 'Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Yakin Ertürk : Addendum : 15 Years of the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, (1994-2009): A Critical Review', 19-20.

notions of security – the process of making or prioritising ‘security threats’ and traditional understandings of trafficking as a sex-‘threat’ to women. In stark opposition, positivism and neorealism assume that ‘insecurity’ or ‘threat’ exist objectively and can be discerned with some certainty. By assuming so, the complex process through which policymakers, and those who influence them, identify security threats and propose appropriate responses, judging the most effective action in a certain historical, economic, political and technological context, appears as neutral and detached from political reason.⁴⁶⁷

Consequently, the concept of anti-trafficking security surpasses the traditional realist focus on states and their objectivity in defining ‘threats’. It is then important to note that in instances where states have not been seen as the main security objective, substantive evidence has attested that states cannot be trusted as guarantors of security either, in the context of anti-trafficking security. To fill this gap, extra-state actors are pivotal in anti-trafficking security action plans. This juxtaposition of the security of the individual and the security of the national community has been exhausted in feminist security analysis, particularly in the construction of two dichotomies: ‘the first one pitches an individual concept of security against a collective one; the second pitches the nation against the gendered community’.⁴⁶⁸ Are these ‘really’ dichotomies or one more link of the ‘security continuum’?⁴⁶⁹

This focus on the security of individuals, particular populations and communities, rather than the security of the states, is reflected in the concept of

⁴⁶⁷ J Pretorius, 'The Security Imaginary: Explaining Military Isomorphism', *Security Dialogue* 39, no. 1 (2008), 99, 101.

⁴⁶⁸ L Hansen, 'Gender, Nation, Rape: Bosnia and the Construction of Security', *International Feminist Journal of Politics* 3, no. 1 (2000), 55, 58.

⁴⁶⁹ See, D Bigo, 'Globalized (in)Security: The Field and the Ban-Opticon', 2006. See, also, Aradau's analysis of women's insecurities within existing anti-trafficking security articulations in privileging the state or patriarchal power relations: Aradau, (2004).

human security.⁴⁷⁰ The United Nations Development Programme in its 1994 Human Development Report (1994 HDR), has been fundamental in expressing the narrow application of normative security: '[t]he concept of security has for too long been interpreted narrowly: as security of territory from external aggression, or as protection of national interests in foreign policy or as global security from the threat of a nuclear holocaust'.⁴⁷¹ Human security, however, has been presented as a universal concern, related to 'many threats that are common to all people – such as unemployment, drugs, crime, pollution and human rights violations'.⁴⁷² Linking diverse and yet, according to the 1994 HDR, 'interdependent' threats, the report identifies seven categories as the backbone of human security: economic security, food security, health security, environmental security, personal security, community security and political security.

In this respect, instead of providing a concrete definition of what human security might mean, the 1994 HDR sustains that '[s]everal analysts have attempted rigorous definitions of human security. But like other fundamental concepts, such as human freedom, human security is more easily identified through its absence than its presence. And most people instinctively understand what security means'.⁴⁷³ Less instinctively and more based on representations, the victims of trafficking are often portrayed as the victims of both physical and material insecurity.

By attempting to challenge the gist of traditional state security threats, human security is often perceived as a 'softer' model of security – being unable, so far, to mobilise forces, provide structural explanations and design action plans for the

⁴⁷⁰ For the use of term, see, Kaldor, (2007).

⁴⁷¹ UN Development Programme, 'Human Development Report 1994', (A/RES/57/264, 1994), 22.

⁴⁷² *Ibid.*

⁴⁷³ *Ibid.*, 23.

social re-organisation of economic and social structures. To this extent, human security has injected a more humanistic, ‘innocent’ rhetoric and has sustained that trafficking victims ‘lack human rights protection, engendered by the rule of law, and live in extreme conditions of fear and socioeconomic injustice’.⁴⁷⁴

By adding the element of human rights to securitisation,⁴⁷⁵ the concept of human security has institutionally expanded the security imaginary to an area that was considered to be distinct and, therefore, to be kept separate from mainstream securitisation concerns: the area of rights and liberty. While rights remained ‘uncontaminated’ and carefully distinct from securitisation needs, under the mobilisation of the dogma ‘insecurity can no longer be contained’, vulnerability has now been crossing borders and subjects. Within this domain, the rhetoric of ‘freedom from fear’ and ‘freedom from want’ attached to the notion of confronting vulnerabilities, has not only discursively expanded security but also the security agencies.⁴⁷⁶

On a practical level, civil society organisations have joined forces with the competent state agencies in a mutual endeavour to challenge insecurity and to enforce the ‘war’ against threats. The association of trafficking with corruption of politicians, police and border officials has expanded further the limitless mobilisation of security discourses. From within, the plasticity of the trafficking in-security opens the possibility of posing the immediate ‘threat’ of corruption.⁴⁷⁷

This potential association between trafficking activities and the bribing of police

⁴⁷⁴ H R Friman and S Reich, 'Human Trafficking in the Balkans' in *Human Trafficking, Human Security and the Balkans*, H R Friman and S Reich eds. (PA: University of Pittsburgh Press, 2007).

⁴⁷⁵ Securitisation as a process is linked to the criminalisation of migrants, through processes – such as the reluctance to extend rights to third country nationals – that represent migrants as threats, see, J Huysmans, 'The European Union and the Securitisation of Migration', *JCMS: Journal of Common Market Studies* 38, no. 5 (2000), 751.

⁴⁷⁶ Bigo sees security agencies as extremely heterogeneous, driven by diverse interests and globalised processes, see, Bigo, 'Globalized (in)Security: The Field and the Ban-Opticon'.

⁴⁷⁷ See, Chapters 2 and 5.

or border officials sheds the traditional notion of states as security mechanisms. As national, political and cultural investments are based on justice mechanisms, trafficking threats have an erosive effect:⁴⁷⁸ can our justice system be effective in persecuting traffickers? If not, then what does this mean about ‘us’ (e.g. the EU citizens) and ‘our’ justice mechanisms? This development, on the one hand, shakes the foundations of traditional notions and practices of military, state security. On the other hand, the security imaginary is further expanded and substantiated by political and social discourse.

Gender and Security

As a gendered security problem, prior to or concurrently with the mobilisation of rights and civil society aspirations, trafficking has also constructed ‘gender’ through political and legal narratives. In essence, it has re-produced sexual difference, on a policy level, as a question that concerns the subject’s body; predominantly, the victim’s imaginary. For instance, the former US Secretary of State Janet Reno explained in a public speech that ‘victims embody America’.⁴⁷⁹ Adapted to trafficking, where national boundaries seem transparent as the US Department of State coordinates anti-trafficking efforts both domestically and internationally, the victims embody current global understandings of space–time constructions. To enhance and materialise these understandings a series of reports and legal instruments are in place.

⁴⁷⁸ Similar to the expansion of threats encountered under the examination of ‘Broken Windows’ theory.

⁴⁷⁹ C Messner, ‘Observing Victims: Global Insecurities and the Systematic Imagination of Justice in World Society’ in *Imaginary Boundaries of Justice*, R Lippens ed. (Oxford: Hart Publishing, 2004), 186.

A number of National Institute of Justice (NIJ) reports, for instance, have uncovered several key findings about the gendered ‘reality’ of trafficking. Among these: women are often unemployed and victims are easy to recruit; most traffickers are the same nationality as the women and usually have no criminal records;⁴⁸⁰ a particularly effective method of recruiting young women is when traffickers rely on victims whom they have turned into loyal enforcers or recruiters;⁴⁸¹ more female than male victims are encountered by the law enforcement agencies, the majority of the cases involving ‘forced prostitution, followed by domestic servitude and agricultural labour’.⁴⁸² Therefore, the initial dichotomy between nation and gender security priorities is dismantled and materialised through the ‘tactile’ and ‘real’ victims’ imaginary.

Each of these representations unravels the fact that focusing on women is not merely to sensationalise the subject or to destabilise a traditionally male-dominated security terrain. It is fundamental to enacting interdependence. This version of the ‘national’ or ‘alien’ gendered subject being victimised is envisaged in a sense that triggers an instituted imaginary of the victim, whose rights and security are violated. Consequently, in this context security emerges as a dialectical process between gendered insecurity, threat and vulnerability.

As Aradau has previously disentangled the knots of this dialectic, ‘a so-called widening debate has endorsed an expanded concept of security and has shifted the boundaries of the security realm to include all sorts of threats to the state and other

⁴⁸⁰ D Hughes and T Denisova, 'Trafficking in Women from Ukraine', (Final Report, National Institute of Justice, NCJ 203275, 2002).

⁴⁸¹ K Bales and S Lize, 'Trafficking in Persons in the United States', (Final Report, National Institute of Justice, NCJ 211980, 2005).

⁴⁸² H J Clawson et al., 'Needs Assessment for Service Providers and Trafficking Victims', (NCJ 202469, 2002).

forms of political communities'.⁴⁸³ Diverse in scope, nature and ideology, transnational organisations active in the field of anti-trafficking action, such as the IOM, Europol and the Organisation for Security and Cooperation in Europe (OSCE) have articulated security concerns, mostly through the individuals' rights to liberty, integrity, dignity and security of person. They have also communicated a series of entitlements, such as the right not to be held in slavery and the right to be free from cruel and inhumane treatment.⁴⁸⁴

It is then a cluster-like 'threat' associated with organised crime, terrorism, sex work, corruption and erosion of state mechanisms, as well as the vulnerability of women, that renders trafficking an object of securitisation. Therefore, what counts as a valid security threat is sterilised through multiple filters regulating inter-state practices and transnational agencies. Which mechanisms are these? Focusing on Europe, which legal and policy developments discursively constructed the security imaginary?

EU Security and the 'War on Trafficking'

European security agencies are not a post-9/11 invention; they have a long documented tradition, a history of diplomatic discussions, and have maintained for years a highly significant institutional role and a powerful 'externalisation' imaginary. During the 1980s the Schengen Agreement (1985, followed by the 1990 Implementation Convention)⁴⁸⁵ and the Single European Act (1986)⁴⁸⁶

⁴⁸³ Aradau, (2008), 43.

⁴⁸⁴ *Ibid.*, 40-1; OSCE, 'Trafficking in Human Beings: Implications for the OSCE. Background Paper Published for the OSCE Review Conference, September 1999', (Vienna: Organisation for Security and Cooperation in Europe, 1999).

⁴⁸⁵ Agreement Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Check at their Common Borders (Schengen Agreement); Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders (Schengen Convention).

accelerated a parallel process of ‘Europeanisation’ and the ‘externalisation’ of what were traditionally labelled as ‘internal security’ issues.⁴⁸⁷ It is widely accepted today that the European Union has become an important security actor, both within the member states and outside the European territory.⁴⁸⁸

Although this was initially seen as a progressive movement and a clear success of the EU’s role as a security actor (responsible for controlling external borders, cooperating efficiently with law enforcement agencies and facilitating information exchange),⁴⁸⁹ the intensification of controls has raised serious questions of human rights compliance.⁴⁹⁰ As previously mentioned, the ECHR (article 5) explicitly prioritises the right to *liberty and security of person*. Therefore, the initial imaginary of a clear distinction between security and human rights is gradually transformed into a policy challenge to combine the two. The challenge upholds that the emergence of European society will recognise wrongs regarding the security of vulnerable citizens as public wrongs, appropriate for securitisation and criminalisation, because these are wrongs against its common interests, those interests that bind Europeans together as a political community.⁴⁹¹ However, ‘the current “threat” is that security issues, at the expense of the others, will predominate after the catastrophic events of 11th September’.⁴⁹² Given a certain degree of continuity between security and human rights, the challenge is also to decode the transformational syntax of security imagination, which is

⁴⁸⁶ SEA, OJ L 169/1 (1987).

⁴⁸⁷ M Anderson and J Apap, 'Changing Conceptions of Security and Their Implications for EU Justice and Home Affairs Cooperation', (Centre for European Policy Studies, CEPTS SITRA, No.26/October 2002, 2002).

⁴⁸⁸ D Bigo et al., 'The Changing Landscape of European Liberty and Security: Mid-Term Report on the Results of the Challenge Project', (Brussels: Centre for European Policy Studies, 2007), 5-22.

⁴⁸⁹ European Commission, 'The Schengen Area', n.d.

⁴⁹⁰ See, e.g., Guild, (2008).

⁴⁹¹ For an analogy see Ramsay’s analysis of ‘overcriminalisation’ in the US, in Ramsay, (2010).

⁴⁹² Anderson and Apap, 'Changing Conceptions of Security and Their Implications for EU Justice and Home Affairs Cooperation', 2.

crucial in maintaining the mobilisation of security even within human rights instruments.

In the context of trafficking as a public problem, the primary securitisation tool in the EU's fight against it is the intensification of external frontiers (Euro Border Guard), as well as the creation of a synopticalised intelligence-led domain of both counter-trafficking and victims' protection initiatives.⁴⁹³ This has brought, on the one hand, an increasing institutional pluralism in aspects related to security, e.g. the European Police Office (Europol),⁴⁹⁴ the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX),⁴⁹⁵ the European External Action Service (EEAS) and the EU Joint Situation Centre (SitCen),⁴⁹⁶ the Supplementary Information Request at the National Entry (SIRENE),⁴⁹⁷ Schengen Information System (SIS),⁴⁹⁸ European Dactyloscopy (EURODAC),⁴⁹⁹ Southeast European Cooperative Initiative (SECI),⁵⁰⁰ etc., which have transformed the landscape of the EU Area of Freedom, Security and Justice, using as a discursive capsule the promise of combating trafficking. On the other hand, it has created a rapid system of technological proficiency, and has legitimated a panoptical⁵⁰¹ model of security governance, posing challenges to the way that imaginary security has been used in

⁴⁹³ For instance see, Munro, (2006).

⁴⁹⁴ Council Act OJ C 316 of 27.11.1995.

⁴⁹⁵ Council Regulation (EC) No 2007/2004, 26.11.2004, OJ L 349, 25.11.2004.

⁴⁹⁶ For their legal basis, see, European Council Decision taken with Agreement of the President of the Commission of 1 December 2009 Appointing the High Representative of the Union for Foreign Affairs and Security Policy, OJ L 315, 2.12.2009.

⁴⁹⁷ Outlines the main task of the 'SIRENE Bureaux' established in Schengen States, which is the exchange of additional or supplementary information on alerts between the states, see, Europa, 'Sirene - Schengen Information System', n.d.

⁴⁹⁸ See, also, the section: 'The Schengen Information Systems (SIS)'.

⁴⁹⁹ Council Regulation No 2725/2000, OJ L 316 of 15.12.2000.

⁵⁰⁰ See, the Convention of the Southeast European Law Enforcement Centre (SELEC), of 26 May 1999, entered into force on 7 October 2011.

⁵⁰¹ For the use of term, see, Foucault, (1991); T Mathiesen, 'The Eagle and the Sun: On Panoptical Systems and Mass Media in Modern Society' in *Transcarceration: Essays in the Sociology of Social Control (Cambridge Study in Criminology)*, J Lowman, R J Menzies, and T S Palys eds. (Aldershot: Gower, 1987).

order to both protect and threaten fundamental rights. Lastly, the evaluation of this intensive network of security technologies encourages us to question the limits of transgressive anti-trafficking security to the extent that it merges securitisation, criminalisation and human rights protection, as a threefold (re)solution.

Europeanisation: the EU Area of Freedom, Security and Justice (AFSJ)

This section makes a first reference to the evolution of the idea of European integration and raises a few important concerns that are to be elaborated further under the Greek case study.⁵⁰² Therefore, its scope is limited and only encourages us to think of the European anti-trafficking project as a complex technology of power. It is complex because it combines common strategic, diplomatic and, to a certain extent, political/aspirational targets – insofar as it combines rights and, in its foundations, anti-war discourses – and surveillance mechanisms underpinning modalities of punishment.⁵⁰³ In this respect, the project of West European unification launched by Jean Monnet and the French Government in 1950 aspired to create a common diplomatic and defence policy. The central idea was to make a potential war between France and Germany impossible and to ensure political stability and peace in the region.⁵⁰⁴

Distinct in nature, for Eastern Europe European unification has been associated with ‘Westernisation’ and the pursuit of the ‘Europeanisation’ process, which is expressed through economic and societal targets. ‘Europeanisation’ is associated with an ongoing reform process of improvement, simulation and re-invention. Leaving aside the governability dilemmas inherent in the process of

⁵⁰² See, Chapters 5, 6 and 7.

⁵⁰³ See, Foucault, (1991), 162-9 (the ‘Composition of Forces’).

⁵⁰⁴ S Hoffmann, ‘Towards a Common European Foreign and Security Policy’, *Journal of Common Market Studies* 38, no. 2 (2000), 189.

European integration,⁵⁰⁵ the political agenda of integration established a highly acclaimed plan of common foreign, security and defence policies on the basis of the common interests of the European Union.

It is well-known, however, that one of the most challenging threats to the common area has been related to the movement of people. According to Europol, approximately 500,000 people enter into the European states every year. Half the people entering the EU, according to Europol, are assisted by traffickers, operating within organised crime groups.⁵⁰⁶ To confront this threat, the EU started taking extensive action after the entry into force of the Treaty on European Union (Maastricht Treaty) in November 1993. The Maastricht Treaty established the three pillars of the EU, all of which have been considered pertinent to the issues of trafficking and the subsequent implementation of anti-trafficking actions. However, the focus of the EU's actions against trafficking reveals that policy and programme development has largely concentrated on the promotion of law enforcement and judicial cooperation among states.⁵⁰⁷

Europol: organised crime and 'threats' sans frontières

To effectively deter threats, the Maastricht Treaty of European Union agreed to the formulation of the first European police, Europol, on 7 February 1992. Subsequently, the Convention on the Establishment of the European Police Office (Europol Convention)⁵⁰⁸ envisaged a strong and effective cooperation 'between the competent authorities of the Member States in preventing and combating ...

⁵⁰⁵ Tampere European Council, Presidency Conclusions, *The Tampere Milestones*, 15 and 16 October 1999.

⁵⁰⁶ See, Bruggeman (Deputy Director, Europol) in Bruggeman, 'Illegal Immigration and Trafficking in Human Beings Seen as a Security Problem for Europe'.

⁵⁰⁷ This has been considered a 'reasonable response', see, Obokata, (2006), 87.

⁵⁰⁸ 'Convention Based on Article K.3 of the Treaty on European Union, on the Establishment of a European Police office' (Europol Convention), OJ EU C 316, 27/11/1995.

serious forms of international organised crime where there are factual indications that an organised criminal structure is involved'.⁵⁰⁹ Upon its inception under Justice and Home Affairs, Europol was created in recognition of the fact that 'threats' and organised criminal groups have no frontiers. However, this was also to acknowledge that national (political and legal) contexts are rather fragmented and pose significant challenges to European policing.⁵¹⁰ Some new member states are, then, 'very well advanced in their preparations for EU membership whilst others still have some way to go. The EU law enforcement community as a whole shares a responsibility for fostering the revised criminal justice systems in the new partner countries'.⁵¹¹

Law enforcement is, therefore, one more step towards the integration process. But what are the specific 'threats'? According to Jürgen Storbeck, former Director of Europol, European expansion engulfs a strong element of risk and an inherent 'threat':

[W]hen EU expands to include countries which are recognised as transit zones and/or source areas for certain types of international criminality. For instance, it remains to be seen how populations once motivated to enter the EU illegally [Eastern Europe] will react once they can legitimately benefit from the free movement of persons. Whatever the reaction, their criminal facilitators will be confronted with a number of stark choices. They could decide to use their connections for other types of illegal commodity/activity or perhaps target a clientele from beyond the new borders. One thing is for certain, they will not cease trading.⁵¹²

The mandate of Europol includes international crime, illegalised movement of people, smuggling and trafficking – internal and external 'threats'. With a view to coordinate the prosecution and investigation of cross-border crimes, Europol has been complemented by Eurojust. Eurojust is composed of national prosecutors,

⁵⁰⁹ *Ibid.*, article 2.

⁵¹⁰ J Storbeck, 'The European Union and Enlargement: Challenge and Opportunity for Europol in the Fight against International Crime', *European Foreign Affairs Review* 8, no. 3 (2003), 283, 284.

⁵¹¹ *Ibid.*, 287.

⁵¹² *Ibid.*, 285.

magistrates and police officers, nominated by each member, forming a network that seeks to facilitate coordination and support in organised crime cases.⁵¹³ By placing the ‘threat’ on the inside, criminality and hence criminalisation, is represented as a structural element of the new, enlarged, European reality. This also internalises the conviction that particular national contexts are ‘threats’, especially the ‘newcomers’.

The official discourse on ‘threats’, then, requires ‘impartial’ attention and research. Since 2004 Europol has issued on an annual basis the EU Organised Crime Threat Assessment (OCTA) as a tool that provides ‘a more pro-active approach to fight organised crime’.⁵¹⁴ Among other issues (drugs trafficking, fraud, counterfeiting) it provides an overview of the situation in ‘human trafficking and illegal migration as serious crimes’. Importantly, the OCTA does not cover terrorism, pointing to an underlying shift in priorities and the construction of knowledge about threats. As an instrument of integration, the OCTA, and the ensuing Council Conclusions based on the OCTA from 2006 and 2007, has had a significant impact on the EU law enforcement community in terms of practices and priorities. This is the case, for instance, with the Operational Inter-Organisational Action Plan to Fight Human Trafficking in Greece (ILAEIRA), examined in Chapter 5. Europol produces a fact sheet, updated annually, entitled ‘Trafficking in Human Beings in the European Union: a Europol Perspective’. The explicitly stated aim is to improve intelligence and assist law enforcement authorities of member states in their ‘fight against organised crime’. Within Europol’s Serious Crime Department, the Trafficking in

⁵¹³ Council Decision of 28/02/2002 setting up Eurojust, 2002/187/JHA, OJ L 63/1 (2002).

⁵¹⁴ Europol - European Police Office, ‘OCTA 2008: EU Organised Crime Threat Assessment’, 2008.

Human Beings Group of the Crimes Against Persons Unit (SC3) is responsible for this crime area, classified as ‘abuse of an individual’s human rights’.⁵¹⁵

Thus, Europol is to play an important role in the prevention and combat of ‘illegal immigrant smuggling and trade in human beings’. In order to achieve this objective, Europol was mandated to enhance effective cooperation between the competent authorities in the member states.⁵¹⁶ In order to achieve this, the Europol Convention and Protocols were meant to be read together with pertinent articles of the Schengen Convention.⁵¹⁷ Then, securitisation as a *continuum* is actually represented on an official basis. Police authorities within Europe are to assist each other for the purposes of preventing and detecting criminal offences.⁵¹⁸ This is constructed both as the punitive intensification of controls, as well as an entitlement: the EU citizens deserve this protection, living within the AFSJ borders.

The Organisation for Security and Cooperation in Europe (OSCE)

Among the most influential bodies in the European anti-trafficking field, the OSCE, the successor of the Conference on Security and Cooperation in Europe (CSCE), first emerged as a security organisation. However, it does not deal exclusively with issues of military security or border issues. Reflecting a broader conceptualisation of security, it deals ‘equally with human rights’.⁵¹⁹ Its main priority is to create a comprehensive framework for peace and stability in the new,

⁵¹⁵ Europol - European Police Office, 'Trafficking in Human Beings in the European Union: A Europol Perspective', (June 2009), 1-2. This statement is exemplary of the use of human rights discourses serving the purposes of criminalisation.

⁵¹⁶ See, V Flynn, 'Europol - a Watershed in EU Law Enforcement Cooperation?' in *Justice Cooperation in the European Union: The Creation of a European Legal Space*, G Barrett ed. (Dublin: Institute of European Affairs, 1997).

⁵¹⁷ See, Preamble of the Europol Convention.

⁵¹⁸ See, art. 39(1) of the Schengen Convention.

⁵¹⁹ OSCE, 'Human Dimension Commitments. Volume 1, 2nd Edition. Thematic Compilation', (Organisation and Security Cooperation in Europe, 2005), xvi, 3.

enlarged Europe. The OSCE's constitutional instruments, the Helsinki Final Act and the Charter of Paris acknowledge guiding principles for the 'respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief'.⁵²⁰ This constitutes a milestone in the history of human rights protection, as it is the first time that human rights discourse is included as an explicit and integral element of a regional security framework, equal to and on the same basis as politico-military and economic issues.⁵²¹ This has contributed importantly to the establishment of a common basis and a series of coordinated actions that would combine securitisation and human rights discourse showing that these two can and should be interlinked. In practical terms, this would be understood as attempts to eliminate traditional political hierarchies and tensions between security and human rights objectives.

At the centre of the OSCE's discursive functions is the term 'human dimension', which aims to describe a set of norms related to human rights, democracy and the rule of law. This term was injected as one of the three dimensions of security, together with the politico-military, economic and environmental issues. The human dimension became mobilised in the context of security, as an integral, discursive domain of the grammar of security. As such, it not only destabilised traditional understandings of security, but also expanded beyond the field covered by traditional human rights law.⁵²²

These developments challenge traditional debates pertaining to policing. Crucially, among the innovations adopted is the acknowledgment of trafficking as a human rights concern, not limited to the context of organised crime. Therefore, the OSCE 'human dimension' commitments envisage an expansion of the

⁵²⁰ *Ibid.*

⁵²¹ *Ibid.*

⁵²² *Ibid.*

traditional legally binding human rights instruments. In traditional human rights treaties, individual (or group) rights are formulated, and the state party has the obligation to respect and guarantee those rights. However, how to implement these obligations is at the discretion of the states. In essence, the OSCE states have agreed that ‘pluralistic democracy based on the rule of law is the only system of government suitable to guarantee human rights effectively’.⁵²³ The OSCE process is, as a consequence, a political process that does not create legally binding norms or principles and, therefore, cannot be legally enforced. It does however have binding force, as a political promise to comply with set standards.⁵²⁴

Apart from the formal capacities of the OSCE, pertinent to human rights, influential reports have also been issued. However, according to the European Parliament, the downside of these reports is that the European Union is not one of the priority areas owing to the ‘blatant violations’ which take place in other parts of the world.⁵²⁵ With particular reference to trafficking, there are a number of institutions and bodies within the OSCE that can decisively contribute to ‘combating trafficking’,⁵²⁶ particularly, in the South Eastern Europe region, as part of the OSCE’s strategy and contribution to stability efforts in the area.⁵²⁷

In practice, the OSCE has decisively shed light on a potential disjuncture. This is related to the role of OSCE field officers and the interaction between OSCE knowledge, ideas and practice, and local police structures. For instance, according to Dina Francesca Haynes, who served as a Deputy Director of the Human Rights Department for the OSCE Mission to Bosnia and Herzegovina and

⁵²³ OSCE, 'Human Dimension Commitments. Volume 1, 2nd Edition. Thematic Compilation', 2.

⁵²⁴ *Ibid.*

⁵²⁵ European Parliament, 'Report on the Situation as Regards Fundamental Rights in the European Union (2003), Rapporteur Alima Boumediene-Thiery', (27/87, 2004).

⁵²⁶ See, the section on ‘Migration’, OSCE, 'Proposed Action Plan 2000 for Activities to Combat Trafficking in Human Beings, 11/1999', 18.

⁵²⁷ The Stability Pact, a special initiative for South Eastern Europe and Kosovo.

as the Human Rights Advisor for the OSCE's Mission to Serbia and Montenegro,⁵²⁸ in Serbia, the local police immediately jailed a trafficking victim for prostitution. It was only after a Human Rights Officer with the OSCE intervened that the victim was transported to a makeshift shelter established by local NGOs.⁵²⁹ In addition, during Haynes' tenure in Belgrade, Serbia and Montenegro, a brothel was raided and trafficked women were placed in jail, rather than in the shelter for trafficking victims, while on the very same day a high-level regional meeting was taking place between ministries and Stability Pact, UN and OSCE officials to discuss a follow-up to victim protection mechanisms for the new shelter.⁵³⁰

The Schengen Information Systems

This section turns to the Schengen Information Systems (SIS).⁵³¹ My aim is to conceptualise the construction of multiple surveillance developments, as necessary products of imaginary penalties. I argue that the composition of surveillance technologies are a necessary product of imaginary penalties insofar as they can be used for crime prevention and criminalisation of potential 'threats'.⁵³² The key role of these surveillance 'investments' (discourses and technologies) is that once properly used, individuals 'can be delineated into clear categories – smuggled,

⁵²⁸ D F Haynes, 'Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers', *Human Rights Quarterly* 26, no. 2 (2004), 222.

⁵²⁹ *Ibid.*

⁵³⁰ *Ibid.*, 235.

⁵³¹ Schengen I, II and III. See, J Parkin, 'The Schengen Information System and the EU Rule of Law', (INEX Policy Brief, No 13, Centre for European Policy Studies (CEPS), 2011a); J Parkin, 'The Difficult Road to the Schengen Information System II: The Legacy of 'Laboratories' and the Cost for Fundamental Rights and the Rule of Law', (Centre for European Policy Studies (CEPS), 2011b); European Parliament, 'Schengen Information System II, Com (2001) 720', 2001; Statewatch, 'Some Remarks on Schengen III', 2005.

⁵³² See, e.g., Mathiesen, 'The Rise of the Surveillant State in Times of Globalisation', 437-41; D Broeders, 'The New Digital Borders of Europe: EU Databases and the Surveillance of Irregular Migrants', *International Sociology* 22, no. 1 (2007), 71, 84; Balzacq, (2008), 84.

trafficked, refugee, asylum seeker, economic migrant, and so forth –'.⁵³³ Once this type of accuracy is achieved, then security predictions and prevention would work better. Consequently, crime would inevitably decrease and this would be good for us, for our protection and freedom.

The first step towards the implementation of the AFSJ was formally taken in 1985, in Schengen, Luxembourg. The main initiative, at that point, was to establish a free zone of travel between Germany, France and the Benelux countries (Belgium–Netherlands–Luxembourg) as a control measure intended to balance the potential tensions between freedom and intensified common-border controls against third countries.⁵³⁴ Enhanced police cooperation to balance the internal freedom was also envisaged.⁵³⁵ The formalisation of this initiative took the form of the Schengen *acquis* – Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985. The Schengen Convention allows the free movement of European citizens across national borders without the need for visas. This was initially designed with the view to be

[A] simple liberalising measure to promote trade and integration between different nationalities. However, given increases in levels of immigration into the EU during the 1990s and the rise of anti-immigration politics, the concept of open internal borders has become highly controversial. It has been argued that the lack of internal borders makes it easier for illegal migrants who have entered the EU to move about undetected. This potentially increases the illegal trafficking of people across the EU and the potential for criminals or terrorists to go into hiding anywhere in the Contention area.⁵³⁶

Even though the Schengen Information System (SIS) was initially designed as a powerful tool for strengthening internal European security and for mobilising

⁵³³ C Friesendorf, 'Strategies against Human Trafficking: The Role of the Security Sector', (Vienna & Geneva: National Defence Academy and Austrian Ministry of Defence and Sports, and Geneva Centre for the Democratic Control of Armed Forces, 2009), 161.

⁵³⁴ See, The Schengen Acquis – Decision of the Executive Committee of 27/10/1998 on the adoption of measures to fight illegal immigration (SCH/Com-ex (98) 37 def. 2) OJ L 239, 22.9.2000.

⁵³⁵ Schengen Convention, Title III 'Police and Security', Chapter 1 'Police Cooperation'.

⁵³⁶ Civitas, 'Schengen Convention', 2011 [last accessed: 22/07/11] [<http://www.civitas.org.uk/eufacts/FSEX/EX2.htm>].

a certain securitisation imaginary to prevent potential threats, its discretionary nature, particularly in criminalising ‘aliens’, and its panoptical potential materialises a surveillance-driven, overcriminalising mechanism. In this respect, from ‘open borders’, the logic of intensification of external border controls has evolved.

The main purpose of the SIS, under the Schengen *acquis*, is to maintain public order and security, including national security (article 93). Specific subjects are constructed as being in intense proximity to the categories of ‘public order’ and ‘security’: i) individuals wanted for arrest or extradition (article 95); ii) third country nationals to be refused entry (article 96); iii) persons missing or to be placed under temporary police protection (article 97); iv) witnesses of other persons summoned to appear in court (article 98); v) persons wanted for discreet surveillance or specific checks (article 99). The profiling of the subjects, then, indicates that ‘threats’ can indeed be placed on a scale. While one might have expected that individuals wanted for arrest would be prioritised, SIS figures show that unwanted third country nationals constitute the largest number of entries on persons (approximately 90 per cent, pursuant to article 96), which is the underlying reason why Schengen is often referred to as ‘Fortress Europe’.⁵³⁷

According to Thierry Balzacq’s influential analysis, when securitisation becomes effective, ‘normal’ data politics is disrupted.⁵³⁸ In theory, for instance, under the constraints within which the SIS becomes operational,⁵³⁹ intelligence services should not be granted access to data handled by the police. However, as

⁵³⁷ Balzacq, (2008), 84; T Mathiesen, ‘The Rise of the Surveillant State in Times of Globalisation’ in *The Blackwell Companion to Criminology*, C Sumner ed. (Oxford, Victoria & Malden: Blackwell Publishing, 2004), 438.

⁵³⁸ Balzacq, (2008), 94-5.

⁵³⁹ Council of Europe 1987 ‘Recommendation R(87) 15 of the Committee of Ministers to Member States Regulating the Use of Personal Data in the Police Sector’, which provides strict rules on the communication of police data to other public or private bodies.

Balzacq shows, proactive and intelligence-led policing are merged, ‘more importantly, police and intelligence services, using information with varying degrees of accuracy and reliability, are required to handle data in order to draft policies on increasingly similar target populations’ that share various elements of insecurity (illegalised migration, asylum, trafficking, terrorism).⁵⁴⁰ Crucially, conclusions are then to be drawn through data-processing and linking sets of information on target groups, regarding the degree of risk these groups pose to the community, without any public debate or parliamentary control: ‘[c]onsequently, the nature, the content and the functional flexibility of a tool contribute to the broader enterprise of managing terrorism by establishing open-ended processes of securitisation, with no definite benchmarks of success or failure’.⁵⁴¹ This is crucial because it shows how the anxieties pertinent to surveillance, have been used as a repository for further surveillance-driven initiatives, among which are the EU anti-trafficking mechanisms.⁵⁴²

Conclusions

Promises are made for a reason: to maintain attitudes, to hold positions, to commit to future plans, to stabilise or change. For all that, security discourses evoke ideas of prosperity, balance, peace and freedom in the anti-trafficking promise. This sense of hope, however, requires that security can be maintained insofar as threats are contained or combatted. In this respect, there are others who lie outside this

⁵⁴⁰ Balzacq, (2008), 95.

⁵⁴¹ This point brings together the open-ended processes of both securitisation and imaginary penalties.

⁵⁴² See, e.g., the ‘Tampere Milestones’, Europa, ‘Office of Justice and Home Affairs, Freedom, Security and Justice Domain - Criminal Justice’, n.d.

area of freedom, who do not belong or do not deserve to be protected and others that must be detained because in fact they embody these threats.⁵⁴³

To this end, my analysis has shown that the language of security is related to the discursive construction of multiple threats that seem to be utterly unpredictable and contingent. As a result, an extended machinery of complex security technologies has been enacted. These technologies have been portrayed as natural, proportionate and necessary to maintain order. They have also been portrayed as inefficient or rather imperfect, insofar as new criminal trends pose new, more poisonous threats. The idea is that criminal minds, comprising organised crime groups, are sprinting ahead at the same time as the state's security apparatus is largely focused upon acceleration, which is, however, never enough. Therefore, the technologies constantly need to be redesigned and remain responsive if they are to fulfil their potential for acceleration at some point in the future.

The impact of these threats is that they pose conditions of insecurity. Therefore, important discussions have focused on women, particularly women's victimisation and vulnerability. Even though it is acknowledged that wider economic and social factors contribute to women's victimisation, such as unemployment, gender inequality and the feminisation of poverty, simultaneously, most attention has been given to the threat posed by organised crime groups. As such the main governmental efforts have focused on the combat of organised crime and other crime-related threats. Thus, the social factors of unemployment, gender inequality and the feminisation of poverty have not been seen as 'real' threats to which a response should be given, but rather as 'compassionate' reminders of two things.

⁵⁴³ In relation to 'promises' in the criminal justice system and the exclusion of the 'other', see N Lacey and L Zedner, 'Community in German Criminal Justice: A Significant Absence?', *Social & Legal Studies* 7, no. 1 (1998), 7, 19.

Firstly, a reminder of the fact that women should be ‘empowered’, and secondly, a reminder of the fact that when we talk about security, we either mean the security of states or human security, and in anti-trafficking these two have actually been, to some extent, intertwined. I will start with the latter reminder because my argument will lead us to the first reminder: I have investigated the linkages between threats by redeploying the well-established term ‘security continuum’, which is of great value as it shows how the severity of one threat feeds on the other at a representational level. Also, as the term suggests, I have explored how, under the remit of surveillance, it is promised that diverse threats to security can be eliminated.

As for the organised crime threat, multiple, imaginative proposals have been put forward. These have presented a positivistic image of trafficking criminality, in order to serve the interests of the penal state. In effect, security discourses have been contributing to maintaining the current order by promising to balance diverse priorities under the objective of eliminating organised crime-related threats. In doing so, security knowledge has been legitimising the evolution and perpetuation of anti-trafficking as an imaginary penalty.

Simultaneously, poverty, inequality or indeed other structural factors as the underlying cause for both criminality and women’s desire or need to move across states have remained intact and perhaps rest in the enigmatic suggestion of ‘women’s empowerment’.⁵⁴⁴ I explore this possibility further in the next chapter.

⁵⁴⁴ See, S Marks, 'Human Rights and Root Causes', *The Modern Law Review* 74, no. 1 (2011), 57, 70-4.

Chapter 4

Imaginary Anti-Trafficking Rights and Victims

Introduction

This chapter turns to human rights and considers the functions of rights discourses, in the field of trafficking in women. By applying the familiar by now methodological framework, my aim is to map out the antagonisms as well as the intersections and confluences between the rights-led approach to trafficking in women and the approaches examined earlier. In doing so, I ask how, through the language of rights, the problem of trafficking has been articulated. Most importantly, within the imposed constraints of time and space, I inquire into (some of) the solutions that have been put forward as a human rights response to the problem. This human rights response is viewed in relation, and crucially in opposition to the criminalisation approach examined in Chapter 2.

So far, through criminalisation the solution to the trafficking problem has been the implementation of harsher punishments and the intensification of controls. With a view to protect the state and its citizens, border controls and imprisonment rates have been utilised as an index of governmental efforts to 'prevent, protect and punish'. Non-citizens, and therefore the majority of (transnational) trafficking victims, would, in this view, benefit from the elimination of organised crime. However, in the anti-trafficking debate, security concerns also brought in the language of rights. The right to security, as investigated in Chapter 3, gave rise to the dilemmas: rights of states or rights of individuals? Rights of trafficked persons or rights of non-trafficked persons?

These were then portrayed as antagonisms pertinent to rights to security, liberty and freedom.

This development opened up the anti-trafficking debate. Issues of poverty, women's empowerment and gender equality, and wider exploitative conditions were discussed. However, these were overshadowed by a compulsive inter-state preoccupation with developing law enforcement and surveillance. This expansion of security technologies initially appeared to be justified based on accounts that were attributing to trafficking characteristics of an 'organised crime criminality'. It is exactly these security accounts that, by inserting the language of 'risks' and 'threats', have been increasingly disassociating criminality (and victimisation) from social conditions. As such, valid knowledge about crime gradually became tantamount to contributions to 'crime control', while social explanations of criminality have been deemed invalid or unproductive:

The crime control industry has, therefore, come to exert a hegemonic influence upon academic criminology. The 'wars' against crime, drugs, terrorism, and now 'anti-social behaviour' demands facts, numbers quantitative incomes and outcomes – it does not demand debates as to the very nature of these battles.⁵⁴⁵

So it is through the legitimating force of positivistic explanations of crime that valid anti-trafficking knowledge has been confined to enquiries that serve the interests of the penal state.

Thus, the language of security, even though it initially raised important issues, was reduced to a rather limited account of the solutions available, reproducing the narrative of criminalisation. Security discourses, then, have been contributing to maintaining the current order by promising to balance diverse priorities under the objective of eliminating crime-related threats. In doing so,

⁵⁴⁵ K Hayward and J Young, 'Cultural Criminology: Some Notes on the Script', *Theoretical Criminology* 8, no. 3 (2004), 259, 261-2.

security knowledge has been legitimising the contingent evolution and perpetuation of anti-trafficking as an imaginary penalty.

In this context, then, what issues have been prioritised by the rights approach? What do we even mean by saying that actors view the issue from a human rights perspective?⁵⁴⁶ As observed in the discussion of security discourses, far from disputing the priority of surveillance, the language of rights has been confined to representations of victims' suffering. In this respect, human rights accounts are limited, as '[t]he systemic context of abuses and vulnerabilities is largely removed from view'.⁵⁴⁷ Thus, suggestions for reconceptualising the trafficking problem and its solution based on human rights are also largely removed from view. From an international law perspective, for instance, states retain the right to set the conditions under which 'aliens' may enter and reside in their territory.⁵⁴⁸ Therefore, efforts to raise issues related to victims have been constrained by the priority to protect state interests. But is rights discourse so limited? If so, how do these limitations relate to the human rights aspirational tradition?

In order to answer these questions, I investigate the rights-led approach to trafficking and offer my account which predominantly focuses on victims' rights and gendered representations of victims. The originality of this exploration lies in the connection between victims' voices and the establishment of imaginary penalties. I argue that victims' experiences in the criminal justice system, particularly their elevation to the status of 'witness' in trafficking cases, have provided important evidence to support their dissatisfaction and frustration

⁵⁴⁶ Obokata, (2006), 120; Munro, (2008).

⁵⁴⁷ Marks, (2011), 75.

⁵⁴⁸ N Piper, 'Feminisation of Labour Migration as Violence against Women: International, Regional, and Local Nongovernmental Organisation Responses in Asia', *Violence Against Women* 9, no. 6 (2003), 723, 729.

regarding interaction with law enforcement agents and wider criminal justice processes. Paradoxically, this has actually reinforced the ‘anti-trafficking promise’: once criminalisation, security and human rights are properly balanced and stabilised, and (or even because) victims’ concerns are suitably addressed, trafficking can be abolished.

Representations of women as victims in the official discourse also play a crucial part in sustaining the imaginary functionality of the contemporary anti-trafficking model. In most instances, the way the problem of trafficking is being addressed suggests that ‘women have been designated as “culturally legitimate” victims’.⁵⁴⁹ This by no means suggests that there is no longer a need for specific reference to women’s experiences, and moreover, reference to women’s victimisation. On the contrary, it emphasises that the institutional representation of women as victims is not accidental, and one can trace some challenging victimological accounts to this end. To facilitate the current discussion, I focus on Robert Elias’s thesis on the politics of victimisation, particularly his analysis of how current structures deflect attention away from systemic sources of victimisation – that is from basic ‘political, economic, and social structures’.⁵⁵⁰

The focus on women also shows that even within the legal discourse specific forms of subjectivity have been reproduced. This is because the global application of international law often conceals implicit conceptual distinctions. In this respect, to employ ‘the category “women” can be a valuable method of highlighting the commonality of the marginalisation of all women in the international legal

⁵⁴⁹ R Elias, *The Politics of Victimisation: Victims, Victimology and Human Rights* (Oxford & NY: Oxford University Press, 1986), 166.

⁵⁵⁰ *Ibid.*, 234.

system'.⁵⁵¹ Therefore, focusing on women's victimisation may also reflect prevailing political and legal configurations: '[v]ictims could as easily represent the state's failure, but by co-opting victims and the victim movement, the state may use them to portray its apparent concern and promote its legitimacy instead'.⁵⁵² With these points in mind, my analysis suggests that international anti-trafficking developments, in the specific ways that they have imagined a 'rights' approach, provoke contested articulations and problematic structures.⁵⁵³

Under international structures, it is the fixity of gendered categories that triggers re-articulation, at an official level, and hence, the re-affirmation of stereotypes, rendering women visible through the 'spectacle' of sexualised victimisation. This spectacle is then linked to the post-9/11 era. Contemporary victimisation, victims' rights and services are by and large concentrated on representations of vulnerability and trauma.⁵⁵⁴ While for decades criminology and criminal justice focused extensively on the offenders, their profile, class, gender, race and ethnic background,⁵⁵⁵ with the adoption of international and national anti-trafficking instruments, the victims have redrawn the focus from the aetiology of offending to the symbolic significance of vulnerable, destructible embodiment.

This part concludes by maintaining that human rights' aspirational discourse has been constructed as a counteraction to the managerial punitive *praxis*. International treaties, however, often come about as broad and flexible frameworks aiming to balance diverse interests and to limit governments'

⁵⁵¹ Charlesworth and Chinkin, (2000), 2; C Chinkin and S Wright, 'The Hunger Trap: Women, Food and Development', *Michigan Journal of International Law* 14, no. 2 (1993), 262; C MacKinnon, *Are Women Human? And Other International Dialogues* (Cambridge: Harvard University Press, 2006), 1-14.

⁵⁵² Elias, (1986), 233.

⁵⁵³ For the value of relevant investigations in international law see, Marks, (2000), 121-46.

⁵⁵⁴ N Smelser, 'September 11, 2001, as Cultural Trauma' in *Cultural Trauma and Collective Identity*, J C Alexander, et al. eds. (Berkeley: University of California Press, 2004).

⁵⁵⁵ A Gallagher and E Pearson, 'The High Cost of Freedom: A Legal and Policy Analysis of Shelter Detention for Victims of Trafficking', *Human Rights Quarterly* 32, no. 1 (2010), 73, 75.

bureaucratic, anti-criminality, managerial constraints. This restricted aim has radically circumscribed human rights' revolutionary and reformative potential. How can human rights re-arrange and destabilise the logic of securitisation and criminalisation? Has its role been fulfilled in the anti-trafficking imagination?

Human Rights Approaches

In the development of anti-trafficking measures, the protection of the human rights of victims of trafficking has gained prominence during the past decade. It has been argued by official actors that the protection and assistance of victims plays a role beyond the merely aspirational contribution of the humanitarian discourse: 'the failure to attribute sufficient weight to the human rights dimension will reduce the chances of success in the fight against trafficking'.⁵⁵⁶ According to this view, the human rights approach is effective because any attempt to govern crime, in this case the fight against trafficking,

[I]s more likely to succeed in both reducing the incidence of trafficking and improving the protection of those at risk when it is governed by the respect for human rights and interests of the victims. Therefore, a balance has to be struck between anti-trafficking measures and the protection of human rights.⁵⁵⁷

In light of the anti-trafficking measures examined earlier, what does the 'protection of human rights' entail in the anti-trafficking context? Is it fair to assume that a human rights approach is limited to achieving the image of balance?

With regard to human rights protection, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁵⁵⁸ as is well known, constitutes the sole international legal instrument specifically designed to promote

⁵⁵⁶ Apap and Medved, 'Protection Schemes for Victims of Trafficking in Selected EU Member Countries, Candidate and Third Countries', 8.

⁵⁵⁷ *Ibid.*

⁵⁵⁸ The *Convention on the Elimination of All Forms of Discrimination Against Women* 1979, 1249 UNTS 13.

women's equality. Indeed, CEDAW acknowledges that extensive discrimination against women currently exists and it emphasises that discrimination on the basis of sex violates 'the principles of equality of rights and respect for human dignity'.⁵⁵⁹ Insofar as trafficking is seen as a matter of gender discrimination, then, there is no balance to be struck between anti-trafficking measures and the protection of human rights. In this respect, the protection of human rights would actually eliminate the underlying cause of trafficking. So, if this is not the 'human rights approach' conceptualised under the image of balance, then it is surely necessary to further investigate the human rights approaches in anti-trafficking.

I put aside, for the time being, a crucial discussion on the construction of biological claims inherent in the word 'sex'⁵⁶⁰ as in 'discrimination on the basis of sex' stipulated by CEDAW, and I focus on representations of rights and of trafficking, as these representations illuminate constructions of 'sex'. My aim is to show that a rights-led anti-trafficking approach based on CEDAW accommodates the idea that the use of the rights language is a form of combat and a mode of contesting the *status quo*. The rights vocabulary used by CEDAW communicates directly to the social causes that nourish trafficking, revealing the reasons behind human rights violations. For instance, under the explicit obligation posed on states to 'take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women' (article 6), CEDAW frames trafficking as an issue of discrimination and inequality. Hence, in

⁵⁵⁹ Preamble of CEDAW. See, also, 'Introduction to CEDAW', [last accessed: 27/02/12], [<http://www2.ohchr.org/english/law/cedaw.htm>].

⁵⁶⁰ Reference made to the theses of Michel Foucault and Judith Butler on 'sex' and 'gender'. As Loizidou has put it, '[w]hile Foucault's work points to the imaginary category of 'sex', Butler's work builds on this Foucauldian position to point out that gender is also an imaginary category'. See, E Loizidou, 'The Love Bug and the Melancholic Drag Queen or a Reflection on the Cultural/Political 'Grounds' of Subjects as Sexual', *Journal for Cultural Research* 8, no. 4 (2004), 447, 449; E Loizidou, 'The Trouble with Rape: Gender Matters and Legal 'Transformations'', *Feminist Legal Studies* 7, no. 3 (1999), 275, 279-83.

opposition to criminalisation and security-driven approaches, this rights approach explores a clearly delineated problem: the specific processes through which social conditions of discrimination, exploitation and inequality come to cause human rights violations. This is a crucial starting point, far from the positivistic explanations of criminality examined under criminalisation and, to some extent, security.

The problem, however, is that CEDAW is an exception in the examination of rights-led approaches to trafficking and has not been the main focus on many occasions.⁵⁶¹ Moreover, the dominant rights approaches engage with identifying the problems in the construction of trafficking without attempting to resolve them. Instead of first providing the tools to name the conditions that engender and sustain vulnerabilities and then using them, the rights-led approaches have, to a large extent, relied upon criminalisation and security structures for providing solutions to the problems. Human rights are represented in narratives as the main principle of liberation from oppression and domination: ‘the rallying cry of the homeless and the dispossessed, the political programme of revolutionaries and dissidents’.⁵⁶² However, these narratives only encourage us to revisit the ‘practical and sustainable’ solutions put forward by criminalisation and security. The articulation of recommendations and human rights demands, therefore, appears to be materialised through criminalisation and securitisation strategies.⁵⁶³ In the section that follows, I give an account of how human rights have been instrumentalised within anti-trafficking as an imaginary penalty.

⁵⁶¹ In striking occasions CEDAW has not been the main focus in legal academic circles, see, C Chinkin and J Gordon, 'The UK CEDAW Story', *European Human Rights Law Review* 3(2011), 274, 277.

⁵⁶² C Douzinas, *The End of Human Rights* (Oxford: Hart Publishing, 2000), 1, 2-8.

⁵⁶³ For a critical analysis of the current discourse of root causes and an enticing suggestion for an alternative explanatory discourse, see, Marks, (2011), 74-7.

Human Rights in Anti-Trafficking

CEDAW

The obligations posed by CEDAW involve a wide-ranging agenda, and therefore the legal avenue is being identified as one among many options. Intended to function as an exploration of actions to be taken within but also beyond legal measures, CEDAW provides fertile ground for contextualising trafficking and violence against women in a broader sense. Most notably, poverty and unemployment are recurring factors: '[p]overty and unemployment increase opportunities for trafficking in women',⁵⁶⁴ and '[p]overty and unemployment force many women, including young girls, into prostitution'.⁵⁶⁵ A CEDAW-oriented rights approach then addresses questions related to the economy and the exploitative conditions posed by the labour market, insofar as it identifies these conditions as the very cause of structural inequalities that a) increase opportunities for trafficking, and b) force women into sex work. Also, women (and to that extent, gender problematisations) are constantly and necessarily inherent in the conceptualisation of trafficking, and therefore, the framework offered by this rights-led approach does not seem to pretend that women (and to that extent, gender problematisations) are at the periphery of the matter.

Instead of drawing upon various legal instruments, one could argue that the definition of discrimination provided by CEDAW, article 1, and the subsequent utilisation of the term in the convention, guarantees the enjoyment by women of human rights and fundamental freedoms. These rights include the right to life; the right not to be subject to torture or to cruel, inhuman or degrading treatment or

⁵⁶⁴ CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992 (contained in Document A/47/38), article 6, paragraph 14.

⁵⁶⁵ *Ibid.*, article 6, paragraph 15.

punishment; the right to equal protection according to humanitarian norms in time of international or internal armed conflict; the right to liberty and security of the person; the right to equal protection under the law; the right to equality in the family; the right to the highest standard attainable of physical and mental health; the right to just and favourable conditions of work.⁵⁶⁶ All of these are pertinent to human rights violations that are commonly linked to trafficking. Using CEDAW as a whole would subsequently mean that trafficking in women is one instance of violence that, in this particular historic context, affects women, and therefore, a set of changes should be introduced by states. As a matter of enforcement, then, to ‘combat trafficking’ would be interpreted as actions in various areas, and as trafficking would be viewed as an issue of discrimination, we would have to open up the conceptual map of what either ‘protection’ or ‘combat’ would mean.

In this sense, the transformational vocabulary of rights would generate different meanings. CEDAW encourages us to think beyond criminal sanctions, and in this respect, it also encourages us to think of ‘protection’ as an attempt to redeploy ‘empowerment’, not ‘to empower’⁵⁶⁷ – that is, empowerment as a series of articulations that show how current customary, cultural and social conditions and practices are responsible for, or rather constitute, discrimination against women.⁵⁶⁸

⁵⁶⁶ On the concept of discrimination in the context of trafficking, see, S Dairiam, 'Uses of CEDAW', International Women's Rights Action Watch Asia Pacific, [last accessed: 14/02/12] [<http://www.iwraw-ap.org/aboutus/trafficking.htm>].

⁵⁶⁷ Previously noted in Chapter 2, ‘empowerment’ has been critically discussed by authors in order to unmask how the term has been used in legal discourse to actually empower the ‘rescue industry’ and undermine the victims – ‘others’: ‘used by those who view themselves as helpers of others or fighters for social justice, empowerment is the current politically correct way to conceptualize helping’. L M Agustín, 'Questioning Solidarity: Outreach with Migrants Who Sell Sex', *Sexualities* 10, no. 4 (2007b), 519, 529.

⁵⁶⁸ For constructions of female ‘others’ and the oriental fantasy within the international and national legal discourse of trafficking, see, R Kapur, 'Faith' and the 'Good' Liberal: The Construction of Female Sexual Subjectivity in Anti-Trafficking Legal Discourse' in *Sexuality and*

To mention only a few of these provisions, articles 3 and 4 are pertinent to *de facto* equality, as an ongoing process that aims to acknowledge and protect difference, for instance, the adoption of measures aimed at ‘protecting maternity’.⁵⁶⁹ CEDAW urges states to re-design social and cultural patterns of men and women’s conduct, ‘with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’.⁵⁷⁰ To this large extent, then, CEDAW articulates a combat against ‘sex’ stereotypes, which is in fact applicable to trafficking for sexual purposes. The applicability of stereotypes in this context is attached to notions of ‘demand’ in the reproduction of (hetero-) sexualised individuals.⁵⁷¹ It is also applicable to the naturalised broader violence that is imposed by stereotypes in the contemporary form of ‘engendering’ individuals as a social practice, only to value them immediately afterwards. Perhaps what CEDAW does not provide is an explanation of why these stereotypes exist in the first place, and/or further, ways to *undo* them. This is not, however, to criticise the applicability of CEDAW, as a set of practical solutions, but to show that the limits of gender contestations are reflected in progressive instruments.

Furthermore, important accounts have been offered on the narrowness of national interpretations of what constitutes a challenge to discrimination against women.⁵⁷² Keeping these restrictions in mind is important because, as a consequence, any critic can expect various issues to emerge throughout the

the Law: Feminist Engagements, V Munro and C Stychin eds. (Abingdon & NY: Routledge, 2007), 227-47.

⁵⁶⁹ CEDAW, art. 4(2).

⁵⁷⁰ CEDAW, art. 5 (a).

⁵⁷¹ See, e.g., Lazaridis, (2001), 83.

⁵⁷² See, Chinkin and Gordon, (2011), 275.

implementation and monitoring process,⁵⁷³ and in relation to assessing states' *de jure* compliance.⁵⁷⁴ What I find alarming, however, is not the diverse interpretation given to the concept of discrimination, but the reconfiguration of organised criminality as the main source of exploitation and violence against women within the monitoring process, and the – seemingly – subsequent national investments in law enforcement.

For instance, the shadow report on the implementation of the CEDAW principles in Poland identifies as factors conducive to trafficking, 'the feminization of poverty, gender discrimination and feminization of unemployment and migration'.⁵⁷⁵ The suggested recommendations, however, involve changes to the Polish Penal Code and the Polish 'Alien Law', as well as, in the specific area of law enforcement, to 'ensure that [victims'] identification procedures are implemented in the practice of law enforcement'.⁵⁷⁶ Similarly, the shadow report on the implementation of the CEDAW provisions in Albania, acknowledges trafficking as a form of gender discrimination.⁵⁷⁷ When it turns to recommendations, however, it maintains that a) '[i]mprovements in legislation are necessary in order to strengthen the fight against traffickers and avoid punishment of victims of trafficking in all cases'; and b) '[i]t is important to insist on the proper implementation of the existing laws. We consider that there is a need to implement the new Law No.10192/3.12.2009, "On the Prevention and Suppression of Organised Crime and Trafficking Through Preventive Measures

⁵⁷³ For an extensive analysis of the UN Treaty monitoring bodies, particularly the CEDAW Committee (based on Art 17, CEDAW) in the context of trafficking, see, Dairiam, 'Uses of CEDAW'.

⁵⁷⁴ Focusing on the utilization of criminal law, see, UNDPPC, 'CEDAW Legislative Compliance Indicators', United Nations Development Programme.

⁵⁷⁵ La Strada Foundation against Trafficking in Women, 'Shadow Report CEDAW, Poland'.

⁵⁷⁶ *Ibid.*, 11.

⁵⁷⁷ The Albanian Women Empowering Network and The Network Against Gender-Based Violence and Trafficking, 'Albania - NGO Shadow Report to the UN CEDAW Committee', (2010), 9, paragraph 18.

Against Property”’.⁵⁷⁸ Consequently, trafficking in women is only to be reconfigured as a ‘law and order problem’.

Multiple Instruments in Anti-Trafficking

‘By this law a crime has been *created* in order that it may be severely punished; but observe, that has been a crime in women which is not a crime in men’.

Josephine Butler⁵⁷⁹

Early understandings of what a human rights approach to trafficking in women would look like were linked to slavery, the ‘white slave trade’ and the regulation of sex work.⁵⁸⁰ There is almost a consensus that the 19th-Century anti-slavery campaign of William Wilberforce and the activist endeavour undertaken collectively by Josephine Butler, Bramwell and Florence Booth, Percy Bunting and Henry J. Wilson initiated the first anti-trafficking political struggle, focused on women’s rights and the regulation of sexual life.⁵⁸¹ It was in the mid to late 1800s that the term ‘white slave trade’ emerged and became a field of articulated knowledge. This powerful new rhetoric is also reflected in the Constitution of the League of Nations 1919.⁵⁸²

⁵⁷⁸ *Ibid.*, 11-2, paragraphs 37, 39.

⁵⁷⁹ Josephine Butler criticising the Contagious Diseases Acts of 1864-1869, quoted in A S G Butler, *Portrait of Josephine Butler* (London: Faber and Faber Ltd., 1954), 82 [emphasis in the original]. The language of the book seems dated and driven by religious views, for the influential actions of J. Butler, however, and a historical account of the anti-‘white slavery’ campaign in the UK, see, The Josephine Butler Society, [last accessed: 12/01/12] [<http://www.jbs.webeden.co.uk/#/josephine-butler/4515755332>].

⁵⁸⁰ See, Chapter 2.

⁵⁸¹ See, Barry, (1984); M R Elliott, 'Faith-Based Responses to Trafficking in Women from Eastern Europe', in *The Lilly Fellows Program National Research Conference, 'Christianity and Human Rights'* (Samford University, Birmingham, Alabama 2004); J Sage and L Kasten, eds., *Enslaved: True Stories of Modern Day Slavery* (London & NY: Palgrave Macmillan, 2006); Limoncelli, (2010).

⁵⁸² The Members of the League were entrusted with the general supervision over the execution of agreements with regard to the ‘traffic in women and children’, see art 23(c), League of Nations, *Covenant of the League of Nations*, 28 April 1919, 11 Martens (3rd) 323, 225 Parry’s TS 195.

The most prominent understandings of what a contemporary human rights approach to trafficking in women looks like are also linked to slavery, labour rights and the previously examined narratives linking transnational organised crime and sex work.⁵⁸³ Tom Obokata's theoretical contribution to this approach is of great value in many respects. His analysis maintains that a human rights approach is necessary to supplement global action against trafficking, rather than reinvent a new solution.⁵⁸⁴ This is because,

[i]t is widely accepted that trafficking is not only a criminal justice issue, but also a human rights issue, because the act is regarded as a serious threat to the promotion and protection of human rights. This implies dual duties imposed upon states with regard to trafficking under international law. The first is a duty to prevent and suppress trafficking in human beings, and the second is a duty to address human rights issues inherent in the act of trafficking.⁵⁸⁵

In this sense, applying a human rights framework appears two-dimensional. Firstly, Obokata maintains that human rights offer a framework of analysis: insofar as we are familiar with the human rights language, we can then use it to explore and identify the pertinent issues related to life, work, health and freedom (from slavery and torture). Secondly, human rights provide us with a framework for action. With regard to this second dimension, Obokata sees human rights as a mechanism for exercising pressure on states:

[The human rights framework] attempts to articulate legal obligations imposed upon States, such as obligations to prohibit trafficking, prosecute traffickers, protect victims, and address the causes and consequences of the practice. A human rights framework therefore can put more pressure on States to address the human rights issues pertinent to the phenomenon.⁵⁸⁶

⁵⁸³ See, Chapter 2.

⁵⁸⁴ Indeed, according to the UN 2000 Anti-Trafficking Protocol, article 14, 'Saving Clause' provides that nothing in the Protocol affects the rights, obligations and responsibilities of states under international humanitarian law, human rights law and, in instances that it is applicable, refugee law. In that respect, the Protocol clearly recognises the persisting human rights obligations of states relevant to protection. Hence, this compatibility between frameworks is officially recognised.

⁵⁸⁵ T Obokata, 'Human Trafficking, Human Rights and the Nationality, Immigration and Asylum Act 2002', *European Human Rights Law Review*, no. 4 (2003), 410, 411.

⁵⁸⁶ Obokata, (2006), 35.

Human rights are also useful, according to Obokata, for one added reason, which can perhaps be considered as the most crucial. For my investigation it is definitely the most crucial, as it actually combines the utilisation of human rights as a framework for conceptualisation and action. According to this last point, then, a human rights approach is desirable because victims are entitled to protection. ‘They [those trafficked] may be seen as victims of human rights abuses rather than criminals who violate national immigration laws and regulations, and therefore a victim-centred approach may be promoted’.⁵⁸⁷ As to what a victim-centred approach may entail, Obokata suggests that this approach could rectify the harm caused by empowering victims, as victims’ needs become a central issue. The problem, however, is that ‘[t]here is no precise answer as to what can be done in this regard’,⁵⁸⁸ and consequently, there are only options to be explored. I will return to the exploration of these options immediately after investigating the human rights approach a little further.

In order to depict associations between legal instruments and establish the grounds on which a human rights anti-trafficking approach can be sustained, important critics have argued that a rights-led approach needs to be more multidisciplinary and also reflective of the early antecedents of anti-trafficking, namely: the International Agreement for the Suppression of the Slave Traffic 1904,⁵⁸⁹ the International Convention for the Suppression of White Slave Traffic 1910,⁵⁹⁰ the Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention 1926,⁵⁹¹ and the Convention for the Suppression of the

⁵⁸⁷ *Ibid.*

⁵⁸⁸ *Ibid.*

⁵⁸⁹ 1 LNTS 83 (1904).

⁵⁹⁰ 3 LNTS 278 (1910).

⁵⁹¹ 60 LNTS 253 (1926).

Traffic in Persons and of the Exploitation of the Prostitution of Others 1949.⁵⁹² To this end, Obokata provides a comprehensive list of the competent instruments, and his analysis juxtaposes past and present anti-trafficking, highlighting the need to address both root causes and prohibitions:

Prohibition of trafficking of human beings through national legislation for the purpose of suppression and prevention is one obligation imposed upon States under international human rights law. While the exact wording varies, some of the existing human rights instruments explicitly require States to prohibit the practice.⁵⁹³

Along with prohibitions and criminalisation, the instruments touching upon root causes – particularly poverty – are of equal importance, according to Obokata: ‘[d]ue to the poor economic conditions in their States of origin, many people migrate to developed States in order to seek better opportunities’.⁵⁹⁴ So, to mention only a few instruments, the fact that poverty has a negative impact on the enjoyment of human rights is explicit in the freedom from want in the Preambles of the Universal Declaration of Human Rights 1948 (UDHR),⁵⁹⁵ the International Covenant on Civil and Political Rights 1966 (ICCPR),⁵⁹⁶ and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR).⁵⁹⁷ With respect to labour rights, a rights approach should also reflect on the provisions set out by the International Convention on Rights of All Migrant Workers and

⁵⁹² 96 UNTS 271 (1949).

⁵⁹³ Obokata, (2006), 148.

⁵⁹⁴ *Ibid.*, 122.

⁵⁹⁵ A/RES/217A (III) (1948). For articles pertinent to trafficking, see, e.g.: art. 3 (right to life, liberty and the security of person), art. 4 (prohibition of slavery and servitude), art. 5 (prohibition of torture, inhuman or degrading treatment or punishment), art. 7 (equality before the law and protection against discrimination), art. 13 (right to freedom of movement), art. 23 (right to work and free choice of employment).

⁵⁹⁶ 999 UNTS 171 (1966). Important reference is made to slavery, the slave-trade, servitude, and to ‘forced or compulsory labour’, under article 8. Also, pertinent to trafficking are articles: 9 (liberty and security of person, ‘no one shall be subjected to arbitrary arrest or detention’) and, compensation to victims 9(5) (‘victims of unlawful arrest or detention shall have an enforceable right to compensation’).

⁵⁹⁷ 999 UNTS 3 (1966). Important reference is made to labour rights and to the protection of rights and freedoms of all workers, under articles 7 and 8. Also, article 10(3) stipulates that children and young persons should be protected from economic and social exploitation.

Members of Their Families 1990 (Migrant Worker’s Convention).⁵⁹⁸ Also, instruments that provide broader human rights protections should be taken into consideration, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) 1950,⁵⁹⁹ the American Convention on Human Rights (ACHR) 1969,⁶⁰⁰ the African Charter of Human and Peoples’ Rights (African Charter) 1981,⁶⁰¹ the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (‘Convention of Belém Do Para’) 1994,⁶⁰² and the Charter of Fundamental Rights of the European Union 2000.⁶⁰³ The previously examined Council of Europe Convention on Action against Trafficking in Human Beings 2005,⁶⁰⁴ the Inter-American Convention on International Traffic in Minors 1994,⁶⁰⁵ the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution 2002⁶⁰⁶ and the Convention on the Rights of the Child 1989 also make explicit reference to trafficking,⁶⁰⁷ which was strengthened after the adoption of the

⁵⁹⁸ A/RES/45/158 (1990). In specific, articles: 11 (slavery or servitude, ‘forced or compulsory labour’), 16 (right to liberty and security of person).

⁵⁹⁹ 213 UNTS 221 (1950). See, for instance, articles: 2 (right to life), 3 (prohibition of torture), 4 (prohibition of slavery and forced labour), 5 (right to liberty and security).

⁶⁰⁰ 1144 UNTS 123 (1969). See, e.g., articles: 6 (freedom from slavery), 7 (right to personal liberty), 22 (freedom of movement and residence).

⁶⁰¹ 1520 UNTS 217 (1981). See, e.g., articles: 5 (right to the respect of the dignity and prohibition of slavery, slave trade, torture, cruel, inhuman or degrading punishment), 6 (right to liberty and to the security of the person).

⁶⁰² 33 *International Legal Materials* 960 (1994). See, e.g., article 2 (violence against women including rape, sexual abuse, torture, trafficking in persons, forced prostitution).

⁶⁰³ OJ 2000/C 364/01 (2000). See, e.g., articles: 3 (right to the integrity of the person), 4 (prohibition of torture and inhuman or degrading treatment or punishment), 5 (prohibition of slavery and forced labour), 6 (right to liberty and security).

⁶⁰⁴ Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197 (2005).

⁶⁰⁵ OAS Treaty Series, No.79 (1994).

⁶⁰⁶ Adopted by States belonging to the South Asian Association for Regional Cooperation (SAARC). Member States are Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. See, [last accessed: 02/01/12]

[http://www.saarc-sec.org/areaofcooperation/detail.php?activity_id=10].

⁶⁰⁷ A/RES/44/25 (1989). See, e.g., articles 34 (sexual exploitation) and 35 (traffic in children).

Optional Protocol on Sales of Children, Child Prostitution and Child Pornography 2000.⁶⁰⁸

With such a variety of rights at stake, and after having identified the issue of poverty as a root cause, Obokata's analysis concludes by addressing the need for more legislative steps, particularly through national legislation: '[t]his is essential because legislation makes obligations imposed upon those concerned, including the law enforcement authorities, clearer, and serves as a basis for holding them legally accountable for non-compliance'.⁶⁰⁹ Finally, his analysis turns to the issue of victims in relation to the root causes and maintains that '[t]he root causes of the act cannot be adequately addressed without understanding the conditions in which those at risk of being trafficked live'.⁶¹⁰ This is a rather surprising turn as it implies that there must be some other, perhaps hidden root causes, beyond poverty, that researchers need to delve into.⁶¹¹ In fact, this adds one more important element to the imaginary penalties thesis, related to scientific knowledge. According to this, the anti-trafficking promise is renewed: once more research is conducted on the conditions in which those at risk of being trafficked live, trafficking can be abolished.

Which Legal Instruments are Human Rights Instruments?

In a similar fashion to Obokata's analysis, Sandhya Drew observes that anti-slavery agreements are often termed the 'first human rights agreements, concerned as they were with crimes against humans rather than against states *per se*'.⁶¹²

⁶⁰⁸ A/RES/54/263 (2000).

⁶⁰⁹ Obokata, (2006), 174.

⁶¹⁰ *Ibid.*, 176.

⁶¹¹ My arguments and methodology here draw on Marks, (2011).

⁶¹² Drew, (2009), 4.

These agreements, along with the ILO Conventions,⁶¹³ constitute the very first human rights model, according to Drew. Still, she argues that it is only recently, with the UN 2000 Transnational Organised Crime Convention, that a human rights model has come ‘fully into focus’:

However, even with a human rights model, the phenomenon of modern human trafficking does not sit easily within traditional human rights law which is orientated towards breaches by the state. In contrast, human trafficking is a market activity often carried out by powerful private criminal organisations.⁶¹⁴

Indeed, the importance of the UN 2000 Transnational Organised Crime Convention has been highlighted by many critics.⁶¹⁵ However, Drew’s observation poses the pivotal question: what makes a convention a human rights instrument?⁶¹⁶ And to what extent can one consider the UN 2000 Transnational Organised Crime Convention or indeed the UN 2000 Anti-Trafficking Protocol as contributions to the human rights approach? The explicit aim of the UN 2000 Anti-Trafficking Protocol is to prevent and combat trafficking in persons and to protect and assist the victims of trafficking. However, as an instrument annexed to the UN 2000 Transnational Organised Crime Convention, which is in principle a crime prevention treaty, it cannot be considered primarily as a human rights instrument.⁶¹⁷

⁶¹³ The Convention Concerning Forced or Compulsory Labour (1930), ILO Convention No 29, 39 UNTS 55; the Convention on Migration for Employment (1949), ILO Convention No 97, 120 UNTS 70; the Abolition of Forced Labour Convention (1957), ILO Convention No 105, 320 UNTS 291.

⁶¹⁴ Drew, (2009), 4.

⁶¹⁵ For instance, the view expressed by Heather Smith highlights the importance of the UN 2002 Anti-Trafficking Protocol, as it highlights the first global effort to address human trafficking in 50 years, H M Smith, 'Sex Trafficking: Trends, Challenges, and the Limitations of International Law', *Human Rights Review* 12, no. 3 (2011), 271.

⁶¹⁶ For an important account that draws on Jonathan Simon’s *Governing Through Crime* and Douglas Husak’s *Overcriminalisation*, and explores the interaction between the rights doctrines and criminalisation, see, Ramsay, (2010).

⁶¹⁷ See, also, Apap and Medved, 'Protection Schemes for Victims of Trafficking in Selected EU Member Countries, Candidate and Third Countries', 8.

Drawing on the presumption of organised criminality, Drew's analysis suggests that human rights law has imposed positive obligations on states and that the specific obligations, in this context, involve the protection of victims, as well as the 'taking of effective steps to prevent trafficking as well as prohibition and punishment'.⁶¹⁸ Importantly, Drew then suggests that it is actually a progressive narrative which sustains the law enforcement and prohibitive regime: '[t]he creation and enforcement of specific criminal prohibitions represents a progression from the previous approach, focusing solely upon immigration control, which failed to distinguish between trafficker and trafficked'.⁶¹⁹

Human rights then have a tempering or correcting (and perhaps rectifying) effect on criminal law and law enforcement. Not only do human rights make clearer what the criminal sanctions have been trying to achieve, but also this clear distinction between the trafficker and the trafficked would inevitably be beneficial for the victims. One could argue, however, that it is through security instruments that this distinction can be achieved, and also, that a human rights approach is actually rather narrow if it is limited to balancing and stabilising criminal sanctions. Drew's analysis, important in many respects, shows that human rights have the potential to create a comprehensive framework for victims of trafficking. However, it is recommended that the human rights approach should not be 'soft', and should therefore acknowledge trafficking as a 'crisis'. This is because, based on Drew's argument, human rights should not abandon the tools of criminal and immigration law:

Criminal and immigration law are essentially reactive to a crisis. Preventive steps required to discharge the state's positive obligations will include addressing the causes of trafficking to prevent trafficking generally. They will also include putting in place a system of early warnings as specifically

⁶¹⁸ Drew, (2009), 4-5.

⁶¹⁹ *Ibid.*, 5.

preventive steps ... Finally, in furtherance of its positive obligations, the state has given itself considerable powers as against suspected individuals. These can be justified as measures necessary for the protection of the rights of others, but should be continually measured against the outcomes for that stated aim.⁶²⁰

The image of balance then re-emerges. This time the state is to balance actions, preventive steps and outcomes, between protecting ‘the rights of others’ and managing ‘suspected individuals’. As a cautionary remark, it is suggested by the author that these outcomes can and should be continually measured. To the extent that the balancing of these two actions is measurable, these two fields of knowledge appear to be remarkably interrelated. Instead of looking at these two mechanisms as two concrete fields of distinct ideologies, a) to protect and b) to punish, one should see these as a system, ‘as the present correlative of a certain technology of power over the body’.⁶²¹ Meanwhile, the discussion has already drifted away from the aspirational discourse of rights.

Women’s Rights Discourses: critical reflections

Now, in the sections that follow I turn to women’s rights in the context of anti-trafficking. My aim is to trace women’s rights discourses in the specific setting of trafficking victimisation and draw a few preliminary lines connecting representations of women as victims and the ‘politics of victimisation’ in the specific ways that these politics utilise a human rights language. To do this, I examine the role of victims in the criminal justice system and interrogate the idea of a victim-centred approach to anti-trafficking.

Hence, the following sections do not aim to cut ties between women and rights, but rather they aim to rethink how these two have actually become

⁶²⁰ *Ibid.*

⁶²¹ Foucault, (1991), 29.

materialised so far. I argue that the use-value of victims in criminal proceedings and institutional practices such as ‘cooperation in exchange for protection’, ‘reflection period’ and ‘voluntary repatriation’ are clear signs of the fact that ‘[o]fficially, victims will usually come second to state interests, when considered at all’.⁶²² In this respect, victims have been viewed functionally, ‘as possible ingredients to help pursue cases, or promote public relations, but not as people whose interests constitute ends in themselves’.⁶²³

To support my argument, I turn to the victimological theory of Robert Elias and I read official recommendations related to victims’ protection through the lens of the ‘politics of victimisation’. In this sense, the analysis offered here is rather narrow as it does not present the breadth of contemporary debates in relation to women’s rights, human rights and victims’ rights.⁶²⁴ Rather my aim is to link traditional victimological theory and human rights discourses. According to Elias, victimology has been an international pursuit stimulated by post-World War II humanitarianism.⁶²⁵ Similarly, often described as one of the great civilising achievements of the modern era, the contemporary idea of human rights also has its origins in World War II and its aftermath,⁶²⁶ though different narratives have located the really important starting-point for the international protection of human rights in the more recent past or indeed in different points in history.⁶²⁷ The ideological interconnections between the study of victims and rights discourse are indisputable, yet underexplored.

⁶²² Elias, (1986), 140.

⁶²³ *Ibid.*, 140-1.

⁶²⁴ Besides this task has been successfully undertaken by many influential critics, see, e.g., D Buss et al., 'Introduction to 'Sexual Movements and Gendered Boundaries: Legal Negotiations of the Global and the Local'', *Social & Legal Studies* 14, no. 1 (2005), 5; Charlesworth and Chinkin, (2000).

⁶²⁵ Elias, (1986), 17.

⁶²⁶ C A Gearty, *Can Human Rights Survive?* (Cambridge: Cambridge University Press, 2006), 1-28.

⁶²⁷ See, e.g., Marks, (2011), 57.

My ultimate aim, as established earlier, is to draw a line connecting these two fields of knowledge (victims and rights) and show how in delivering gendered victim services and the promised ‘more effective’ women-centred anti-trafficking approaches, particular subjectivities become instrumentalised in imaginary penalties.⁶²⁸

Female Sexual Subjectivity in Anti-Trafficking Discourse

Here I consider a few critical views related to the utilisation of a human rights approach in anti-trafficking, and by doing so I wish to interrogate further the rights-led suggestions examined earlier. Comparative analyses of anti-trafficking regimes in the EU have suggested that in practice anti-trafficking structures reflect a rather broad conceptualisation of trafficking, even at the level of definitions.⁶²⁹

Drawing on this point, an influential view has been expressed, according to which these broad, diverse and perhaps conflicting definitions of what constitutes trafficking is an important sign of international legal inadequacy. This is because the utilisation of international legal instruments leaves scope for the re-insertion of competing perspectives and ideologies at a national level.

In this respect, no matter how many instruments are in place at this current stage (how these can be combined or how diversified a legal approach to trafficking can be) the lack of theoretical clarity renders the human rights approach untenable, ‘[o]r [it] would, at least, raise difficult questions about where and why we draw lines between bad working conditions, illegal harms, and human rights abuses in this context’.⁶³⁰ This point is further elaborated to support the

⁶²⁸ With regard to the operationalisation of gender in gendered penalties, see, Hannah-Moffat, 'Re-Imagining Gendered Penalties: The Myth of Gender Responsivity', 203-15.

⁶²⁹ See, e.g., Munro, (2006), 325; Obokata, (2006), 39-83; Goodey, (2004), 29.

⁶³⁰ Munro, (2008), 256.

argument that by actually expanding the category of a ‘human rights violation’ so much, it becomes not only impractical, but also meaningless:

While the existence of such coercion, deception or exploitation would certainly provide a basis on which to condemn trafficking activity, it is by no means clear that it gives rise in itself to human rights abuse. Indeed, lest we reduce the concept of a ‘human rights violation’ to an amorphous category that can be stretched unreflectively to encompass any behaviour of which we disapprove, it seems that a number of further questions need to be asked here about the extent of the coercion, the nature of the deception, and the context of the exploitation, both to support this assertion and to link it to an established rights claim.⁶³¹

This is because in fact we are dealing with broader inequalities that can be considered to have ‘sparked the turn to human rights in anti-trafficking policy in the first place’.⁶³² Indeed, these inequalities are very well-documented:

EU free movement entitlements and non-national entry predicated on tourism or education have created a complex and fluctuating relationship between regular and irregular status for many migrants. Global distributions of socio-economic resources, security, and opportunity have been unequal, and are left largely unaddressed by the remedial responses offered by prosperous nations whose legal and illegal industries abound with an entrepreneurial spirit that seeks out (with varying levels of scruples) the cheapest and most compliant labour force.⁶³³

In opposition to the hypothesis that a human rights approach can be too vague, one could argue, then, that the problem is not the extent to which trafficking has been under-explored or unexplored, or even the extent to which rights have been articulated in a clear or vague manner. Quite the opposite, the causes identified pose uncomfortable questions to contemporary totalising social processes, and therefore, transformative demands are subsumed under the command of the disciplinary society.⁶³⁴ Confronted with these questions, only a few accounts have suggested alternative solutions beyond recommendations to adjust, expand, correct and balance the inadequacies inherent to the contemporary criminal law approach,

⁶³¹ *Ibid.*, 246.

⁶³² *Ibid.*, 256.

⁶³³ *Ibid.*, 256-7.

⁶³⁴ Hardt and Negri, (2001), 243.

the contemporary human rights approach to trafficking in women and their various combinations.⁶³⁵

Along these lines, Ratna Kapur has examined international legal instruments and political discourse and has drawn important parallels between the two. Kapur's analysis suggests that what is alarming in contemporary anti-trafficking is not the severity of the phenomenon in its current form, and it is definitely not the lack of clarity or the inadequacy of legal articulations.⁶³⁶ What Kapur finds alarming, however, is the deployment of sex and sexuality by international and national anti-trafficking discourse for the purposes of moral surveillance. Kapur's analysis upholds that in the area of women's sexual victimisation, 'sex trafficking' is presented as an overwhelming problem. This over-representation serves multiple functions.

Mainly, 'sex trafficking' overshadows a rather broad array of abuse and exploitation by falsely animating dominant understandings of what exploitation, in its contemporary form, might entail. In this respect, similarly to the ways that 'sex trafficking' becomes newsworthy and triggers moral panics, in the field of international law and human rights, 'sex trafficking' is presented as 'the overwhelming problem by nearly all players in the human rights arena'.⁶³⁷ As a result, the complex processes of migration, of subject formation and of legal formation become erased. Instead, we are presented with simplistic, linear stories about women's lives and victimisation. The narratives are carefully dislocated and placed at a safe distance from our everyday reality, and they are able to conflate distinctions between trafficking, sex work, migration and crime, since they all take

⁶³⁵ See, e.g., Aradau, (2004); and Papanicolaou, (2008b).

⁶³⁶ Kapur, 'Faith' and the 'Good' Liberal: The Construction of Female Sexual Subjectivity in Anti-Trafficking Legal Discourse'.

⁶³⁷ *Ibid.*, 226.

place in a sphere that is remotely disconnected from 'us'.⁶³⁸ Kapur maintains that, in the specific ways that trafficking victimisation is presented as linked to sex work, biases towards the 'Other' are being reproduced, which resonate with the colonial encounter.⁶³⁹

Strategies that legitimate the political intervention by the colonial state, Western ideologies and moralities regarding sexual relations, according to Kapur, inform assumptions. These assumptions about women's sexuality, especially women from the non-Western world, impose restrictions and reinforce gender and cultural stereotypes:

In the name of protecting women's rights, these initiatives are invariably based on assumptions about women's sexuality, especially about women from the post-colonial world, as victims, infantile and incapable of decision making. These assumptions have invited highly protectionist legislation and at times even justified protective detention and intervention strategies that further reinforce gender and cultural stereotypes.⁶⁴⁰

The oriental fantasy, according to Kapur, of the native woman as oppressed, humiliated, subordinated, silenced and thoroughly victimised is reproduced in contemporary human rights discourse, which has primarily served criminalisation interests.⁶⁴¹ Kapur then encourages us to think of these two parallel functions (victimisation and punishment):⁶⁴² the reproduction of the victimised subjectivity perpetuates the penal state, 'the stereotype requires, for its successful signification, a continual and repetitive chain of other stereotypes'.⁶⁴³

⁶³⁸ *Ibid.*, 227.

⁶³⁹ For the colonial influence in the construction of international legal ideas, see, Marks, (2003).

⁶⁴⁰ Kapur, 'Faith' and the 'Good' Liberal: The Construction of Female Sexual Subjectivity in Anti-Trafficking Legal Discourse', 245.

⁶⁴¹ *Ibid.*

⁶⁴² These are only two among many control functions, Edward Said, for instance, traces broader imperialist political, ideological, economic and social practices, see, E Said, *Culture and Imperialism* (London: Vintage Books, 1994), 7-8.

⁶⁴³ H Bhabha, *The Location of Culture* (London & NY: Routledge, 2010), 110.

The Anti-Trafficking Politics of Victimisation

Provisions pertinent to victims' rights, and in this specific context, the protection of the human rights of victims have been instrumental in anti-trafficking. From the instruments examined below a clear link is established between victims of trafficking and the element of illegality. Either seeing victims as illegalised migrants or as an instrument to criminalise others, the victim-centred approach has been limited to resolving the problem of the existing law's inadequacy. For instance, the UN 2000 Anti-Trafficking Protocol in its Preamble stipulates:

[E]ffective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognised human rights.

Moreover, articles 2 and 6-8 of the UN 2000 Anti-Trafficking Protocol, clearly state provisions for the protection of victims, with respect to their human rights. This enumeration is highly relevant to a twofold recognition: 1) It makes evident that numerous human rights instruments have spelt out provisions to prevent and combat trafficking, or slavery, servitude and slavery-like practices of women, and protect the victims of such crimes. Maintaining a tripartite approach, the fact that prevention and combat come first, discursively renders protection a secondary measure. In this respect, the overlooked protection of victims, in its specific application to women, is still linked to sexual purposes, narrowing the scope of application, as well as fuelling debates in the field.⁶⁴⁴ 2) The discourse on women – victims of human rights violations – officially registers a particular form of subjectivity in the contemporary era. This is crucial because it serves as a

⁶⁴⁴ Munro, (2006); J Doezema, 'The Ideology of Trafficking', in *Work Conference 'Human Trafficking, 15 November 2002* (Centre for Ethics and Value Inquiry (CEVI), Ghent University 2002); Agustín, (2007a).

reminder that this type of gender-specific victimisation does not take place outside the contemporary sphere of women's longstanding struggle for equality, but despite these struggles.⁶⁴⁵

In the case of the United States, the Victims of Trafficking and Violence Protection Acts (2000; 2003; 2005; 2008)⁶⁴⁶ can also be invoked to initiate civil actions. At a discursive level, even though the Acts were intended to focus on victims' protection ('promised' by the title), the explicit purpose of the Acts is 'to enhance measures to combat trafficking in persons and for other purposes'.⁶⁴⁷ The Acts are concerned with the set-up of the Interagency Task Force to Monitor and Combat Trafficking (sec. 101), the Office to Monitor and Combat Trafficking (sec. 102), measures for the prevention and prosecution of trafficking in foreign countries (sec. 103); and at a secondary level, the assistance for victims of trafficking in other countries (sec. 104). Particular reference to women is only made in the context of recalling competent instruments on violence against women, without further reference to specific services.⁶⁴⁸

⁶⁴⁵ See, also, Marks, (2011).

⁶⁴⁶ Trafficking Victims Protection Reauthorisation Act of 2000 (Public Law 106-386); Trafficking Victims Protection Reauthorisation Act of 2003 (Public Law 108-193, H.R. 2620); Trafficking Victims Protection Reauthorisation Act of 2005, (H.R. 972); Trafficking Victims Protection Reauthorisation Act of 2008 (H.R. 7311).

⁶⁴⁷ TVPRA, 2008 (H.R. 7311), 1.

⁶⁴⁸ *Ibid.*

In Europe, an extensive framework of legal instruments has been in place.⁶⁴⁹ Most prominently, Council Directive 2004/81/EC,⁶⁵⁰ regarding the residence permit that is issued to ‘third country nationals, victims of trafficking who cooperate with the competent authorities’, refers to the victim’s informed decision regarding their cooperation with the police and the broader criminal justice system.⁶⁵¹ The first question raised by this development is related to the victim’s contribution, utilisation in criminal proceedings and their participation in the criminal trial.

To facilitate these purposes, article 6 ‘Reflection Period’ stipulates that states should ensure that third-country nationals, victims of trafficking, are granted a reflection period allowing them to recover ‘and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether they cooperate with the competent authorities’. The extent to which victims become instrumentalised in this process and the extent to which victims’ protection will be contingent upon cooperation with the competent law enforcement authorities, as well as the duration and starting point of the reflection

⁶⁴⁹ To mention only a few instruments that comprise secondary EU legislation: European Parliament and Council Decision 803/2004/EC April 2004 adopting a programme of Community action (2004-2008) to prevent and combat violence against children, young people and women and to protect victims and groups at risk (the Daphne II Programme) [30.04.2004] OJ L 143/1; Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third-Country Nationals and Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted [2004] OJ L 304/12; Framework Decision 2001/220/JHA of 15 March 2001 on the Standing of Victims in Criminal Proceedings [2001] OJ L 82/1; Framework Decision 2002/629/JHA of 19 July 2002 on Combating Trafficking in Human Beings [2002] OJ L 203/1; Council Joint Action 2002/629/JHA of 24 February 1997 Concerning Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children [1997] OJ L 63/1; European Parliament Resolution on the Exploitation of Prostitution and the Traffic in Human Beings [1989] OJ C/120/352; European Parliament Resolution on Trafficking in Human Beings [1996] OJ C 32/88; European Parliament Resolution on the Communication from the Commission to the Council and the European Parliament on Trafficking in Women for the Purpose of Sexual Exploitation [1998] OJ C/14/39.

⁶⁵⁰ European Union: Council of the European Union, Council Directive 2004/81/EC of 29 April 2004 on the Residence Permit Issued to Third-Country Nationals Who are Victims of Trafficking in Human Beings or Who Have Been the Subject of an Action to Facilitate Illegal Immigration, Who Cooperate With the Competent Authorities, 06/08/2004, 2004/81/EC.

⁶⁵¹ See, article 6, Council Directive 2004/81/EC.

period, shall be determined according to national legislations (articles 6 and 7). So, within this context national interpretations vary; as examined under the Greek case study,⁶⁵² a practice that is not limited in the Greek national context has been described as ‘cooperation in exchange for protection’:

Under the current system, a non-EU national who has been characterized by a prosecutor as a ‘victim of trafficking’, following the reflection period, can only exercise her rights to protection and assistance if she ‘cooperates’ with the authorities. This in effect creates a link between the protection and prosecution aspects of efforts to combat trafficking. Such a link undermines the rights of women to protection and assistance irrespective of whether they cooperate or not.⁶⁵³

Moreover, Council Directive 2004/81/EC lacks a gendered basis found elsewhere. Therefore, it does not make explicit reference to women, with the exception of article 9(2), which acknowledges the obligation of states to provide ‘necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs, such as pregnant women ...’. In this context, the value of victims can be called into question, as many victims in these states are illegal immigrants. Therefore, they are more likely to face enforcement actions including deportation.

Indeed, women’s victimisation and multiple stereotypes of illegality operate concurrently. What other conceptions of class, sex, ethnicity and race are being reproduced in the anti-trafficking politics of victimisation?

Trafficking, Victims, Stereotypes

Jo Goodey, in her important critique of current EU and international criminal justice intervention with respect to the protection of and assistance to victims, and especially witness protection, reminds us of the three ‘Ps’ approach discussed in

⁶⁵² See, Chapters 5-7.

⁶⁵³ Amnesty International, ‘Greece: Uphold the Rights of Women and Girls Trafficked for Sexual Exploitation’, (EUR 25/002/2007, 2007b), 11.

Chapter 2. According to Goodey, an exploration of the victim-centred approach should take into consideration that victims' protection is one of the elements examined under the three 'Ps' approach (prevention, prosecution, protection).⁶⁵⁴ Focusing on the third element, Goodey explains, there are a range of measures that can be put in place. These can be broadly divided into social and criminal justice responses. On the one hand, the social responses can include 'short-term residence permits; housing; welfare payments; education; employment; and health care'. On the other hand, criminal justice responses can incorporate:

[P]rovision of information to victims on the substance and progress of their case; specialist victim support and counselling services; restitution and compensation from State and/or offender; protection of witness's privacy; and a comprehensive witness protection 'package' incorporating any or all of the following: police protection for the duration of the case; right to testify away from open court and anonymously; change of identity; relocation of victim and/or family, either within a State or to another State.⁶⁵⁵

However, the measures under these two strands are connected, as trafficked women only tend to enjoy the full range of either of these benefits if they agree to cooperate with the authorities 'by providing the police with "intelligence" and/or testify against traffickers'.⁶⁵⁶ This is ultimately, then, not a question of free choice, will or compliance, as women's decisions depend on 'what trafficked women are able and willing to give in light of the dangers posed to them if they agree to cooperate in a criminal investigation'.⁶⁵⁷

As a result, Goodey observes that two core issues emerge. One is related to the victim-centred culture in different jurisdictions; the second is related to the woman-centred justice in these jurisdictions. In this respect, and with the considerations posed by the security measures of the post-9/11 controls, Goodey's

⁶⁵⁴ Goodey, (2004), 31.

⁶⁵⁵ *Ibid.*, 31.

⁶⁵⁶ *Ibid.*

⁶⁵⁷ *Ibid.*, 32.

analysis maintains that, in fact, until very recently trafficked women were ‘bracketed in the same category as illegal immigrant and “undesirable other”, their treatment as victims of crime, rather than complicit offenders, is a new development’.⁶⁵⁸ This new development, however, is still associated to specific stereotypes: ‘[t]raditionally, trafficked women have been responded to as illegal immigrants, as being associated with a criminal underworld, and as prostitutes, and, therefore, as women who have fallen outside the range of acceptable female behaviour’.⁶⁵⁹

But what does it mean to fall outside the ‘range of acceptable female behaviour’? And in particular, how does gender intelligibility affect perceptions of victimhood? According to the IOM manual ‘Caring for Trafficked Persons: guidance for health providers’, the fact that a woman has been a victim of trafficking does not mean that she is not a trafficker, or indeed, that she might not become one in the future, due to her interaction with what Goodey calls the ‘criminal underworld’: ‘[s]ome traffickers are former victims of trafficking who now recruit and control other victims’.⁶⁶⁰ Also, other victims may ‘feel independent and empowered by the experience and not wish to be treated like a victim’.⁶⁶¹

In addition, some trafficker–victim situations or relationships are particularly complex, according to the manual, and this is because: 1) victims may have (usually dependent) family members at potential risk, 2) victims may have, or had in the past an intimate or familial relationship with their trafficker, 3) victims many have ‘moved up’ from being a victim of trafficking to being a recruiter or

⁶⁵⁸ *Ibid.*

⁶⁵⁹ *Ibid.*

⁶⁶⁰ C Zimmermann and R Borland, ‘Caring for Trafficked Persons. Guidance for Health Providers’, (Geneva: International Organisation for Migration, 2009), 8.

⁶⁶¹ *Ibid.*, 11.

manager of other victims.⁶⁶² Thus, past, present or future connections with the criminal underworld may be (or can be assumed to be) present and define victimhood. As Goodey's investigation has shown, 'women are not prioritised as *victims* by criminal justice agencies when compared with other victim categories that fulfil stereotypes of "innocent" and "deserving" victims'.⁶⁶³

'Innocent' Institutions

Robert Elias, in the *Politics of Victimisation*, immediately after examining who oppresses and who suffers oppression in instances of victimisation, traces four social elements that have been represented as sources of oppression. According to Elias, human rights victims themselves represent an important source of violations. In fact, Elias focuses on women victims and he argues that in the American context,

[w]e claim that minorities, women, the poor and other oppressed people suffer their fate because they work too little, or because they lack intelligence, or cleverness, or drive. In this modern-day version of social Darwinism, deprived people merely fail to take advantage of their opportunities.⁶⁶⁴

Elias traces institutional functions for blaming victims. Insofar as victim blaming diverts attention from institutional or systemic flaws, and from official wrongdoing, then victims themselves become the focal point; they need to change first. Prescribing a 'subject reform' for victims not only means that through institutional services and practices victims must patiently await some relief from oppression, 'but that they will never significantly enjoy better conditions (i.e., less oppression) until they change themselves and their associates'.⁶⁶⁵ Hence,

⁶⁶² *Ibid.*, 12.

⁶⁶³ Goodey, (2004), 33. [emphasis in the original]

⁶⁶⁴ Elias, (1986), 211-2.

⁶⁶⁵ *Ibid.*, 212.

connections between victimhood and criminality can serve multiple functions when victims' innocence and institutional innocence are at stake.

Georgios Papanicolaou delves deeper into the institutional operations of victimised subjectivities in the context of trafficking. According to Papanicolaou's analysis, migratory flows are not simply a question of supply and demand. Therefore, they cannot be conceived simply as the result of an assortment of 'push' and 'pull' factors. 'Rather under capitalism, the logic of population movements is dictated by capital accumulation itself, and the search for higher profits'.⁶⁶⁶ Focusing on developed countries, then, according to Papanicolaou, the defence of the rate of profit leads either to a drive towards the increase of the productivity of labour, or relies on the supply of low-cost labour. In the case of low-cost labour,

[I]mmigrants are at all times a solution to a problem, not only because their presence addresses a relative scarcity in the low-skill and less socially valued segments of the labour market, but also because it results to the creation of an employable (and disposable) surplus population.⁶⁶⁷

In fact,

What experience generally shows to the capitalist is a constant excess of population, i.e. an excess in relation to the capital's need for valorisation at a given moment, although this throng of people is made up of generations of stunted, short-lived and rapidly replaced human beings, plucked, so to speak, before they ripe.⁶⁶⁸

Changing, or indeed blaming the victim for not changing appears, then, to be 'practical'. In doing so, emphasis is placed on temporary or inevitable factors producing infringements, 'apparently ignoring what some view as the intentional rights violations we commit to promote special interests and conventional

⁶⁶⁶ Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 147.

⁶⁶⁷ *Ibid.*

⁶⁶⁸ K Marx, *Capital Volume I* (London & NY: Penguin Books, 1990), 380.

institutions’.⁶⁶⁹ Thus, ‘we’ often ignore how oppression constitutes itself and how it provides a major source of additional criminal victimisation: ‘Ending oppression, like ending crime, may depend more on political decisions and forces than on misleading technical crusades to control excess, improve enforcement, eradicate enemies, and reform victims’.⁶⁷⁰

*Subject Reforms*⁶⁷¹

Elena Loizidou in her analysis of how gender – the gendered subject – is produced in rape law, and in academic discussions about rape law, maintains that the idea of the subject’s ‘radical transformation’⁶⁷² has always been present in both the statute and the critique of the legal changes.⁶⁷³ ‘Nevertheless, neither legislative/judicial representations nor legal academic claims always deliver what they seek to do, namely, to bring about “transformation”’.⁶⁷⁴ Loizidou draws on Judith Butler and shows that the legal re-articulation of the sex/gender distinction reproduces the very discourses that maintain the ‘heterosexual hegemony of binary sexes: male/female’.⁶⁷⁵ Butler writes on the international human rights’ deployment of the sex/gender, male/female distinction in the context of ‘sexual difference’ and upholds that feminist voices claim that sexual difference is the preferred term to

⁶⁶⁹ Elias, (1986), 241.

⁶⁷⁰ *Ibid.*

⁶⁷¹ The concept aims to draw parallels between the concept ‘prison reform’ utilised in the context of improving prisons, aiming at a more effective penal system, and the suggested reform of subjects aiming at a more effective anti-trafficking mechanism. This facilitates, again, the conceptualisation of anti-trafficking as an imaginary penalty.

⁶⁷² For the term ‘transformation’ Loizidou draws on Drucilla Cornell. According to Cornell by transformation she means change radical enough ‘to so dramatically re-structure any system – political, legal, or social – that the “identity” of the system is itself altered’. And at a broader level, Cornell defines ‘transformation’ as a turn to the question of ‘what kind of individuals we would have to become in order to open ourselves to new worlds’. See, Cornell, (1993), 1.

⁶⁷³ Loizidou, (1999).

⁶⁷⁴ *Ibid.*, 276.

⁶⁷⁵ *Ibid.*, 280.

gender, ‘that “sexual difference” indicates a fundamental difference, and that gender indicates a merely constructed or variable effect’.⁶⁷⁶

Through this application of heteronormative strategies in the legal instruments, Loizidou shows that the promised legal transformation of the subjects actually serves their appropriation and representation as heterosexual victims – women, mere reproductions of statecentric gendered norms that fix the subject ‘as already being sexed’, while they ‘sustain heterosexual hegemony and consequently disavow any other sexualities or genders from becoming intelligible’.⁶⁷⁷ Applying Loizidou’s thesis in the context of trafficking, one observes that ‘sex’ is always present. As examined under CEDAW, it is reaffirmed that a set of rights is contingent upon some biological traits that define the gendered subjects.⁶⁷⁸

In effect, the specific recommendations put forward by instruments relevant to ‘transforming’ women are actually rather non-transformative. The ‘transformations’ described under (voluntarily) repatriation schemes,⁶⁷⁹ for instance, have been regarded as of foremost importance. The risks of such schemes are well-documented, as repatriation has been seen as a practice that exposes trafficked persons to the risk of further reprisals at home: ‘[t]he authorities in destination countries need to bear in mind when repatriating trafficked persons to their countries of origin that, in many cases, they are sending those concerned straight back into the hands of traffickers’.⁶⁸⁰ Despite this recognition, the recommendations laid down by various organisations suggest that

⁶⁷⁶ J Butler, *Undoing Gender* (London & NY: Routledge, 2004), 181.

⁶⁷⁷ Loizidou, (1999), 293.

⁶⁷⁸ See, also, the critique offered by Carline and Pearson, (2007).

⁶⁷⁹ For the feasibility of such programmes, see, J Vedsted-Hansen, 'An Analysis of the Requirements for Voluntary Repatriation', *International Journal of Refugee Law* 9, no. 4 (1999), 559.

⁶⁸⁰ Pearson, 'Human Traffic, Human Rights: Redefining Victim Protection', 60.

victims need to be ‘transformed’. These recommendations, as suggested by Loizidou’s insights, reflect gender and social conformity, and also visualise the efficient reintegration of women in the national labour market:

Particularly in the Balkans repatriation consists of transit assistance, legal information, assistance with the border police, accommodation, in some cases transportation to their homes and reunification with families, vocational training, psychological support medical treatment and legal assistance, with the aim to help victims recover and reintegrate.⁶⁸¹

In relation to Southeastern Europe, the sex/gender heteronormative functions are intertwined with the fantasy of the ‘Other’ described by Kapur. Therefore, the passages offer enough information to imagine the victim – Other – and justify the enactment of measures that target not the subjects’ ‘transformation’ but the subjects’ appropriation based on a set of standards that are ‘practical’ for the preservation and reproduction of the current historic moment. The measures pertinent to repatriation have been considered of vital importance because they involve local organisations in countries of origin, international organisations and state initiatives. In this respect they are characterised by ‘a holistic approach to return and recovery’,⁶⁸²

for the protection, return and reintegration of trafficked women and children in Albania, Bosnia and Herzegovina, FYR of Macedonia [FYROM], Kosovo, Serbia and Montenegro. The project aims to assist victims in need of return and reintegration assistance with pre-departure counselling, and transportation to their home countries. On their arrival and depending on their needs, victims are temporarily lodged in safe shelters, if available. In cooperation with NGOs, psychological and social assistance services are offered to facilitate their reinsertion process into their families as well as access to vocational training and/or employment orientation courses.⁶⁸³

⁶⁸¹ Apap and Medved, 'Protection Schemes for Victims of Trafficking in Selected EU Member Countries, Candidate and Third Countries', 26-7.

⁶⁸² Pearson, 'Human Traffic, Human Rights: Redefining Victim Protection', 11, 61.

⁶⁸³ Apap and Medved, 'Protection Schemes for Victims of Trafficking in Selected EU Member Countries, Candidate and Third Countries', 30-1.

Conclusions

Starting with the aspirational expressions of human rights language, this chapter has explored how human rights discourses have been deployed in the anti-trafficking context. The human rights idea found its contemporary expression in the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948, and in the numerous covenants and conventions derived from it. Since then, it has been maintained that human rights law speaks to people who appeal to its standards against what they regard as unwarranted state intrusion into their lives.⁶⁸⁴ It provides, therefore, ‘a language, a methodology, and techniques for challenging state action’.⁶⁸⁵

Historically, challenging state action has taken different forms, and rights have been configured in discussions of legal, political, sociological, ethical and moral nature.⁶⁸⁶ In Sophocles’ play *Antigone*, the title character, upon being approached by King Creon for defying his command not to bury her slain brother, asserts that she acted in accordance with the immutable laws of the gods. Ever since, *Antigone’s* narrative has been the basis for critical dialogue on state authority, rights, gender and justice.⁶⁸⁷ This particular narrative is useful as it exemplifies the underlying morality and theological influence of Hellenism, which have been of certain significance in the development of the contemporary rights discourse shaped by the values of Judaeo-Christian morality,⁶⁸⁸ natural law

⁶⁸⁴ C Chinkin, 'Sources' in *International Human Rights Law*, D Moeckli, S Shah, and S Sivakumaran eds. (Oxford & NY: Oxford University Press, 2010), 122-3.

⁶⁸⁵ *Ibid.*, 123.

⁶⁸⁶ L Henkin, *The Age of Rights* (NY: Columbia University Press, 1990), 1-2.

⁶⁸⁷ See, e.g., G Hegel, *Phenomenology of Spirit* (Oxford: Clarendon Press, 1977); L Irigaray, *An Ethics of Sexual Difference* (London: Athlone Press, 1993); J Butler, *Antigone's Claim: Kinship between Life and Death* (NY: Columbia University Press, 2000).

⁶⁸⁸ M Weber, *The Protestant Ethic and the Spirit of Capitalism* (London & NY: Routledge, 1992), 3-50.

principles and political theories associated with the rationalism of the French and American revolutions.⁶⁸⁹

In spite of the historic and political value inherent in the rights language, my focus has been on the various ways that human rights have been deployed in the anti-trafficking context. Through the examination of anti-trafficking discursive formations I have shown that human rights are configured as tempering or correcting the criminal law. By inserting elements that have been missing so far, such as the focus on victims, the focus on women, and by inventing practices that are considered to be either victim-centred, or indeed, women-centred, the human rights approach promises to eradicate trafficking by mobilising a more holistic approach. It is within this approach that heated debates have taken place in relation to the particular effects of human trafficking. It is also within this approach that the issue of the root causes of trafficking in women has given rise heated debates. However, the focus of these has been to reassert criminalisation and securitisation measures, and therefore, to conceal other avenues and options.

Lastly, and with sincere concern, I have turned to the production of particular forms of subjectivity. I have explored important arguments with regard to subject (and inevitably, gender-) formation and I have argued that in the context of trafficking victimisation, one can trace the reproduction of rather specific, normative forms of subjectivity. These reproductions of normative forms of subjectivity provide fertile ground for the exploration of anxieties in relation to the capital's need for valorisation at a given moment.

Ultimately, the functions of the rights language are multiple, and they have all been mobilised towards reinforcing the 'anti-trafficking promise': once

⁶⁸⁹ Charlesworth and Chinkin, (2000), 202; Gearty, (2006), 21-5.

criminalisation and human rights are properly balanced and stabilised, then victims' concerns will also be suitably addressed, and victims will be properly secured. Finally, as a result, trafficking could be abolished. To move our discussion forward, in the next chapter I investigate these anxieties further, through the magnifying glass of the Greek case study.

Part II

Methodological Note

The Greek Case Study: Generalisable or Unique

In the use of case studies one question, on which a great deal of discussions has centred, concerns the *external validity* or *generalisability* of case study research: ‘[h]ow can a single case possibly be representative so that it might yield findings that can be applied more generally to other cases?’⁶⁹⁰ My investigation of the Greek case study, as previously mentioned in the Introduction, is central in exploring the re-articulation of the antithesis between a criminalisation and a human rights approach in anti-trafficking. This is because the specific official documents deriving from the Greek anti-trafficking sources offer an invaluable insight into the pertinent manifestations in this, admittedly, narrow socio-legal context (e.g., knowledge - institutions, language, structures, patterns). As related research has been conducted in other national contexts,⁶⁹¹ the Greek case study by no means does it claim that the findings of this case are *generalisable* to all national contexts.

Besides, the official or quasi-official character of the documents analysed suggests that caution is necessary in attempting to treat them as depictions of ‘reality’. And in that sense, the issue of representativeness⁶⁹² arises for those that would consider that a single case or a group of cases could be representative of the

⁶⁹⁰ Bryman, (2004), 51.

⁶⁹¹ See, e.g., H Konrad, 'Trafficking in Human Beings: A Comparative Account of Legal Provisions in Belgium, Italy, the Netherlands, Sweden and the United States' in *Trafficking and Women's Rights*, C Van den Anker and J Doornik eds. (London & NY: Palgrave Macmillan, 2006); Munro, (2005); Munro, (2006); Apap and Medved, 'Protection Schemes for Victims of Trafficking in Selected EU Member Countries, Candidate and Third Countries'.

⁶⁹² By ‘representativeness’ Alan Bryman describes the applicability of the official documents obtained from the research field in wider contexts. To that extent whether a case study is generalisable is also related to the applicability of the textual material, see, Bryman, (2004), 48-52, 381-8.

whole. I find this issue, however, inapplicable to my case study, because it is well-established that in qualitative research the question of whether the case itself is representative 'is not a meaningful question, because no case can be representative in a statistical sense'.⁶⁹³ Then, what implications does this have on my case study?

Despite the fact that the Greek case study does not have a general applicability, I trace some commonalities between the Greek case study and other cases.⁶⁹⁴ I, also, find some inevitable relevance between the international and European anti-trafficking structures, previously explored under Part 1, and the Greek anti-trafficking structures. I cannot limit this relation to a comparison, though, because that would imply that imaginary penalties, in their tactic circulation and distribution, are units disconnected from one another. Insofar as features of comparison are not the direct intention but an inevitable function, among many, this case study, then, has sought to gain a greater awareness and a deeper understanding of social reality in this particular, national, imaginary penalty.⁶⁹⁵

In that respect, a striking link between national and international anti-trafficking structures is identified. This link attests to the fact that both national and international structures are dominated by a disciplinary ethos and by security concerns, which places the responsibility for reform/change/re-imagination away from the institutions and their constraints, and squarely upon the imaginary freedom of action imputed to anti-trafficking actors. This link has largely been animated by transnational flows of normative and normalising anti-trafficking,

⁶⁹³ *Ibid.*, 387.

⁶⁹⁴ See, e.g., the case of Spain where NGOs and religious organisations are to some extent funded by the government to assist victims of trafficking, in Apap and Medved, 'Protection Schemes for Victims of Trafficking in Selected EU Member Countries, Candidate and Third Countries', 80. See, also, the common policy initiatives with Albania, in *ibid.*, 21-31.

⁶⁹⁵ It is an informed decision not to compare two or more countries and to use the Greek case as a field of intensive analysis, see Bryman, (2004), 52.

criminalisation, security and human rights discourses. Hence, it is re-affirmed that the concept of imaginary penalties, which has informed the analysis so far, has been based on the assumption of the universal applicability of these anti-trafficking, criminalisation, security and human rights discourses in the first place.⁶⁹⁶

From all the above it becomes evident that the initial ‘innocent’ methodological question of generalisability of the case and the question of the representativeness of the official documents are both constituent of the question of whether the case study is representative and applicable to wider contexts. Simultaneously, if one focuses solely on these questions, without acknowledging the re-productive functions of imaginary penalties, she/he excludes from their analyses the crucial assumptions of the universal applicability of the contemporary anti-trafficking discourses and technologies. In this specific way I chose to utilise the Greek case study and my decision was also based on a few crucial practical considerations.

Practical Considerations

The initial selection of Greece as my case study was not merely dictated by geopolitical considerations. It is well-known, for instance, that Greece has been both a destination and a transit European country for women victims of trafficking.⁶⁹⁷ It is also well-known that Greece is an external Southeast European border, at the crossroads of east and west and with a rugged coastline and a multitude of islands. Since the 1990s, Greece is also well-known for being a

⁶⁹⁶ See, A M Jefferson, 'Imaginary Reform: Changing the Postcolonial Prison' in *Imaginary Penalties*, P Carlen ed. (Devon & Oregon: Willan Publishing, 2008), 166.

⁶⁹⁷ See, e.g., US, 'Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report', US Department of State, 2002; US, 'Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report', US Department of State, 2003.

popular destination for illegalised migrants.⁶⁹⁸ During the same period, Greece has been importantly represented as ‘the centre of trafficking in Europe’.⁶⁹⁹ Beyond these prevalent elements that make the Greek case study interesting, I focused on Greece because it presents a twofold additional challenge.

Firstly, once anti-trafficking was understood as investing not only on the criminalisation, but also on the victims’ protection dimension of penalty, it immediately posed some uncomfortable questions to the Greek government, revealing the lack of a national victim support service. This gap, notably, never came to the fore of international criticism, even though the Greek victim protection schemes were repeatedly scrutinised. Secondly, while extensive research has covered the emergence of gendered protection schemes for victims of trafficking in other EU member countries and globally, only a few accounts have been offered for Greece and fewer have attempted to critically engage in unpacking the anti-trafficking project in this context.

Consequently, my decision to focus on Greece and, in particular, to preserve the focus on documentary sources has also been informed by these practical issues that highlight the importance of the specific point when the Greek anti-trafficking mechanisms emerged.

The Greek Anti-trafficking Mechanisms

By using the term ‘anti-trafficking mechanisms’ I predominantly refer to the formation of the anti-trafficking task force at the Hellenic Ministry of Public

⁶⁹⁸ See, e.g., M Pavlou, 'The Migrants 'Like Us': Responses to the Migratory Phenomenon in Greece and in Europe' in *Greece of Migration. Social Participation, Rights and Citizenship*, M Pavlou and D Christopoulos eds. (Athens: Kritiki, 2004); V Karydis, 'The Issue of Second Generation: Crime and Migration' in *Greece of Migration. Social Participation, Rights and Citizenship*, M Pavlou and D Christopoulos eds. (Athens: Kritiki, 2004).

⁶⁹⁹ A Hötzeltdt, 'Prevention and Fight against Trafficking: Institutional Developments in Europe, Greece Report', Berlin Institute for Comparative Social Research (BIVS), 2003, 2.

Order (merged in 2007 with the Ministry of Interior and renamed in 2009 as the Ministry of Citizen Protection), a network of NGO elements which were to be absorbed, coordinated and mediated in anti-trafficking actions, and lastly, the enactment of the anti-trafficking legislation, Law 3064/2002, and its executive, Presidential Decree 233/2003, on arrangements of victim protection.

While the emergence of the new anti-trafficking regime marked a distinct theoretical break with the conventional Greek criminal law punitive tradition, it is inaccurate to assume that both the trafficking in women project and the anti-trafficking project were neutral, ‘practical’ attempts to define and subsequently solve the problem of trafficking; such a ‘neutrality’ is typically assumed in the existing literature.⁷⁰⁰ It is also rather simplistic to reduce issues surrounding the application of global standards to no more than practical difficulties of implementation or even to continuing national differences in the way that international human rights instruments have been understood and used.⁷⁰¹ To the contrary, my reading of the official texts identifies a set of complex, antagonistic, fragmented and heterogeneous discourses that animated structured sites of social institutions. My analysis, then, sets out to expound the conditions, motivations and assumptions that were inscribed within these discourses and constructed the 21st century re-emergence of trafficking in women.

⁷⁰⁰ See, e.g., I Emke-Poulopoulos, 'Trafficking in Women and Children: Greece, a Country of Destination and Transit', in *Mediterranean Migration Observatory Series (MMO Working Paper No. 2)* (Athens: Institute for the Study of the Greek Economy (IMEO) and Greek Society of Demographic Studies (EΔHM), 2001); N Lyraraki, 'Come and Live Your Myth in Greece? Trafficking in Women for the Purpose of Sexual Exploitation' (BSc Dissertation, University of Maastricht 2007); G Lazos, *Prostitution and Transnational Trafficking in Modern Greece 1. The Prostitute* (Athens: Kastaniotis, 2002a); G Lazos, *Prostitution and Transnational Trafficking in Modern Greece 2. The Client* (Athens: Kastaniotis, 2002b); G Lazos and with the assistance of M Zanni, 'Trafficking in Greece in 2002', (Athens: StopNow - KEDE 2003).

⁷⁰¹ See, e.g., Nelken, (2010). Segrave, Milivojevic, and Pickering, (2009).

Greek Anti-trafficking Success and Failure

At first glance, the emergence of domestic anti-trafficking structures has been described as ‘the fight against human trafficking a way of moving toward more global justice’.⁷⁰² The dominant narrative of the Greek structures, in particular, has frequently been reduced to the official discourse of either ‘failure’ or ‘success’. The first ever US Trafficking in Persons Report of July 2001, for instance, reported that the Greek Government failed to set legal provisions and meet the minimum standards against trafficking.⁷⁰³ The Greek draft legislation, however, was successfully introduced only months later, in March 2002; an event that was widely applauded by both national and international actors.⁷⁰⁴ To that extent, the dominant narrative often reaffirmed a progressive narrative.

Gradual legislative steps were reinforced by empirical knowledge and practice. The initial failure was followed by success, stability and occasional setbacks, in a slow, but steady, process that pushed forward the transition toward a properly global order. The underlying assumption of this narrative had been that anti-trafficking set the very conditions of meeting desirable or envisioned international - translated into national - objectives. The partial ordering of the Greek domestic law, then, led back necessarily to the applicability, universality and objectivity of the international ordering, which set these objectives in the first place.

⁷⁰² See, for instance, Nelken, (2010), 479, 500-1.

⁷⁰³ See, US, 'Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report', 86.

⁷⁰⁴ See, Lazos and Zanni, 'Trafficking in Greece in 2002', 5; US, 'Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report', 71; HRW, 'Greece: Recommendations Regarding the Draft Law for the 'Fight against Trafficking of Human Beings and the Provision of Aid to the Victims of Crimes Related to the Financial Exploitation of Sexual Life"', 2002.

Official Discourse and Actors in Greece

This initial ‘success or failure’ observation fuelled my subsequent concerns, which are the subject of this second part. Leaving aside the question ‘success or failure?’, I sought to explore the conditions under which anti-trafficking was crystallised as a desirable, official narrative. In engaging with these conditions, my analysis considered the ‘Official Discourse’ tradition, according to which: ‘the discourse’s conditions of existence, the original site of its desirability, are created by the functioning of the state apparatuses’.⁷⁰⁵ State legal apparatuses, accordingly, have constructed the original site of anti-trafficking, expressed through a discursive network, an association between institutions, economic and social processes, systems of norms and scientific analyses/knowledge.⁷⁰⁶

From that diffuse discursive network, I set aside the most prominent institutions and actors in this context that attempted to import and implement anti-trafficking knowledge, upon introduction of the very first Greek anti-trafficking legislation, Law 3064/2002.⁷⁰⁷ Along with international and national legal developments and their preparatory and explanatory reports, I also considered political texts, parliamentary proceedings, policy overviews, action plans and media representations as crucial expressions of the anti-trafficking structures. The texts were codified with a commitment to exploring the ways that ‘knowledges – the social construction of people, phenomena or problems – are linked to actions’.⁷⁰⁸

As a result of systematic engagement with the material and my initial set of questions, which were relevant to the composition of forces in the anti-trafficking

⁷⁰⁵ Burton and Carlen, (1979), 34-5.

⁷⁰⁶ See, Part I. Methodology; See, also, Foucault, (1991), 104-31; Hardt and Negri, (2001), 22-7.

⁷⁰⁷ See, also, Introduction.

⁷⁰⁸ R Gill, 'Discourse Analysis' in *Qualitative Researching with Text, Image and Sound. A Practical Handbook*, M Bauer and G Gaskell eds. (London & LA: Sage Publications, 2007), 173.

muscle, three main discursive terrains re-emerged: criminalisation, security and human rights. That framework, I argue, has been applicable to both national and international contexts; its aim, however, has not been to limit our vision of the multiplicities of forces and subjects produced. In fact, it has set out to trouble the illusion of static-ness of anti-trafficking. To untangle these multiplicities, my analysis has depended again on the concept of ‘imaginary penalties’ as a tool that fleshes out the transcendental force of global security grounded on its performative operation between criminalisation and human rights.

For the most part, my interaction with institutions and actors was established through an initial single point of contact, either a group representative or the dominant figure that was more experienced in reflecting the institution’s clear ideological lines. It is then these individuals that enabled my access to anti-trafficking documentary sources. The possible methodological significance of this approach lies on the reflection of the *ad personam* composition of the groups (particularly the NGOs). Yet, this limited interaction with key actors decisively influenced my approach to examine anti-trafficking perceptions of trafficking victimisation through the shades of gender. Since, it was during my visits for the purposes of obtaining research material that it became apparent that gendered preconceptions were informing of what ‘we’ (actors and researcher) knew about victims. This shared knowledge about gender.

The Gender of Anti-trafficking

The ‘woman victim’ in anti-trafficking has become a concept by which cultural viability is achieved. Whether we talk about legal regulations and enforcement or about gendered victim services that have been set up in order to respond to this

concept, the official texts have decisively informed of what the concept ‘woman victim’ might mean. This has served as a reminder that at the same time that the trafficking story was taking place, another parallel narrative was unveiling a gender story. In practice, while through the anti-trafficking tripartite discursive constructions I was looking for patterns, through the gender story I was looking for functions. Below I explain how the analysis of these gender functions opened up a space for uncovering anti-trafficking negotiations and exclusions.

The relevance of sexuality to the formation of gender has been, of course, the groundwork of much feminist analysis.⁷⁰⁹ Thereafter, if we accept the commonly made assumption that gender discrimination is one of the root causes for trafficking in women,⁷¹⁰ then surely we also accept that the way we read anti-trafficking must be somehow linked to sexuality. The dominant narrative implicitly verifies that it has been in the context of heteronormative sexual exchanges that the demand for victims of trafficking flourishes.⁷¹¹ This is rather problematic since it either suggests that heterosexual norms are inherently wrong, and, therefore, impose exploitative conditions or that we need to look more carefully behind the way that these norms operate and construct gender in this current historical context.

Assuming the latter, my present analysis has interrogated further the current historical context through discursive constructions in order to see what anti-trafficking has made of gender. Thus, it has purposefully acknowledged, but then

⁷⁰⁹ For instance, A Rich, 'Compulsory Heterosexuality and Lesbian Existence', *Signs* 5, no. 4 (1980), 631; S Ali, "To Be a Girl": Culture and Class in Schools', *Gender and Education* 15, no. 3 (2003), 269, 278. And in the work of Judith Butler, see, e.g., J Butler, *Gender Trouble: Feminism and the Subversion of Identity* (London & NY: Routledge, 1999).

⁷¹⁰ Caritas.org, 'Root Causes of Human Trafficking', n.d.

⁷¹¹ Outshoorn, 'Introduction: Prostitution, Women's Movements and Democratic Politics', 3. See, also, Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197 (2005), article 6 – 'Measures to discourage the demand'.

put away, a set of questions surrounding sex work and women – for instance, ‘are women real victims or sex workers?’, ‘is trafficking a different punitive route to criminalising sex work?’ and so forth. Even if the engagement with these questions is a crucial and enormous task, my position has not been to give a definite answer to these questions but rather to engage with the answers already provided by diverse actors that participate in the law-making and enforcement processes. Fundamentally, my urging concern has been to understand how gender becomes intelligible within these questions and how gender becomes the cultural consequence of these very questions.

As such, ‘woman victim’ is then entangled within anti-trafficking constructions, elevated and regulated as a political tool. The very viability of the ‘woman victim’ as a political tool is based, however, on inequality, exclusion (either singular or polarised articulations) and silence. Among the political functions of this tool, my focus has been on texts that excoriated the architects of a crisis that apparently threatened national structures. The nature of the threat posed by victimhood has been discursively constructed and made persuasive. What this analysis does suggest is that insofar as ‘that very viability is itself the consequence of a repudiation, a subordination, or an exploitative relation, the negotiation [in this context, of the constitutive anti-trafficking constraints] becomes increasingly complex’.⁷¹²

⁷¹² Butler, (1993), 117-8.

Chapter 5

Imaginary Anti-Trafficking: criminalisation in Greece

Introduction

This chapter visits the Greek anti-trafficking story and interrogates the conditions under which trafficking in women was constructed as a threatening problem that required an immediate legislative response. I examine the functions of trafficking, perceived as a rupture in the Greek ‘law and order’, and the consequent state response to it.⁷¹³ From previous complete invisibility, trafficking in women, during the years 2002 and 2003, gained particular prevalence and it was commonly depicted as reaching unprecedented levels.⁷¹⁴

To respond to this threat, Greece took the initiative to form an assemblage of powers – mostly state actors, but also NGOs, in order to confront and combat trafficking. The primary target set by Greece was to put together a strong penal framework, in 2002, which was later boosted by becoming operational within the framework of the EU ‘Action Plan on Trafficking in Human Beings’, as of December 2005. Within this framework, the Greek response focused mainly on the legal aspects of human trafficking, and also, on illegalised migration, sex work and organised crime, attributing secondary significance to social causes and to social problems arising from trafficking.⁷¹⁵

⁷¹³ According to the Europol Convention, article 2(2), Europol shall initially act to prevent and combat, among other offences, unlawful ‘illegal immigrant smuggling’ and the specific ‘trade in human beings’. Greece, among the other European States, adopted the Convention in 1998. See, also, Chapters 2 and 3.

⁷¹⁴ Lazos, (2002a); Lazos, (2002b); K Giannetou, 'Human Trafficking: A Form of Transnational Organised Crime', *Policy Briefing* ISTATE, no. 10 (2011).

⁷¹⁵ G Lazos, 'Greece. Peer Review. Social Aspects of Human Trafficking', 2007.

In the context of this punitive harshness, a set of political demands for increased convictions, more police operations, stricter controls and ‘zero tolerance’ against illegalised migration was also prioritised.⁷¹⁶ During the years under investigation, the Hellenic Police, by maintaining a dominant role, has been responsible for designing the specific anti-organised crime policy targets, in areas that involved both criminalisation and victimisation. To a large extent, then, the social reproduction of control has been upholding the foundations of this new anti-trafficking design. This anti-trafficking design has been rather precise: the only means capable of constituting the anti-trafficking promise is the realisation of the potential for an ever-expanding criminalisation. This could be (and it was, even, designed to be) applicable to both criminals and victims. For instance, women victims of trafficking, in order to enjoy the benefits of support by the Greek state, were obliged to cooperate with the police. Alternatively, they were obliged to participate in a ‘voluntary’ repatriation programme.⁷¹⁷

As such, recalling the victim-centred approach examined earlier, in Chapter 4, in this context, victims have been utilised as a mere, tactic mechanism of the penal state, in an effort to increase convictions. The underlying culture of criminalisation, then, has set out the very conditions through which subjects have been seen and ‘valued’ as a tool to meeting punitive targets. Hence, my analysis explores this contemporary state response to trafficking, which has primarily focused on criminalisation. Simultaneously, human security, victimisation and the protection of human rights have been reduced to a second priority issue. Low efficiency, low effectiveness, corruption and indifference are commonly attributed factors that seem to apply to this lack of prioritisation. In addition, a rather

⁷¹⁶ On ‘zero tolerance’ see, Chapter 2.

⁷¹⁷ For a discussion on ‘cooperation in exchange for protection’ and repatriation, see, also, Chapter 4.

complex system of actors perplexes the Greek anti-trafficking solution further, while it suggests that *if only* the criminal law is properly adjusted and enforced in an uncorrupted manner, trafficking could be abolished. In which case, the ‘problem’ of the victims of trafficking could also be eliminated.

In what follows, I begin from an obvious point by providing an overview of the Greek anti-trafficking structures. After this, I review the legislative framework that currently applies to trafficking in women. To this, I seek to explore a set of central issues pertinent to the implementation and enforcement of the relevant legislation. Once more, a network of inter-related threats strengthens the ‘obligation to combat’. In this context, it is not clear, however, whether the ultimate target is to criminalise trafficking (the offence) or traffickers (the perpetrators) or women (the victims). The previously explored, in Chapter 2, criminalisation approach to trafficking in women, at this point, articulates a slightly modified ‘anti-trafficking promise’: not only does it declare that trafficking will be eliminated by anti-trafficking measures, but it also asserts that the protection of the nation can be achieved by the firm application of harsher punishments. Importantly, this promise is controversial in, firstly, the particular kind of conduct that is denounced as a public wrong, and secondly, in constructing the threat of illegalised migration as the main criminogenic factor in contemporary Greece. I offer my own critique of criminalisation, of its dominance and of its blurred boundaries in the construction of the Greek ‘anti-trafficking promise’.

What Ought to be Criminalised: the formation of OKEA

This section revisits what is to be criminalised in the context of anti-trafficking actions in Greece. With the emerging ‘threats’ in the European context previously investigated,⁷¹⁸ notions of security are over-determined founded upon certain gendered anxieties and national investments, in the context of Greece. Far from merely transgressing dominant frames, criminalisation in context should be read for national resonances. The demand for ‘more convictions’, as an index of governmental efforts, is evident in the official discourse. This is also evident in the pertinent academic debates and, most importantly, in the formation of the new, and very first, task force in the field of anti-trafficking action.

The official discourse, expressed through political and governmental anti-trafficking actors, sustained that, since the early 1990s, Greece has been transformed from a country of emigration (origin) to a popular migratory destination.⁷¹⁹ ‘Comparing to its population, it appears to have the highest number of migrants in the European Union’.⁷²⁰ This shift was attributed to Greece’s strategic geographical position, situated at the intersection of three continents – Europe, Asia and Africa – at the Southern tip of the Balkan Peninsula, and in its role as the South-Eastern, external border of the European Union.⁷²¹ Two crucial factors were also considered. On the one hand, the high standards of living, the levels of Europeanisation, and importantly, the economic development of Greece were extensively discussed. On the other hand, the more general, political changes

⁷¹⁸ See, Chapters 2 and 3.

⁷¹⁹ Hellenic Parliament, 'Explanatory Report, Law 3386/2005 'Entry, Stay and Social Integration of Third Country Nationals in Greece'', (Athens: Hellenic Parliament, 2005). [- signed by the competent Ministers of Internal Affairs, Public Order, Health and Social Solidarity, Education and Religion, and Finance.]

⁷²⁰ *Ibid.*

⁷²¹ Europol has also identified the extensive use of the southern coasts of Greece (along with Italy and Spain) as being of special concern in relation to illegal immigration and trafficking, see, Bruggeman, 'Illegal Immigration and Trafficking in Human Beings Seen as a Security Problem for Europe', 2.

in the Balkan region, and in the former socialist states, were considered.⁷²² Greece, then, at the beginning of the 21st century was regarded as a ‘labour-importing, country with legal and illegal immigrants coming from neighbouring countries, such as Albania and Bulgaria, as well as from countries situated as far away as the Philippines and Pakistan’.⁷²³ Particularly during the year 2000-2001, ‘illegal immigrants mostly from Asian destinations, fleeing war and poverty, have been attempting to enter the country by sea with a view towards settling in Greece, Italy or other European countries’.⁷²⁴

With the transformational power of these political, economic and migratory dynamics, and carrying the benefits of being a modernised European country, Greece was presented as a ‘magnet for many aliens, from East Europe and the Balkans, in search of better life conditions, who are, however, easily victimised by criminal organisations’.⁷²⁵ This statement has been further supported by statistical data and relevant reports issued by the Hellenic Police, according to which, ‘Greece is a major destination country of trafficking, for the purpose of sexual and economic exploitation’.⁷²⁶ With estimates of about seven billion euros trafficking profits, at international level, and six hundred million profits in euros, in Greece, it was estimated that between the years 1990 and 2000, eighty thousand women and children from Eastern Europe were incorporated in the Greek sex industry, with

⁷²² Hellenic Parliament, 'Explanatory Report, Law 3386/2005 'Entry, Stay and Social Integration of Third Country Nationals in Greece'.

⁷²³ IOM, 'Final Report on Trafficking in Unaccompanied Minors, Greece 2000', International Organisation for Migration, 2002.

⁷²⁴ *Ibid.*; N P Glytso and L T Katseli, 'Greek Migration: The Two Faces of Janus' in *European Migration: What Do We Know?*, K F Zimmermann ed. (Oxford: Oxford University Press, 2005).

⁷²⁵ Hellenic Police, 'Informational Note: Actions of the Ministry of Interior and the Hellenic Police for the Combat and Prevention of Human Trafficking', (Athens: Hellenic Police, Attica Department, Vice Division, 2008a).

⁷²⁶ *Ibid.*

the use of deceit, coercion or violence.⁷²⁷ Within this context, the Ministry of Citizen Protection (formerly known as the Ministry of Public Order) and the Headquarters of the Hellenic Police⁷²⁸ declared anti-trafficking as a priority for all the pertinent services of the Hellenic Police.⁷²⁹ In 2004 the Deputy Minister of Foreign Affairs was, also, endorsing the anti-trafficking initiative: ‘we are aware of the [trafficking] problem, it is among our priorities. Precisely because we are sensitive to the issue, we are confronting it. We are spearheading a war against trafficking, and we are sharing these [anti-trafficking] objectives with civil society actors’.⁷³⁰

All consequent actions were directed and coordinated by the Public Security Directorate. Notably in April 2001 with a Joint Ministerial Decision by the competent Ministries of Interior and Public Order, a Special Inter-ministerial Committee Against Trafficking in Human Beings, ‘OKEA’ (Group for Combating Human Trafficking – *Omada Katapolemisis Emporias Anthropon*), was established. This is a special task force on human trafficking, the first ever in the Greek context, and it is unique up to the present. The nature of OKEA is of major importance, as it is an inter-ministerial and inter-scientific work group, presided over by the Chief of the Hellenic Police, in which high-ranking and specialised officers of the Hellenic Police, scientists and representatives of the competent ministries of Internal Affairs, Justice, Health and Social Solidarity, Employment and Social Protection, the General Secretariat for Gender Equality (Ministry of

⁷²⁷ M Damanaki, 'Trafficking – Slavery: The New Form of Violence against Women', (Hellenic Parliament [archival information], n.d.).

⁷²⁸ For an account of the historic formation of the Hellenic Police, see the analysis offered by Konstantinos Gardikas, K Gardikas, *Criminology. Volume 2 the Police (Astynomiki)* (Athens: Sakkoulas Publications, 2001).

⁷²⁹ See, e.g., Hellenic Police, 'Two Years of Cooperation of the Anti-Trafficking Department, of the Subdivision for Combating Organised Crime', (Athens: Hellenic Police Headquarters, 2008c).

⁷³⁰ E Stylianides, 'Press Conference on Human Trafficking', 2004.

Interior, Public Administration and Decentralisation) and the International Organisation for Migration participate as members. The foremost objectives set by this establishment have been, primarily, the introduction of a legal framework and, at a secondary level, the provision of information (aiming at raising awareness) and the submission of a proposal for the establishment of competent services.⁷³¹

Based on suggestions drafted by OKEA, the important anti-trafficking legal instrument, Law 3064/2002, was enacted in 2002. Law 3064/2002 was presented as a ‘pioneering and effective tool for the *combat* of this phenomenon’.⁷³² Gradually, since 2004, the language of *war* and *combat* has been further established by the implementation of a highly significant National Plan of Action against trafficking in human beings, which became operational under the code name ‘ILAEIRA’. The primary objectives of this have been stated as the coordination ‘for cross-border and inter-regional cooperation and operational action of police services in the countries of S.E. [South East] Europe’.⁷³³

To summarise, so far the official discourse injected a considerably powerful discourse of *combat*. This reflected the previously explored concept of the ‘war on trafficking’. However, at that point, it was proclaimed that ‘suddenly’ trafficking emerged as a serious organised crime, based not only on the exacerbation of trafficking due to the new migratory flows, but rather on the evolution of organised criminality in Greece. The long international anti-trafficking tradition is,

⁷³¹ Hellenic Police, 'Informational Note: Actions of the Ministry of Interior and the Hellenic Police for the Combat and Prevention of Human Trafficking'.

⁷³² *Ibid.*

⁷³³ E Tsoumani, 'Introductory Statement by the Head of the Greek Delegation, Secretary General for Gender Equality, Ministry of Interior, Public Administration and Decentralization, on the Sixth Periodic Report of Greece Submitted under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women under Consideration by the UN Committee on the Elimination of Discrimination against Women', (New York 2007), 4-5.

then, translated in Greece as an anti-trafficking discursive capsule, which was imagined and materialised under the conditions described.⁷³⁴

The emergence, therefore, of anti-trafficking, as an imaginary Greek penalty gives evidence in support of three main elements so far: 1) the stated Europeanisation aims to make implicitly evident that Greece acts under specific international and regional obligations and must adapt its legislation to the international and European standards; 2) the Hellenic Police has been instituted as the primary competent governmental authority to design anti-trafficking actions, which renders it impossible to dismiss questions of the nature of this design, imagined by policing structures, as pertaining to the repressive core of the state;⁷³⁵ 3) the issue of (illegalised) migration has been elevated to one of the main root causes of trafficking, while the sex industry has been presented as the focal point of exploitation and the key underlying 'demand' factor.⁷³⁶ From the developments investigated above, the provision of victim services has significantly been under-represented, implied and integrated within a criminalisation framework, and yet, not explicitly prioritised as a matter of critical national interest.⁷³⁷

⁷³⁴ See, Chapters 2, 3 and 4.

⁷³⁵ See, G S Rigakos and G Papanicolaou, 'The Political Economy of Greek Policing: Between Neo-Liberalism and the Sovereign State', *Policing and Society: An International Journal of Research and Policy* 13, no. 3 (2003), 271. And in relation to the study of the Hellenic Police reflecting relevant ideologies, see, E Lambropoulou, 'Crime, Criminal Justice and Criminology in Greece', *European Journal of Criminology* 2, no. 2 (2005), 211; E Lambropoulou, 'Citizens' Safety, Business Trust and Greek Police', *International Review of Administrative Sciences* 70, no. 1 (2004), 89; S Vidali, *Crime Control and State Police: Ruptures and Continuities in Crime Policy (Vols. A & B)* (Athens & Komotini: Sakkoulas Publications, 2007).

⁷³⁶ See, e.g., Hellenic Police, 'Criminality in Greece. Patterns and Evolution in Recent Years (1991-2007)', (Hellenic Police Headquarters, 2007).

⁷³⁷ This was the main point of criticism on the draft law 3064/2002 offered by NGOs in Greece, in particular, by the Feminist Centre of Athens, which draw a relevant report signed by twelve NGOs. See, Feminist Centre of Athens, 'Draft Law on 'Combating Human Trafficking, against Sexual Exploitation, Pornography in Minors and Generally Economic Exploitation of Sexual Freedom and Protection to the Victims of Such Acts'', (n.d.).

Criticism

The main criticism that this imaginary penalty has received is that even though it focuses, almost solely, on criminalisation, the number of convictions is ‘alarmingly low’, or indeed, ‘alarmingly lenient’.⁷³⁸ The Committee on the Elimination of Discrimination against Women, after examining Greece’s implementation of its obligations under the UN Convention against All Forms of Discrimination against Women, in 2007, raised important concerns about the ‘persistence of trafficking in women and girls and about the insufficient enforcement of legislation on trafficking’.⁷³⁹ This has apparently been an ongoing point of criticism; its prominence and frequent occurrence are remarkable in the Greek case study. Coming from diverse actors, this criticism has aimed to imply that the levels of corruption and the prevalence of ‘state organised crime’ perhaps have eroded the criminal justice mechanisms.⁷⁴⁰

To this, one of the most influential forces of international criticism, the US TIP reports, has repeatedly stressed this conceptual paradox, and has offered a possible explanation, according to which ‘corruption among police and border control is a major problem’.⁷⁴¹ The same reports have underlined that even though the victims appear to have a use-value as witnesses, and therefore, their role is regarded as instrumental in criminalisation, the ‘government does not provide

⁷³⁸ Greek Helsinki Monitor, 'Action 1. Report on Domestic Violence and Trafficking of Women in Greece, Annex Trafficking of Women', (Athens: GHM, 2007). M Delithanassi, 'Traffickers, Meaningless Prosecutions', Kathimerini, 25/02/2007. Also, pertinent to the issue of ‘effective prosecutions’, see, e.g., Amnesty International, 'Greece: Uphold the Rights of Women and Girls Trafficked for Sexual Exploitation', 11.

⁷³⁹ See, CEDAW, 'Concluding Comments of the Committee on the Elimination of Discrimination against Women: Greece. 02/02/2007', (CEDAW/C/GRC/CO/6, 2007).

⁷⁴⁰ With the Greek economic crisis of 2011-12, popular criminalisation and security discussions have focused on Greek state crime, for a discussion that links the concept of organised crime and the official political system, see, P Kostakos, 'Greek Organized Crime: An Essentially Contested Concept', n.d.

⁷⁴¹ See, e.g., US, 'Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report'. Though, relevant data exist in multiple US TIP Reports.

shelters or services for trafficking victims, and an NGO that wanted to provide medical and psychological help to possible trafficking victims at governmental detention centres has been given only limited access'.⁷⁴²

Organised Crime, (Illegalised) Migration and Sex Work Threats

The academic debates in the field of anti-trafficking have mainly been preoccupied with the exploration of the obligation to combat. An accurate re-articulation of the official 'war on trafficking' discourse has been reflected in the pioneering research of Grigoris Lazos.⁷⁴³ The main body of his exploration involved the sex industry and its formation, according to Lazos, under the powerful influence of organised crime networks. Of foremost importance is the coincidental publication of the report 'Stop Now: Trafficking in Greece in 2002',⁷⁴⁴ with the legal and intelligence developments at the governmental level. Lazos's analysis as reflected in the Stop Now report considers the organisation of forced prostitution and the role of criminal networks as the primary form of trafficking in Greece. Organised crime, then, which had been considered to be unknown before the beginning of the 1990s,⁷⁴⁵ emerged in parallel with trafficking. Without underestimating the importance of domestic criminality, the report over-emphasises the role of immigrants both as victims and perpetrators. To this, its undivided attention is concentrated on 'trafficking and forced prostitution of immigrant women in Greece in 2002'.⁷⁴⁶

⁷⁴² US, 'Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report', 54.

⁷⁴³ The extensive scale of his research is reflected in the publication of two volumes on prostitution and trafficking in Greece, see, Lazos, (2002a); Lazos, (2002b).

⁷⁴⁴ Lazos and Zanni, 'Trafficking in Greece in 2002'.

⁷⁴⁵ G Antonopoulos, J Tierney, and C Webster, 'Police Perception of Migration and Migrants in Greece', *European Journal of Crime, Criminal Law and Criminal Justice* 16, no. 4 (2008), 353; Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece'.

⁷⁴⁶ See, 'study design' in Lazos and Zanni, 'Trafficking in Greece in 2002', 2-4.

Under the national criminalisation prism, what is to be criminalised is divided across class and ethnicity lines. This is not to say that it diverges from the analysis of the less specific, international level.⁷⁴⁷ It does make it possible, however, to conceptualise how along these lines trafficking in women, as a criminalisation category, was made meaningful, and how certain types of national investments were collaterally attached to gender and victimhood.⁷⁴⁸

Legal framework and criminalisation

The special anti-trafficking legislation introduced in the Greek Penal Code in 2002, with the L.3064/2002 (ΦΕΚ Α' 248/15.10.2002), as subsequently supplemented by delegated legislation and other specific provisions contained in L.3386/2005 (ΦΕΚ Α' 212/23.08.2005) on the status of third country nationals ('Entry, Stay and Social Integration of Third Country Nationals in Greece'), constitutes the Greek legislative step in a process of harmonisation of the domestic regime with the Framework Decision on Trafficking in Human Beings of 19 July 2002,⁷⁴⁹ and with international legal developments, specifically, the UN 2000 Anti-Trafficking Protocol.⁷⁵⁰ For the part that victims' protection is concerned, the Greek legal framework was seen as properly balanced and stabilised after the introduction of the Presidential Decree 233/2003 (ΦΕΚ Α' 204/28.08.2003),

⁷⁴⁷ See, Part I.

⁷⁴⁸ See, J Silliman, 'Introduction. Policing the National Body: Sex, Race, and Criminalisation' in *Policing the National Body. Race, Gender, and Criminalisation*, J Silliman and A Bhattacharjee eds. (Cambridge, MA: South End Press, 2002).

⁷⁴⁹ Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings OJEC L 203/1 (2002). As well as Directive 31/2000 on electronic commerce, 2000/31/EC OJEC L 178/17 (2000).

⁷⁵⁰ See, A Sykiotou, 'Gendered Criminality: An Attempt Towards a Critical Approach' in *Gendered Criminality: Penal and Criminological Approaches to Gender* N Kourakis ed. (Athens: Sakkoulas Publications, 2009). Perhaps it comes as a surprise the fact that Greece has signed but not ratified the UN Palermo Protocol. Greece has, also, signed but not ratified the Council of Europe Convention on Action against Trafficking in Human Beings.

issued in August 2003, which laid out the particular provisions regarding protection and assistance to victims.

Shifting the Legal Framework

The shift introduced by the new legal framework involved the amendment of Chapter 19 of the Greek Penal Code (articles 336 – 353, and in further relevance, article 322 – abduction, article 323 – slave trade, article 349 – pimping, article 351 – trade in humans). Furthermore, it added a new paragraph to article 323 (slave trade) of the Penal Code, entitled ‘Trafficking in Human Beings’ (article 323A). The new framework (article 323A) criminalised contemporary forms of human trafficking for the purpose of organ removal or for the forced or fraudulent exploitation of labour of trafficking victims, as a specific form of crime, and the recruitment of children for use in armed conflicts. Of immense importance appear the prohibitions of activities described in the Greek Penal Code as ‘Crimes Against Personal and Sexual Freedom and Crimes of Economic Exploitation of Sexual Life’, which unfold in the amended articles 348-353; these were in place since the enactment of the Greek Penal Code, adopted in 1951, reflecting a clear, yet perhaps, outdated idea of the social issues involved. To the regulatory framework of sex work, there were no changes introduced, thus, it remained legal and highly regulated in Greece.⁷⁵¹

⁷⁵¹ Sex work is regulated in Greece by Act 2734/1999 (Official Gazette A-161) on the licensing of sex workers, as amended by Sec. 12, Act 2839/2000. Under the conditions laid out by L.2934/1999 involving an obligation to obtain a work permit (art. 1); an obligation to undergo fortnightly medical examinations (art. 2); an obligation to obtain a license for the use of the premises where the activity takes place This license is issued by local authorities provided that certain conditions regarding the location of the premises are fulfilled (art. 3). Furthermore, the law prohibits the use of the same dwelling by a group of prostitutes unless the members of the group, up to three prostitutes, work in different hours (art. 4). The violations of these conditions incur sentences of imprisonment up to 2 years accordingly as well as a pecuniary sentence. As regards street prostitution, article 5(4) also explicitly criminalises soliciting in public using indecent postures, talk or movements, which is punishable by up to 3 months of imprisonment.

Additional acts were, also, inserted into article 348, pertaining to pornography featuring minors (article 348A) and to article 351 (soliciting to prostitution). The initial article 315 made no reference to smuggling or to the contemporary broader understanding of exploitation; to that extent, the aforementioned article was amended to incorporate the penalising of the economic exploitation of sexual life and for the commission of indecent acts with or involving minors in exchange for money or gifts (article 351A).

The essence of prohibitions appears ‘agender’, article 348 addresses the facilitation of sexual relations of others by trade or for profit; this includes the publication of personal advertisements, images, telephone numbers, or the use of other electronic messages, if it involves sexual relations with minors. Article 349, however, addresses procurement, distinguishing between procurement of a minor, which constitutes aggravating circumstances and it is punishable with imprisonment of up to twenty years according to the circumstances of the case (if the victim is a minor, if the offence has been committed by a public official within the context of their duties, or if the victim has suffered serious bodily harm), and procurement of adult women, which incurs a sentence of imprisonment of at least eighteen months. The difference between procuring and trafficking is highly relevant to exploitation. The victim of the first, hence, is not regarded as exploited, and the procurer merely facilitates that decision. Even though, in practice pimping/soliciting (article 351) can be seen as leading to trafficking in human beings for the purposes of sexual exploitation, the main difference is that article 351 is categorised under ‘Sexual Offences’, while, the new article 323A (punishing trafficking for purposes of labour exploitation or organ removal) is under the heading of ‘Crimes Against Personal Freedom’. To this, it should be

noted that men who live off the earnings of a professional prostitute may also be punished by imprisonment of up to three years.

In the area of criminalisation, the most striking change, upon the introduction of the contemporary anti-trafficking developments, involves the old article 351, on procurement, confined to the exploitation of women victims (adult and minor), the penalties of which were those for misdemeanours, and which was replaced in its entirety by the new Law. The amendments introduced harsher penalties for trafficking for sexual exploitation; the custodial sentences prescribed by the Law are mandatory up to ten years, or up to twenty years provided that certain circumstances are present, such as when the victim is a minor or when it can be deduced that the offender intends to earn income from the commission of these acts. Simultaneously, pecuniary punishments (50,000-100,000 euros) are also prescribed. The reformed provision (articles 323A(3) and 351(3) PC) also provides for the punishment of a person who commits sexual acts in the knowledge that the other individual is a victim of trafficking (that is, knowledge of the conditions the law associates with trafficking).⁷⁵² This latter development has been rather important, since on the one hand, it reflects concerns expressed in the Swedish abolitionist model (criminalisation of purchasing sexual services), while on the other hand, it has received substantive criticism for stating an unrealistic pretence. Actually, in practice it is almost inapplicable to establish intention and prior knowledge of the victims' status.⁷⁵³

⁷⁵² For a recent systematic commentary on the provisions of the Greek Penal Code, see Sykiotou, 'Gendered Criminality: An Attempt Towards a Critical Approach'; N Hatzinicolaou, *Aliens [Alloedapoi]* (Athens: Nomiki Vivliothiki, 2009); Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece'.

⁷⁵³ See, N Behlivani, 'Considering the Trafficking Phenomenon on the Basis of the Court Decision of Serres 37-46/2005', *Armenopoulos* 10, no. 1 (2007), 1629.

Victims' Status

It has been widely accepted that the described above punitive response meant to acknowledge that even though trafficking may have been conceptualised as an 'agender problem', in fact, it is mostly targeting women and girls.⁷⁵⁴ Insofar as gender sensibilities were put forward through the new punitive context, the new framework was considered to be successful. According to the Secretariat General for Gender Equality, the new Law carried an extremely beneficial dynamic for its clarity to define the concept of victims of human trafficking more clearly, irrespective of whether the person has entered the country legally or illegally.⁷⁵⁵ Then, one would have expected this anxiety to define clearly and prosecute effectively for the sake of victims to, also, be reflected upon the protective measures.

The Greek legal framework offers to the 'victim of human trafficking'⁷⁵⁶ (in the sense of 'identified victim') protection from expulsion in two different stages and introduces the concept of 'reflection period' for the first time. Firstly, the legal order established by L.3064/2002, acknowledges the moment that the alleged victim is identified as such (i.e. since there are sufficient reasons for suspecting that in the first place). At a second stage, protection is granted after the recognition

⁷⁵⁴ Sykiotou, 'Gendered Criminality: An Attempt Towards a Critical Approach', 276.

⁷⁵⁵ A Sarri, 'Measures and Actions against Trafficking in Human Beings Taken at National Level by the Participating Countries: Presentations by Greek Representatives' (paper presented at the Council of Europe Campaign to Combat Trafficking in Human Beings, Ministry of Interior and General Secretariat for Gender Equality, under the Auspices of the Inter-Ministerial Committee Against Trafficking in Human Beings in Greece, Regional Conference Proceedings, 5-6 December 2006 [Directorate General of Human Rights and Legal Affairs, Strasbourg, 2007]).

⁷⁵⁶ The 'victim' is defined under art.1 –not as someone would have expected the person that is harmed from the crimes defined under the art.323A PC, under the title 'human trafficking' or under the art. 351 PC that is titled as 'slavery' (- *σωματεμπορία*) but the individual that became the victim of a series of crimes to whom the L.3064/2002 expands the provision of relevant services, i.e. of slavery (art. 323), pimping (art. 349) and the commission of indecent acts with or involving minors in exchange for money or gift (art. 351A), regardless of whether the victim has entered the country legally or illegally. L.3386 excludes the cases of minors, victims of pornography or the facilitation of others' debauchery with a minor, since the Law does not mention the relevant articles 348 and 348A.

of the individual as a victim of human trafficking. More specifically, after the recognition of the victim as a victim of human trafficking, with a formal legal act, by the public prosecutor (article 46), a residence permit is issued. Exactly because of the recognition of the victims' status, usually, the cooperation of the victim with the police or the prosecutors is expected (article 47).⁷⁵⁷ A period of one month ('reflection period') may also be granted by a special order of the public prosecution service. This 'reflection period', which is offered for thinking about their options and whether they are willing to cooperate with the authorities, is provided to victims (article 48) based on the outcomes of the police screening process; a maximum period of two months is provided when the victim is a minor. In the case that the victim is a minor, also, 'zero tolerance'⁷⁵⁸ responses are reflective of the severity enacted as a response to trafficking in minors.⁷⁵⁹ To that extent, it is then justified to assume that the victims' profiles have played a central role in the justification of the punitive response. The more 'innocent' the victim, the more justified the severity of the punitive response.

At a discursive and political level, the wording of the new article 351 of the Greek Penal Code has generally followed the template offered by article 3(a) of the UN Protocol to the Convention against Transnational Organised Crime (2000); an approach which was not entirely welcomed by Greek legal circles, due to

⁷⁵⁷ Article 47, L.3386/2005 'in case the competent police or prosecution authorities have sufficient evident to suspect that a third country national could be identified as a victim of human trafficking, as these crimes are defined under the case I' of art.1 of the current law, then the authorities are responsible for providing him with the information in regard to the possibility of issuing a residential permit for a limited period, given that he cooperates in the combat of human trafficking'.

⁷⁵⁸ See, also, Part I.

⁷⁵⁹ Emke-Poulopoulos, 'Trafficking in Women and Children: Greece, a Country of Destination and Transit'; G O Fidan, 'An Approach to Undocumented Migrants in Greece', (Greek Council for Refugees, n.d.); A Diamantopoulou, 'Anna Diamantopoulou European Commissioner Responsible for Employment and Social Affairs Violence against Women: Zero Tolerance, Closing of the European Campaign Lisbon, Centro De Congressos De Lisboa, 4-6 May 2000', 2000.

potential issues regarding interpretation of the terms that were transplanted to the Criminal Code's text from the English original.⁷⁶⁰ Such as the word 'trafficking' itself, and, also, the interpretation of concepts such as the 'position of vulnerability'. In addition, the debates were intensified around the interpretation of more theoretically loaded concepts, such as 'coercion'. It has been argued that the Greek academic community of criminal lawyers has been traditionally,

[V]ery wary of the Parliament's increasingly frequent, opportunistic and piecemeal amendments of the Greek Penal Code, and the majority, in this case, seems to have concurred with the view that the special anti-trafficking legislation did not add anything that the previously existing provisions of the Code did not address systematically.⁷⁶¹

The innovation of the substantive changes that L.3064/2002 brought about involves a more explicitly austere sentencing framework. This, however, has been accomplished with a simultaneous amendment of the substantive content of the relevant articles. In practice, this has been deemed likely to create confusion in the application of the law by the courts and, thus, perpetuate the lack of effective enforcement of the legislation.⁷⁶² This is a criticism commonly applied to the Greek context, viewed as the 'real problem' surrounding most crimes of sexual exploitation.⁷⁶³ In other words, it has been sustained that the desired legislative changes could have been accomplished with minor amendments rather than a radical rewording of the law, and with added political emphasis on enforcement or

⁷⁶⁰ G Dimitrainas, 'Combating Human Trafficking after L.3064/2002' in *The New Law 3064/2002 on Human Trafficking*, E Symeonidou-Kastanidou ed. (Athens & Thessaloniki: Sakkoulas Publications, 2003); Sykiotou, 'Gendered Criminality: An Attempt Towards a Critical Approach'; Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece', 312-3.

⁷⁶¹ E Symeonidou-Kastanidou, 'Human Trafficking in the International Context and the Criminalisation Approach to It under the Greek Law' in *The New Law 3064/2002*, E Symeonidou-Kastanidou ed. (Athens & Thessaloniki: Sakkoulas Publications, 2003). Quoted in Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 238. See also, Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece', 312.

⁷⁶² Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 238.

⁷⁶³ See, e.g., T Papatheodorou, 'The Penalisation of Sexual Harassment in Greece', *Augi* 01/10/2006.

rather with a single emphasis on protection, since the punitive provisions already existed.⁷⁶⁴ As such, the particular legislative intervention has been severely criticised for being more concerned about fulfilling an obligation rather than reflecting on an important problem. Giorgos Dimitrainas has noted, commenting on L.3064/2002,

In any case the result of amending the Penal Code should be driven by a carefully designed revision, given that someone wishes the final product to be a Penal Code and not just to be *called* Penal Code ... This is what happened with L.3064/2002, which ultimately creates the impression that the Greek legislator was more interested in using the specific words and descriptions of the international and European texts, so that he could exhibit the results of their identical transfer into national legislation, rather than deal with the phenomenon with the seriousness that it demanded.⁷⁶⁵

The initial claim that the legislative change of 2002 involved more specifically the institutionalisation of the issues related to (illegalised) migration, sex work, organised crime and border control, rather than the prioritisation of human rights' interests, becomes evident. Additionally, it should already be clear that the major focus of the legislative changes of 2002 has been on trafficking for sexual purposes, rather than trafficking in general, even though it fails to articulate the gendered aspects of it. As noted by Georgios Papanicolaou, however, L.3064/2002 does not stand alone.⁷⁶⁶ Article 11 (para. 3, L.3064/2002) makes the provisions of article 187 explicitly applicable for crimes of sexual exploitation, by means of which the special legislation on organised crime emerges. 'Article 187 had also been refurbished a little earlier by a legislative initiative, L.2928/2001,⁷⁶⁷ whose reception by the academic community of criminal lawyers had been similar

⁷⁶⁴ Symeonidou-Kastanidou, 'Human Trafficking in the International Context and the Criminalisation Approach to It under the Greek Law', 32.

⁷⁶⁵ Dimitrainas, 'Combating Human Trafficking after L.3064/2002', 156.

⁷⁶⁶ Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 238.

⁷⁶⁷ See also Chapter 6.

or worse on the basis of similar misgivings',⁷⁶⁸ as described by Dimitrainas.

The particular questions raised by the legal framing of L.2928/2001 caused wider debates and considerable concerns as to a potential threat to civil liberties implied by the bill's contents.⁷⁶⁹ Also, it still is questionable as to which degree this new anti-organised crime and anti-terror legislation was driven by 'empirical necessity or by strategic and ideological imperatives to harmonise Greek laws with international and European norms on these issues'.⁷⁷⁰ As documented by Sappho Xenakis, extensive criticism has been expressed related both to the fear that this new legislation would infringe civil liberties, and to the treatment of the issues of terrorism and organised crime as a whole:

Opposition parties, the press and the Athens Bar Association, however, all protested against the proposed legislation. Citizen's rights groups, including the Greek chapter of Amnesty International, also publicly expressed their concerns over the threat to civil liberties implied by the bill's contents.⁷⁷¹

Overall, the bill was perceived as a hasty and over-reaching effort of the Greek government to provide a response to international pressures, particularly with regard to combating terrorism.⁷⁷²

The main shift, then, is not only in the more severe sentencing framework for

⁷⁶⁸ Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 238.

⁷⁶⁹ See, e.g., Xenakis, (2004), 349.

⁷⁷⁰ *Ibid.*, 349.

⁷⁷¹ *Ibid.*

⁷⁷² Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece', 313. For more information on the extensive and heated legal and political debates on L.2928/2001 on organised crime, see, Hellenic Parliament, 'Minutes and Report of the Permanent Committee for Public Administration, Public Order and Justice on the Draft Law 'Amendments of Provisions of the Penal Code and the Code of Criminal Procedure and Other Provisions on the Protection of Citizens from Punishable Acts of Criminal Organisations', (Athens: Hellenic Parliament, 2001a); Hellenic Parliament, 'Report on Draft Law 'Amendment of Provisions of the Penal Code and the Code of Criminal Procedure Regarding the Protection of Citizens from Punishable Acts of Criminal Organisations'', (Athens: Directorate of Scientific Studies, Hellenic Parliament, 2001b); I Manoledakis, *Security and Liberty. Interpretation of L.2928/2001 on Organised Crime. Relevant Texts* (Thessaloniki: Sakkoulas Publications, 2002); E Symeonidou-Kastanidou, *Organised Crime and Terrorism. Contemporary Developments in European and Greek Legal Order* (Athens & Thessaloniki: Sakkoulas Publications, 2007a).

those found guilty under this legislation, but also, importantly, in the association between trafficking and organised crime and the subsequent changes brought about in various aspects of the investigation process and the judicial procedure for organised crime suspects and for the identification of victims. According to Papanicolaou's analysis, this is perhaps one of the most important shifts, with immense practical applications. Some of the investigative powers systematised by the 2001 law were already known in Greece, especially under the special legislation regarding drug control and drug-related investigation introduced as early as 1987.⁷⁷³

Yet this latest intervention has been important in many respects. Firstly, it coincided with a conceptual shift in the way that organised crime was perceived in the Greek society as a major threat.⁷⁷⁴ Secondly, this latest development made an impressive array of powers, which considerably enforces the muscle of enforcement, including DNA analysis, undercover policing, controlled deliveries, wiretapping, personal data processing and the monitoring of financial transactions at once applicable for the entire range of the crimes named in article 187PC. To this, the law removed jurisdiction for the trial of these crimes from jury courts and reallocated it to higher courts composed exclusively of professional judges. Finally, it introduced leniency policies for bystanders and witness protection measures.⁷⁷⁵

For the issues pertinent to witness and victim protection examined earlier,⁷⁷⁶ the direct connection of the anti-trafficking legislation with legislation dealing

⁷⁷³ Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 239.

⁷⁷⁴ See, Xenakis, (2004), 352.

⁷⁷⁵ Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 239.

⁷⁷⁶ See, Chapter 4.

with organised crime has been criticised for inflicting a permanent bond between criminalisation interests and the position of the victims in trafficking cases. For instance, Papanicolaou's analysis shows that the victim in anti-trafficking investigations has been regarded as a mere anti-organised crime instrument.⁷⁷⁷ In that respect, it is bound to affect the position of what has been quoted in the pertinent literature as the 'prostitute-victim' in anti-trafficking investigations, as she represents a particular use-value for the (specific criminal) conduct, as well as for the results of the investigation as a witness. Insofar as her role is instrumental in the anti-organised crime operations, her status is mostly defined by that particular use-value and less by considerations of victims' rights and support. This is evident in the police circular guiding the process of interrogation of identified victims, whose logical structure is that of *exchange*, and specifically, cooperation in exchange for protection,

[I]f you think that you were forced to suffer one of the things mentioned above, then do not hesitate to declare this to the police officers who carry out the inquiry (the preliminary investigation), [and] who will examine your case with sensitivity and respect and will offer you the help and support that you are entitled to by law.⁷⁷⁸

For interrogating the concept of 'prostitute-victim' a little further, the concept cannot be reduced to the legal analysis nor can it be derived from moral choices. Recollecting [Foucault] the technologies of knowledge one must seek the reason for this 'formidable efficiency' of injecting elements of criminalisation. These elements have been authenticated by the 'sciences' and, thus, 'enabled to function on a general horizon of "truth"'.⁷⁷⁹ For instance, when the new anti-trafficking

⁷⁷⁷ Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 239; Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece', 314-5.

⁷⁷⁸ Hellenic Police, 'Combating Human Trafficking, and Assistance to Victims. Circular 3007/38/90-K8', 26 November 2003', (2003), 7. See, also, Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece', 314.

⁷⁷⁹ Foucault, (1991), 256.

legislation was introduced, a parallel discussion of the changes that the influx of migrants brought about in the ethnic composition of the sex industry was taking place.⁷⁸⁰ Dominant scientific views, simultaneously, have also been linking sex work and anti-trafficking, suggesting that the most effective solution to the problem has been the criminalisation of sex work (targeting the demand).⁷⁸¹ In terms of the legal developments, it is, also, very clear that the anti-trafficking legislation cannot be considered in separation from the legislation regulating the status of migrants, both women and men, as it applies to all forms of trafficking. The link is not merely conceptual or ideological, but rather practical, as important components of the anti-trafficking framework are found in the body of legislation relevant to migration, currently L.3385/2005 on third country nationals. So while victims of trafficking are for the purposes of that legislation a special category of third country nationals, the procedure established by articles 46–52 remains, at all times, conditioned by the victims' use-value to the investigative procedure.⁷⁸²

As critics have maintained, for instance, the issuing of the special stay permit for victims of trafficking depends in the first instance on the characterisation of the individual as a 'victim' by the public prosecutor (article 46). The reflection period (article 48) is also granted by a special order of the public prosecution service, depending on the results of the police screening. Ultimately, as explained, the police screening, which is directly linked to the system of protections, is contingent upon the basis of organised criminality.⁷⁸³ The actual issuing of the

⁷⁸⁰ See, for example, Lazos, (2002a). Also, Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece', 314.

⁷⁸¹ Grigoris Lazos interviewed by Maro Triantafyllou, see, M Triantafyllou, 'A Conversation with Professor Grigoris Lazos from Panteion University. Forced Prostitution of Foreign Women in Greece', n.d. [last accessed: 02/01/12].

⁷⁸² See, Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece', 314.

⁷⁸³ ASPIDDA, 'Practices, Tools and Models. Prevention and Combat of Trafficking in Human Beings. May 2007', (2007), 13-4.

stay permit depends on whether the extension of the stay of the aforesaid person is 'deemed expedient, in order to facilitate the ongoing investigation or penal process' and 'whether the above-mentioned person has demonstrated clear will to cooperate' or whether the individual 'has broken all relations with the alleged traffickers'.⁷⁸⁴

Conversely, according to article 51, the stay permit is not extended, or is recalled, when the authorities (the prosecution service) consider that the cooperation or report of the victim is malevolent or abusive, or when the victim stops cooperating. To this, the description of the actual practical measures in the area of victims' services, stipulated by the pertinent developments, have not been laid out in detail. For instance, both P.D. 233/2003 and L.3064/2002 make reference to a list of competent actors responsible for delivering these services. However, there is no further provision as to which actors are responsible for delivering specific services. There is, also, no further provision relevant to the referral mechanism, or even, to the required experience or to any training in delivering these services.⁷⁸⁵ The term 'use-value' then of the victim is not a metaphor, but an accurate description of the state 'transaction' involved.

To the extent that illegal migrant identities can be reconstructed and re-imagined, the current symbolic hierarchy of illegal migrant identities instituted by the new legal developments is re-inscribed as 'Other'. 'The humanitarian viewpoint is complemented by a law and order approach, which calls for more effective state intervention in immigration policy. Legality in fact becomes a

⁷⁸⁴ Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece', 314-5.

⁷⁸⁵ ASPIDDA, 'Practices, Tools and Models. Prevention and Combat of Trafficking in Human Beings. May 2007', 13-4.

dimension for distinguishing between Us and Them'.⁷⁸⁶ The promised treatment of the 'victim' as a 'witness' is actually interpreted and therefore applied as 'alien' awaiting expulsion.⁷⁸⁷ The practical relevance of embedding the regime of protection and support within the punitive, regulatory framework of the position of migrants is that, when the behaviour expected by the individual does not materialise in the way dictated by the criminalisation mechanism, then the flexible stick of the penal state can always regress to the original treatment of the migrant as an 'alien' body awaiting expulsion, which is not only at the margins of society but a body that needs to be expelled for preserving the purity of the state (or the nation). That this has been and remains the case is also illustrated firstly by actions at the level of street policing and in the obscure spaces of migrant detention centres, and secondly, by the consistent and persistent ill-treatment of migrants, as documented by the recurrent reports of human rights activists⁷⁸⁸ and of agencies operating beyond the strictly repressive core of the state, such as the Greek Ombudsman.⁷⁸⁹ But it may also be visible in practices which manifest themselves as instances of discretionary non-compliance to the victim-centred layers of the criminalising performance.

Reconsidering Anti-Trafficking Enforcement

The preceding exploration of the legal instruments brings the issue of anti-trafficking enforcement at the intersection of trafficking, illegalised migration and sex work,⁷⁹⁰ and in the centre of international and national attention. The

⁷⁸⁶ A Triandafyllidou, 'The Political Discourse on Immigration in Southern Europe: A Critical Analysis', *Journal of Community & Applied Social Psychology* 10, no. 1 (2000), 373.

⁷⁸⁷ *Ibid*; Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece', 315.

⁷⁸⁸ See, e.g., Amnesty International, 'Greece. Out of the Spotlight: The Rights of Foreigners and Minorities Are Still a Grey Area', (EUR 26/016/2005, 2005).

⁷⁸⁹ Greek Ombudsman, 'Annual Report', (Athens 2001).

⁷⁹⁰ See, also, Chapters 2 and 3.

international audience has been expecting that the introduction of the new legal framework would not only revise the relative articles of the Penal Code, but also bring about social change.⁷⁹¹ At the same time that the national attention was focused on enforcement, anti-trafficking was yet to solve the legislative problems triggered by issues of obligation and interpretation. In both instances, enforcement was depicted as the litmus test to determine the success of the Greek anti-trafficking mechanisms.

An important first step towards intensified efforts to ‘crack down on trafficking and trade in human beings’⁷⁹² has been, as previously discussed, the establishment of the ‘Group Against Human Trafficking’ (OKEA), a task force dedicated to the ‘combat of human trafficking’, aiming to bring legislative and social changes and inform about the problem.⁷⁹³ Given the preceding discussion, it has been evident by now that the formation of OKEA has been portrayed as crucial in many respects. For the purposes of facilitating our investigation, I have traced two main functions in the conceptualisation of OKEA as a key ingredient of the Greek anti-trafficking penalty. The first is related to the emergence of OKEA as a response to trafficking - a public security and order problem, encapsulated in the pressuring question: ‘can the new legislation break the back of Greece’s sex trade?’⁷⁹⁴ The second function is that of a real subsumption, with criminalisation absorbing elements that would have otherwise been coordinated by ‘purely’

⁷⁹¹ See, e.g., CEDAW, ‘Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth Periodic Report of States Parties, Greece.’, (CEDAW/C/GRC/6, 1 July 2005), 37.

⁷⁹² See, for instance, *ibid.*

⁷⁹³ *Ibid.*

⁷⁹⁴ Grigoris Lazos, member of OKEA, quoted in K Tzilivakis, ‘New Fight to Stop Sex Trade. Protagonists in the Fight to End Sex Slavery in Greece Say Public Awareness of the Matter Must Go Hand in Hand with Law Enforcement Efforts’, 25/09/2009 [last accessed: 25/09/11] [<http://www.helleniccomserve.com/archivedgreeknews33.html>].

protective mechanisms and mediated in civil society.⁷⁹⁵ As this narrative unravels it is evident that these two functions are interconnected.

So far, it has been established that OKEA has been formed as a special committee under the aegis of the Ministry of Public Order and its composition is inter-ministerial and inter-disciplinary. With the mandate to develop a comprehensive counter-trafficking policy, OKEA's aim has been to monitor the effectiveness of the new anti-trafficking legal framework and to 'monitor the counter-trafficking operations that are being undertaken by the Greek State'.⁷⁹⁶ The Committee has been composed of the Chief of the Greek Police (President of the Committee), an IOM representative, and representative of the Ministries of Health, Employment and Interior, high-level police officials and social scientists. As a mechanism thus to both implement plans to 'combat' trafficking and then to monitor these actions, it is safe to assume that the question 'can the new legislation break the back of Greece's sex trade?' - posed by a member of OKEA - can also be read as the discursive construction of an answer. I shall now explain why this construction is of foremost importance.

At first instance, this very question reaffirms the pressuring need for the existence of OKEA - rather than the need for the competent anti-trafficking law - since it is OKEA that would facilitate issues of enforcement and then monitor the levels of legislative success. Secondly, it reaffirms that given this pressuring need for OKEA, the accumulation of diverse powers under the auspices of the committee is justified. Thirdly, it almost erases an important detail: OKEA became operational under the auspices of the Hellenic Police Headquarters. The

⁷⁹⁵ I read these functions through the prism of the transition from the disciplinary society to the society of control, see, Hardt and Negri, (2001), 328-32.

⁷⁹⁶ Ariadne Network, 'Greece', (Athens: Human Rights Defence Centre - KEPAD, and the Association for the Social Support of Youth - ARSIS, 2007).

power balance that was set out to be achieved then, through the inter-ministerial and inter-disciplinary committee, between the political leadership and the criminalising core, was in fact a utilitarian imbalance. Leaving a set of questions regarding the ideological composition of the Hellenic Police open to future inquiry, the argument put forward here is that the establishment of this punitive core was drawing on competitive influences – an acute antagonism between criminalising or militarised forces.⁷⁹⁷

In our case, then, the ‘real subsumption’ disrupts the linear and totalitarian figure of capitalist development.⁷⁹⁸ If OKEA can be seen as an array of forces, a strategy for partnership or cooperation between the state and NGOs (‘civil society’), then the modalities of disciplinarity and control have also engulfed protective structures and the very possibility of resistance. Laconic and yet crucial, the criticism of OKEA has been that since the beginning of its operation it has been ineffective with scattered meetings and a documented difficulty in coordinating.⁷⁹⁹ This existing weakness/criticism however leaves little space for re-imagination beyond the logic of tampering diverse forces and fostering the right balance. Thus, it re-injects the narrative/promise that once this inter-disciplinary structure becomes more operational and flexible, trafficking can be abolished.⁸⁰⁰

Finally, OKEA is not the only anti-trafficking structure, set up at the Ministry of Public Order; a second advisory group, but with the broad mandate of combating crime, was established in 2002. The so-called Project Management Team for Planning the Policy against Crime (PMT-PPC) is chaired by the Head of

⁷⁹⁷ See, G Papanicolaou, 'Greece' in *Plural Policing: A Comparative Perspective*, T Jones and T Newburn eds. (London & NY: Routledge, 2006), 90-3.; See, also, Rigakos and Papanicolaou, (2003).

⁷⁹⁸ Hardt and Negri, (2001), 25.

⁷⁹⁹ Ariadne Network, 'Greece'.

⁸⁰⁰ See Part I.

Public Security, while official agents and members of the academic world also take part in this team. The team has drafted a brochure that informs victims on the duties of police officers in specific criminal actions like sexual exploitation and domestic violence.⁸⁰¹ Moreover, since 2005 twelve anti-trafficking teams have started operating in various police divisions throughout Greece in order to enhance regional operations.

The subsequent reconfigurations of forces are indicative of the fact that this constructed imbalance, to the extent that it was investigated here, had the potential to reproduce itself. This reproduction took place despite the articulation of important criticism in relation to exclusion of NGOs from the decision-making processes, and lack of institutionalised training regarding human rights and gender issues for law enforcement officials and members of the judiciary.⁸⁰² Many observers have confirmed that between 2000 and 2001, a committee investigated 103 reports of police involvement in trafficking, raising doubts and mistrust about the ‘real’ willingness (or even compliance) of police forces to ‘crack down trafficking rings’. ‘The continuing complicity and involvement of members of the Greek police is also confirmed by the Panhellenic Confederation of Police Officers and the Ministry of Public Order. The newly established internal unit is intended to penalise police involvement and catch the “untouchables”’. There have been no recent convictions of police officers or other officials in connection with

⁸⁰¹ European Crime Prevention Network, 'Greece', EUCPN, n.d. [last accessed: 30/01/12] [<http://www.eucpn.org/policies/results.asp?category=2&country=10>].

⁸⁰² Greek Helsinki Monitor and The World Organisation Against Torture, 'Violence against Women. Report Prepared for the Committee on the Elimination of Discrimination against Women at Its Exceptional Session of 5-23 August 2002 Considering Greece's Compliance with Its Obligations under the UN Convention on the Elimination of All Forms of Discrimination against Women, July 2002', (GHM/MRG-G, 2002), 11.

THB [Trafficking in Human Beings]. As OKEA member Lazos reported in the interview, “the police continued working with a smirk on their faces”⁸⁰³.

Criminalisation Action Plans

‘ILAEIRA’⁸⁰⁴ is the skeleton of the anti-trafficking, security developments that followed the major legal shift introduced by L.3064/2002. ILAEIRA clearly articulates its main security concern as the criminal offence of trafficking for sexual purposes and the ‘economic exploitation of the sexual life of women and minors’. The introduction of the document offers the historical background of the name ‘ILAEIRA’. The name ‘ILAEIRA’ bears a special symbolism and meaning. ILAEIRA was one of the first two women to be abducted according to Greek mythology. Leukippos, the king of Messene had two daughters, Ilaeira and Phoebe, who were betrothed to Idas and Lyceus, his brother’s sons. Their abduction by the Dioskouroi, Kastor and Polydeukes, led to war, where the Dioskouroi royal scions met an inglorious end. Hence the name of the action plan not only bears a symbolism and meaning, but also a specific narrative of what, in the context of trafficking, can be used as a reference to what sex trafficking or the exploitation of sexual life constitutes.

The EU Vice-President for matters of Justice and Interior, Mr Franco Frattini, placed the plan under his auspices and agreed to fund the programme. To this Greek initiative replied and reciprocated twenty one countries and four European International Organisations (EUROPOL, INTERPOL, EUROJUST, FRONTEX).

⁸⁰³ Hötzeltdt, 'Prevention and Fight against Trafficking: Institutional Developments in Europe, Greece Report', 8.

⁸⁰⁴ ‘ILAEIRA’ was approved during its Drafting Committee meeting of 16 July 2008, so that all competent agency stakeholders can implement it immediately. Also, note that the document is restricted for wide circulation. For further information see, Hellenic Police, 'Action Plan 'ILAEIRA"', n.d. [last accessed: 09/01/12] [http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=1717&Itemid=362&lang=].

The plan was officially presented on 7 and 8 December 2006, in Athens, with the participation of senior and high rank officials (400 delegates) of participant countries. Also, participants were representatives of International Organisations, and of the involved Ministries, competent bodies and NGOs, at a national level. The programme 'ILAEIRA' is a coordinated operational action for the treatment and fight against human trafficking in women and children, with the purpose of economic exploitation of sexual freedom, and its pursuit is a substantial, coordinated and effective action of all the involved agencies, since their fragmented action does suffice for the treatment of this transnational phenomenon.

ILAEIRA was circulated to all relevant services and to all bodies involved around the country, for update and application. Its application had been developed at two levels, at an inter-border and a national one (for Greece). At a national level two meetings were held of experts from all the participant countries in Athens on 7 and 8 December 2006 and on 30 and 31 May 2007 for the editing of the text which will become the Plan for Inter-border Cooperation of the Police and Judicial Authorities, for a cooperative single action.

The inter-border plan follows a particular methodology of planning, by building on the European and Olympic *acquis*, that includes:

1. Cooperation – common planning by a group of experts from the participant countries / organisations.
2. Testing of design through exercises with the participation of strategic and operational staff, based on scenarios.
3. Evaluation of exercises – including the conclusions for the planning.

4. Application of the final plan, as a model of inter-border cooperation in cases of organised networks of human trafficking between the European Union and third countries of South-East Europe.

5. Evaluation of the operational results and their presentation in the European Committee, under the guidance of Mr. Franco Frattini. Following the completion of meetings of representatives from all participating countries and other entities, an Officers Expert Group was established, which provided the following texts:

- ‘Plan of Inter-organisational – Operational Action at a National level for the treatment and fight against the economic exploitation of sexual freedom of women and children, “ILAEIRA”’.
- Memorandum of police action and best practices for handling cases of Trafficking in Human Beings (Police Use Only).
- Anti-trafficking initiative ‘ILAEIRA’, settings and procedures for border Police Cooperation.⁸⁰⁵

The document consists of a reference to the legislative framework and the general background of the development. Fundamentally, ILAEIRA is mainly preoccupied with the sex industry, while it states that, firstly, trafficking in women for the purpose of sexual exploitation is the third most widespread organised crime form, following arms smuggling and narcotics trafficking, and secondly, that the shared aim of combating the sexual exploitation of women and children is a political priority both at the European and international level.

For the similarities between sex trafficking and illegalised migration, the plan reaffirms and reinscribes at an institutional level that the action plan deals with sex trafficking as a crime linked to other offences, and fundamentally, connected to

⁸⁰⁵ Hellenic Police, 'Action Plan 'ILAEIRA'.

illegal immigration, ‘as criminal organisations sometimes illegally traffic their victims into our country. Although the two crimes have some similarities, the distinction between the two is clear and simple’.⁸⁰⁶

However, ILAEIRA fails to elaborate on the particular points that make this distinction ‘clear and simple’. Moreover, ILAEIRA serves a strategic role: it reiterates the linkage between trafficking in women and organised crime. This is directly related to the system of protections, since in order to activate victims’ protection under the stated legal framework, sufficient evidence of the operation of organised criminal networks needs to be provided. Crucially, this is not only established at a legislative level but also at an operational one. Therefore, the Anti-Trafficking Police Departments are part of the Unit of Combating Organised Crime (while in sex trafficking cases usually there is a cooperation of different police units such as the Department of Social Order and Morals [Τμήμα Ιθών - *Τμήμα Ηθών*-], and the Department of Prosecuting Illegal Migration [Τμήμα Δίωξης Λαθρομετανάστευσης-]).⁸⁰⁷

The backbone of ILAEIRA is the management and the balancing of diverse and often oppositional concerns. Besides, ILAEIRA covers the whole spectrum of the anti-trafficking activities, and to that extent, coordinates actions of the co-competent ministries and those of Non-Governmental Organisations that offer victim support. For instance, not only does the action plan offer distinct definitions of the ‘victims of trafficking in human beings’, but also of the ‘potential victim of human trafficking’. In doing so, it reaffirms the arbitrary and abstract nature of these *victim/vulnerable* qualities. In an effort to make this ‘victim profiling’ a more straightforward process, ILAEIRA, along with pertinent statistical sources

⁸⁰⁶ *Ibid.*

⁸⁰⁷ For the relevance of the Police Division, ‘Thima Ithon’, see, also, Chapter 7.

made available by the Hellenic Police, stresses that ‘Statistical data assessment from the Public Security Division/ Security and Order Branch /Hellenic Police Headquarters, shows that human trafficking victims are primarily women who come from countries of Eastern and Southeast Europe, such as: Russia, Romania, Ukraine, Moldova, Bulgaria, Belarus, Albania, etc. Lately, there has been an increase in the number of victims who come from Nigeria’.⁸⁰⁸

Criminalisation of Victims

By using the concept of victims’ criminalisation, I draw on two interlinked points of criticism, which are often under-represented in the relevant debates. They do, however, shed light on certain preliminary, cautionary notes which will be further investigated in the chapters that follow.

The first point involves the indirect criminalisation of victims. This is the articulation of criminalisation, justified on grounds of protection, or often vaguely initiated by discussions on protection. In a communication established by the Special Rapporteur Sigma Huda on the human rights aspect of the victims of trafficking in persons, for example, the case of disappearance of children after their placement in a shelter in Athens (in Agia Varvara – known for the high levels of Roma residents) was highlighted. According to the Rapporteur, the Greek authorities have placed (in the aforementioned shelter) over the period 1998 and 2002, 661 children, 560 Albanians (almost all Roma), 45 Greeks (almost all Roma), 40 Iraqi and 16 from 6 other countries. From the total six hundred sixty

⁸⁰⁸ For the statistical data sets, see, e.g., Hellenic Police, 'The Hellenic Police Force Cooperates with Other Agencies in the Framework of O.K.E.A.', n.d. [last accessed: 07/02/08] [<http://www.ydt.gr/main/Article.jsp?ArticleID=94810>]; Hellenic Police, 'Comparative Statistical Data of Cases, Perpetrators and Victims between 2006 and 2007', Hellenic Republic, Ministry of Interior, 2006-2007 [last accessed: 03/04/11] [http://www.astynomia.gr/index.php?option=ozo_content&perform=blogcategory&id=97&Itemid=259&lang=].

one (661) children, five hundred two (502) of them went missing.⁸⁰⁹ The disappearance of the children allegedly occurred in the course of the implementation of a government project titled 'Protection and Social Care of Street Children', which was intended to provide accommodation, care and rehabilitation to the growing number of children in inner-city areas of Greece.

An investigation into these facts, carried out by the Greek Ombudsman and made public in March 2004, confirmed that a large number of children had escaped from the institution and were officially missing as they had not been relocated by the police or other authorities. The Rapporteur jointly with the Special Rapporteur on the sale of children, child prostitution, and child pornography, therefore, brought this situation to the government's attention, by letter, dated 1 December 2004.

The Greek Government replied by letter, dated 18 March 2005, that the Security Directorate of Attica/Sub-Directorate for the Protection of Minors was instructed, following an order issued by the Public Prosecutor of the First Instance Court of Athens, to carry out preliminary investigation on this matter and to investigate any offences committed against these children. The preliminary report was concluded and has already been forwarded to the Public Prosecutor. The Greek government, also, provided information on general measures to protect minors, and indicated that the Hellenic Police pays special attention to the protection of minors from particular risks that they may run; 'particularly minors who loiter, a condition that may lead to *criminal tendencies*'.⁸¹⁰ To this, it was

⁸⁰⁹ See, also, Greek Helsinki Monitor, 'Action 1. Report on Domestic Violence and Trafficking of Women in Greece, Annex Trafficking of Women'.

⁸¹⁰ S Huda, 'Integration of the Human Rights of Women and a Gender Perspective. Report of the Special Rapporteur on the Human Rights Aspect of the Victims of Trafficking in Persons, Especially Women and Children, 27 March 2006', (UN, ECOSOC, E/CN.4/2006/62/Add.1, 2006), 10-1 [emphasis added].

explained by the government that the police ‘provides information to the competent protection authorities and pursues cases of exploitation, neglect or maltreatment’.⁸¹¹ However, the letter did not indicate who the competent authorities are, under which obligations they act, whether they are supervised or not and whether they had been in cooperation with the police upon the children’s disappearance – particularly, if we assume that the children were under the supervision of these authorities when they disappeared.

Lastly, the Greek government, with its response underlined the fact that the police enforce competent legislation, particularly, with regard to parent supervision and employment of minors. Crucially, according to the government, the police would also ‘arrest and bring before courts minors who led a vagrant or immoral life or seek means of livelihood in gambling or other activities that could result in criminal acts’.⁸¹² Criminalisation concerns, then, are not contained within limited boundaries, but appear to have ever-expanding possibilities; even inquiries regarding victim protection are specifically being raised. On the presented case, the Special Rapporteur replied by letter, dated 20 April 2005, and specified that receiving information on this particular case was requested in the first instance.

The second point involves the direct criminalisation of victims, particularly of women retrieved in the sex industry. Prominent reports have criticised the extensive scale of the phenomenon and have raised attention to the lack of data on the number of cases where victims cooperated with the competent authorities but were, however, found guilty along with their traffickers.⁸¹³ Salient evidence, also, supports that courts have often been tolerant towards the blatant intimidation of

⁸¹¹ *Ibid.*, 11.

⁸¹² *Ibid.*, 10-1.

⁸¹³ See, e.g., the specific actions of July 2007, Greek Council for Refugees, 'Legal Assistance to Asylum Seekers and Refugee Applicants, Victims of Trafficking and Third Country Nationals (HIV Positive), Interim Progress Report', (Greek Council for Refugees, 10/2007, n.d.).

victims.⁸¹⁴ This is highly significant, as it shows that intimidation of victims would run counter to criminalisation results, given the mistrust and fear of women victims to testify in court.⁸¹⁵ However, it does play a highly significant role in mobilising multiple criminalisation functions.

Conclusions

The preceding analysis has been challenging the initial apparent contestation between a criminalisation and a human rights approach to the ‘war on trafficking’, examined in Part 1. The Greek ‘anti-trafficking promise’, in fact, has been articulated under the diplomatic pressure for compliance and it is the product of legislative struggle and tension. Through security action plans and with the view to meet punitive ends, this anti-trafficking promise, however, was to be materialised as a multi-disciplinary anti-trafficking mechanism. The previously explored balance, under Part 1, re-emerges in this Part, and it has meant to balance prosecution, prevention and protection by bringing together criminalisation, security and human rights discourses. Through a rather diverse network of actors and under the auspices of the Hellenic Police, this transboundary approach put forward an ongoing demand for public security. It, also, drew increased political legitimacy by broaching a set of issues relevant to human rights, sexual exploitation and violence against women as concerns that had to be tackled through proper and balanced enforcement.

⁸¹⁴ See, e.g., Greek Helsinki Monitor, 'Press Release of 21 April 2007. Parliamentary Discussion: Nigerian Female Victim of Trafficking in Danger of Facing Retribution Upon Her Repatriation', (2007).

⁸¹⁵ See, Experts Group on Trafficking in Human Beings, 'Report of the Experts Group on Trafficking in Human Beings, 22 December 2004', (Brussels: European Commission, Directorate-General Justice, Freedom and Security, 2004).

Yet, this first-ever vision of Greek anti-trafficking, as is today argued, has been crafting its necessity or even desirability by intertwining the discursive threats of trafficking, illegalised migration, sex work and victimisation. As a consequence, its sufficiency or efficiency to bring together diverse voices, interests and actors, appears as a secondary concern. *As if* the empirical reality of protective measures can only be realised within punitive structures in a democratic state. At a parallel, the unfolding of criminalisation in trafficking in women is accommodated by specific gender values and structures.

Keeping in mind the above analysis, to even begin rethinking the anti-trafficking structures is then contingent upon the radical reconsideration of this ever-expanding regime of punitiveness. By gaining an insight into the current criminalisation workings, it becomes clear that women's victimisation and criminalisation have been constituent elements of anti-trafficking criminalisation articulations. In that respect, if criminalisation could actively engage in a transformation project, then, the project's starting point should be the articulation of gender considerations. These should be disconnected, however, by the very iterability that allows them to perpetuate their meaning.⁸¹⁶ From interrogating the proportion of women in criminal justice agencies, particularly the police,⁸¹⁷ to the cultural investigation of the historical context within which violent victimisation takes place, anti-trafficking *has* the innumerable potential to be re-articulated, and thus, re-imagined. This potential has been neglected so far, but perhaps security and/or human rights discourses might be able to express other possibilities, in the Greek context.

⁸¹⁶ Cornell, (1993), 11.

⁸¹⁷ J Brown and F Heidensohn, *Gender and Policing. Comparative Perspectives* (London & NY: Macmillan Press, 2000), 95.

Chapter 6

Imaginary Anti-Trafficking Security: Greece

Introduction

How was security conceptualised within the context of the ‘war on trafficking’ in Greece? And what are the specific security issues to which priority was given? These are the two main questions that inform this current turn to security investigations. As previously examined, the Greek anti-trafficking structures were presented as ‘problem-solving’, associated with the threat posed by organised criminal activity and its dominance in the Greek sex industry. The notions of threat investigated under Chapter 5, however, were assessed as a threat to the Greek state. To this, security technologies, such as the action plan ILAEIRA, were mobilised in response. In that respect, issues of human security explored in Chapter 3 have been overshadowed by strategic and tactical articulations of state interests.

Drawing on these articulations, I investigate further the workings of security. In doing so, I examine how transnational trafficking in women is regarded as a threat to regional or national state interests, and how it does so by negotiating women’s security. In these ‘negotiations’, I trace two main anxieties. Firstly, there is an ongoing struggle between internationalist pressures that have pushed the development of anti-trafficking crime policy in Greece and the domestic obstacles, or indeed, resistance to it. Secondly, I focus on the redeployment of threat narratives by the Greek state, emphasising on the importance of anti-trafficking and international cooperation in action plans for the amelioration of a) domestic terrorist threats, and b) national security concerns.

The dominant narrative reaffirms that although Greek officials have intensified border security and control, maritime border security with Turkey still requires careful attention, while the land borders with Albania, Bulgaria and FYROM remain open to illegalised migration and trafficking.⁸¹⁸ Insofar as the concept of security is mainly interpreted through the mechanisms of public security and order, the security of women victims of trafficking is either of secondary importance or gains importance due to its affiliation to national security.

The following analysis crucially notes that the concept of security, upon focusing on the particular national context, illuminates a number of mechanisms through which geopolitical knowledge has been interpreted and reformulated to support specific political agendas. These often form a narrative that fundamentally deviates from the international justification provided to sustain the competent security mechanisms. This is not merely to describe a disjuncture; it is in the plasticity of security (in its very transgressive institution) that the initial antithesis between criminalisation and human rights is possible/thinkable/intelligible. Then it is through security discourses that anti-trafficking makes any sense at all. It is in the initial construction of trafficking as a threat to 'our' security that 'we' have responded with a criminalisation or a human rights approach. As such, security brings together criminalisation and human rights, and transforms their initial antithesis into a *continuum* which strategically moves from one end of the criminalisation-security-human rights scale to the other.

This is a focal point, since it destabilises the hierarchy of anti-trafficking priorities and repositions security from the layers to the very core of anti-

⁸¹⁸ V Hysi, 'Human Trafficking and Democratic Transition in Albania' in *Human Trafficking, Human Security and the Balkans*, H R Friman and S Reich eds. (Pittsburgh: University of Pittsburgh Press, 2007), 101.

trafficking interest, in the re-imagined possibilities of the national context. For describing the complexity of security I use the term ‘performativity’ to engage with security acts and speech.⁸¹⁹ In doing so, I draw a parallel between the way Butler sees ‘sex’ as a regulatory ideal whose materialisation is compelled through certain highly regulated practices,⁸²⁰ and the functions of security. In that respect, I am grounding my claim on literature according to which ‘security’ is not simply what one [individual/state/nation] has or a static description of what one is.⁸²¹ Security, then, in this context, exposes its functions, since it only becomes recognisable [culturally intelligible, in Butler’s terms] within the domain of anti-trafficking politics.⁸²²

My intention is to see security as an agent, the effect rather than the cause of a discourse. As a consequence, the performative workings of security are discursively constituted and there is no ‘real’ security outside the expressions of security. This application of performativity is not new.⁸²³ What is suggested here, however, is that the expressions of security in the context of trafficking in women are determined by gender assumptions, or rather the fantasy of their norm, in the specific operations of the domestic/national security articulations.⁸²⁴

⁸¹⁹ See, Butler, (2004), 198-9.

⁸²⁰ Butler, (1993), 1.

⁸²¹ *Ibid.*, 2-3.

⁸²² See, the analysis offered by Claudia Aradau, on security and performative speech acts, Aradau, (2008), 44-51.

⁸²³ See, Bialasiewicz et al., (2007).

⁸²⁴ See, Loizidou, (2007), 151.

External Security–Internal (In)security: a national threat and freedom dialectic

Given Greece's recent economic woes (2008 - 2012) important criticism has been articulated to address the lack of governmental initiatives towards the establishment of social security measures. It is well-known, however, that security as a discursive construct upholds the foundations of the Greek modern state.⁸²⁵

The dominant national narrative since the country's accession to the European Union is one of progress, success and growth. In specific, it has been maintained that a certain degree of 'Europeanisation' has decisively contributed to progress, at all pertinent levels. National security and integrity, international security as well as social security, economic security and democratic security constitute well-founded tiers of the state's contemporary identity and sustain its European character. In effect, the construction of security has been closely related to evolution, development, and 'modernisation', in line with the paradigm set by European partners.⁸²⁶

Historically, Greece, the Hellenic Republic, is considered to be one of Europe's earliest civilizations, the 'cradle of democracy'.⁸²⁷ A narrative of triumph, of 'light', sparkling summer sea, images of whitewashed little houses and the clear blue sky have created the 'postcard' imaginary of Greece. Links to the Ancient Greek world, its coming and going, and in its re-narrativisation always constituting a *present*, are part of this imaginary. As Alexandra Halkias has noted,

⁸²⁵ D Kavakas, *Greece and Spain in European Foreign Policy. The Influence of Southern Member States in Common Foreign and Security Policy* (Aldershot: Ashgate Publishing Company, 2001), 35.

⁸²⁶ See, N P Mouzelis, *Modern Greece: Facets of Underdevelopment* (NY: Holmes & Meier Publishers, INC., 1978), 149-54. Also, N Kotaridis, 'From Factions to Political Parties. Post-Revolutionary Agglomerations in Greece' in *Modern Greek Society Historical and Critical Approaches*, T Sakellaropoulos ed. (Athens: Kritiki Publications, 1993).

⁸²⁷ See, A Halkias, *The Empty Cradle of Democracy: Sex, Abortion and Nationalism in Modern Greece* (London & Durham: Duke University Press, 2004).

‘the image may appear as seductive as it does because it is superimposed on an imaginary snapshot of “the Ancient Greek world”’.⁸²⁸ Lingering at the background of that imaginary brightness, issues of security have always been a bleak point in Greek history.

Since the 1990s is commonly presented that for women victims of trafficking the ultimate ‘pull’ factor has been this seductive image of Greece. Stories of victims have attested to the fact that women from neighbouring countries have been used as sex slaves in the Greek islands. Due to issues of organised crime and corruption (of officials), however, there is no guarantee that priority will be given to victims’ security. Even in cases that women-victims did actually contact the police and the other competent authorities, human security did not appear as the main official concern.

In October 2000, for instance, on the Greek island of Kos an incident was reported to the Hellenic Police, ‘[t]he police paid what amounted to a courtesy visit to the alleged trafficker, who said he had sent the woman back to Romania. The cops accepted the bar owner’s statement and left. That was the extent of the entire visit’.⁸²⁹ In 2002, the case re-opened, however, but it was through an e-mail sent by the IOM Bucharest Office: ‘I regret to inform you that we have not been able to track this victim of human trafficking since then’.⁸³⁰ Perhaps, this is one among many examples, it is sufficient, however, at this stage, to highlight an absence, since I elaborate on the issues of trafficking in women as a security issue a little later.

To that extent, the absence that I wish to highlight is related to the concept of security more generally. The examination of security discourses in the Greek

⁸²⁸ *Ibid.*, 19.

⁸²⁹ Malarek, (2004), 122, see also, 21-3.

⁸³⁰ *Ibid.*, 123.

context gives the impression that the concept of security has been depreciated. Athanasios Marvakis's investigation of security in the Greek migration regime has concluded that in Greece 'we' have ostracised the social dimension of security, and this is evident in the Greek official discourse.⁸³¹ It is worth recollecting, according to Marvakis, that this is a new phenomenon; up to thirty years ago, the social dimension of security was dominant. Then, what happened during the last thirty years? In order to trace the security discourse in a meaningful way, in the paragraphs that follow I present a brief overview of the evolution of security in Greece.

Security and the Greek State

As previously mentioned, issues of security have always been a bleak point in Greek history. A well-documented long history of military conflicts and national tensions with the neighbouring Turkey was officially resolved after Greece successfully won a fierce and bloody struggle for independence from the Ottoman Empire, with the Protocol of London on 3 February 1830, when, in many ways, the history of contemporary Greece begins.⁸³²

As established by the exemplary analysis of Nicos Mouzelis on the political organisation of the proletariat in Greece, the security issues identified, within the wider predicament of the military, have played a key role in the development and/or underdevelopment of modern Greece, from the very constitution of the

⁸³¹ A Marvakis, 'Social Inclusion or Social Apartheid?' in *Greece of Migration. Social Participation, Rights and Citizenship*, M Pavlou and D Christopoulos eds. (Athens: Kritiki, 2004), in specific, 100-2.

⁸³² See, e.g., Halkias, (2004), 23. For an important analysis of the class struggles at the time of the national independence struggle and the involvement of the 'protective' Western Powers, see, N G Svoronos, *Overview of the Modern Greek History* (Athens: Themelio Publications, 1999), 72-3, 77-86.

Greek state.⁸³³ Overall, a certain long-term politico-military mechanism emerged during the early years of national independence in the 19th century, as an attempt of the newly-born state to reduce autonomy of the all-powerful local oligarchies, either notables or military chieftains.

These tensions were often officially expressed through unorthodox political arrangements, such as the period of ‘oligarchic parliamentarianism’.⁸³⁴ A continuous succession of short-lived governments, extreme instability and a constant threat posed by the military, the throne (imposed by foreign influence) and any other semi-autonomous political force to disrupt the basic balance of power between the throne, the oligarchy and the people.⁸³⁵ Within this context, the 1909 military intervention has often been portrayed as the ‘bourgeois’ coup, which opened the door to a series of coups and counter-coups, as antagonistic political groups, which, counting on the help of army factions, tried to defend their political interests and forcibly impose their conflicting views on the new constitutional order in Greece. After the Balkan Wars and the World War I, and up to the Metaxas coup of 1936, the Greek masses were kept outside active politics, with their interests being under or even misrepresented through the major bourgeois parties.⁸³⁶ Vividly reflected through the ideological functions of ‘Megali Idea’⁸³⁷ and ‘dichasmos’,⁸³⁸ Greece was captured in a continuous state of flux, clash and phoenix-type rejuvenation.⁸³⁹ Insecurity was not only a political obstacle constructed at a state level, but remained as an imaginary, ideological motive that

⁸³³ See, Mouzelis, (1978), 105-14.

⁸³⁴ *Ibid.*, 106.

⁸³⁵ *Ibid.*

⁸³⁶ *Ibid.*

⁸³⁷ Fragments of it are still present today in the ideological foundations of nationalist political groups. Specifically, - *Megali Idea* - the Great Idea has been used to advocate the recapturing of Constantinople and the resuscitation of the Byzantine Empire.

⁸³⁸ The schism between the group of Venizelists (supporters of Venizelos) and the group of anti-Venizelists; the former were supporters of the political leader of the time.

⁸³⁹ Mouzelis, (1978), 109.

would reconfigure a certain – lost – power. Unlike Turkey, the Greek military, despite its strategic position, never managed to constitute an autonomous political force. It was not, therefore, simply the military interfering in politics, but also, a political factionalism and patronage politics permeating the army organisation from top to bottom.⁸⁴⁰

After years of instability and political tensions, wars and conflicts – to which detailed reference will be omitted for the purposes of preserving the economy of this analysis, a benchmark in the history of modern Greece was the dictatorial regime of the Colonels, the junta, of 1967-74. The historical accounts of torture, mental and physical, suffered by political prisoners and the association of the regime with the Headquarters of the military police in Athens, still, remains vivid as a cultural, collective scar.⁸⁴¹ The junta's rule included torture, censorship and arbitrary arrests, and it is undisputed that it had been enforced by foreign economic investments and Western political interests.⁸⁴² This established in the social consciousness that the Greek *security* was firmly connected to national autonomy and independence in foreign policy.⁸⁴³

Greece became part of the North Atlantic Treaty Organisation (NATO) in 1952 and a gradual reforming process had already been activated for its democratic transition, which took the form of the Hellenic parliamentary republic in 1975. This has been known as a period of turmoil and change, which

⁸⁴⁰ T Veremis, 'The Officer Corps in Greece (1912-1936)', *Byzantine and Modern Greek Studies* London 1976, no. 2 (1976), 113, 113-4.

⁸⁴¹ See, the reference made to the regime, in Douzinas, (2000), 293. Also, critical insights, on the imposed austerity measures of 2011-12, have offered valuable accounts of what they have described as the 'current economic dictatorship', which draws connections between past and present, political and economic, pressures, see, e.g., Eleutherotypia, 'In Greece an Economic Dictatorship Has Been Born', 12/07/2011.

⁸⁴² See, e.g., Mouzelis, (1978). Also, for the importance of the bilateral foreign relations between Greece and Russia, see, e.g., Ethnos Online, 'Antonis Samaras: Not a Solution to Leave the Eurozone', 25/01/2012.

⁸⁴³ Kavakas, (2001), 35.

irreversibly shaped the political landscape of Southern Europe. The beginning of democratisation processes, most notably, in Greece, Spain and Portugal, as well as the crisis in Cyprus were vital in encouraging and supporting the need for European political cooperation.⁸⁴⁴ As part of these political initiatives, Greece, Spain and Portugal underwent a democratic transition, and the situation in Cyprus was inevitably managed as a matter that required the attention of the European Political Cooperation, during 1974-5, and under the auspices of the UN. The main objective was the realisation of peace in Cyprus, including supervision of disarmament and the devising of practical arrangements to safeguard internal security, embracing the safety of all the people of Cyprus.⁸⁴⁵

The crisis of 1974 constitutes a benchmark for the political and national identity of regional populations and the diplomatic and geographic reshaping of the area. The events that followed the Turkish operation, on 20 July 1974, on the north-east coast of Cyprus, eventually resulted in the occupation of the Turkish Cypriot north enclave.⁸⁴⁶ As a response to the occupation, the Security Council met on that same day and adopted resolution 353 (1974), by which it called upon all parties to cease firing and demanded an immediate end to foreign military intervention. It, also, requested the withdrawal of foreign military personnel present otherwise than under the authority of international agreements, and called on Greece, Turkey and the United Kingdom to enter into negotiations without delay for the restoration of peace and stability in the area.⁸⁴⁷

⁸⁴⁴ *Ibid.*

⁸⁴⁵ For the military and political conflicts of the time see, United Nations Peacekeeping Force in Cyprus, 'The 1967 Crisis', UNFICYP, n.d. [last accessed: 09/01/12] [http://www.unficy.org/nqcontent.cfm?a_id=1491&tt=graphic&lang=11].

⁸⁴⁶ *Ibid.*

⁸⁴⁷ United Nations Peacekeeping Force in Cyprus, 'Events in the Summer of 1974', UNFICYP, n.d. [last accessed: 09/01/12] [http://www.unficy.org/nqcontent.cfm?a_id=1599&tt=graphic&lang=11].

Greece, at that stage, considered the European Community as the institutional framework within which stability could be brought into its democratic political system and institutions, and sought to enforce its independence within the regional and international system as well as its ‘power to negotiate’, particularly in the context of the invasion and the occupation of Cyprus, which has officially been registered as a major threat to Greece.⁸⁴⁸ Indeed, since the 1974 Turkish invasion of Cyprus and up until May 2002, Greece had been, at least formally, in a state of war mobilisation.⁸⁴⁹

Under the registered national threat, by and large, Greece started a galloping process of accession to the European Union, commonly divided in three basic sub-periods: the first, from 1981 to 1985, the second, from 1985 to 1995, and the third, from 1996 to 2002.⁸⁵⁰ The first period is characterised by strong doubts concerning certain serious aspects of European integration. Meanwhile, another goal was to re-determine the country's position within the community by means of establishing a ‘special regime’ of relations and regulations. For this purpose, in March 1982 Greece submitted a Memorandum requesting additional divergence from implementing certain community policies as well as further economic support in order to restructure the Greek economy.⁸⁵¹ In 1988 by means of the Integrated Mediterranean Programs the first ‘Delors packet’ gave a significant boost to the Greek economy, which is famous for its legacy. During this period Greece was particularly reserved concerning general issues with regard to

⁸⁴⁸ Embassy of Greece, 'The Course of Greece in the European Union', Hellenic Republic, Embassy of Greece, Washington, DC, n.d. [last accessed: 09/10/11] [<http://www.greekembassy.org/embassy/content/en/Article.aspx?office=1&folder=39&article=50>].

⁸⁴⁹ For the militarization of Greece, see, Rigakos and Papanicolaou, (2003), 272.

⁸⁵⁰ See, Embassy of Greece, 'The Course of Greece in the European Union'. For preserving the economy of the text, I have excluded from this section important information related to the crisis and its aftermath. The scope of my analysis in this section is, however, rather narrow, aiming at the surface of the regional *security* and *threat* discourse, underpinning the importance of international cooperation, at the level of diplomacy and/or crime policy. See, also, Xenakis, (2004).

⁸⁵¹ Embassy of Greece, 'The Course of Greece in the European Union'.

European integration, and particularly to the efforts and plans aimed at further integration in the departments of institutions, politics and defence.⁸⁵² During the second stage, Greece gradually adopted pro-integration views. While the third stage of Greece's participation in the Union, commenced in 1996, has been characterised by even further support for the idea and process of European integration and intensifying integration in every department, the strengthening of supra-national institutions (Commission, Parliament) and the development of a joint foreign and security policy by the Union.⁸⁵³

Gradually, this internal/external dynamic projects reflections of subjectivities, showing the same picture inside/outside (us/others) examined previously. In doing so, it encapsulates the structure of a language that is in itself the consequence of a repudiation, a subordination, or an exploitative relation.⁸⁵⁴ It is, then, the dialectic through which identities take shape and cultural legitimacy is established, (even) through binaries, hierarchies and tensions.⁸⁵⁵ Numerous tensions at a diplomatic, economic and strategic level have been significantly affecting Greece's model, as a divergence from the average 'community' development level. For instance, the tension of the name of Macedonia/FYROM, re-established a given threat posed by neighbouring states to Greece. Finally, by 1996, the third stage of the Greek participation in the European Union began, and it was only in 2002 when Greece became a full member of the Union; since January 1st of the same year, Greece had also been participating as a full member of the Economic and Monetary Union and the single European currency. Since

⁸⁵² *Ibid.*

⁸⁵³ *Ibid.*

⁸⁵⁴ See, Part II, Methodological Note.

⁸⁵⁵ For the construction of subjectivities through processes that make them thinkable and imaginable, and that regulate the real and the nameable, see, J Butler, 'Imitation and Gender Insubordination' in *Inside/Out*, D Fuss ed. (NY: Routledge, 1991), 13-29.

then, crucially, the issue of neighbouring Turkey has been either the main subject or the subtext of multiple, complex negotiations, in the sphere of diplomacy, national and regional security, and its links to emerging contemporary threats such as illegalised migration, organised crime and trafficking in women.⁸⁵⁶

In Europe, the events affecting Greece were, at the same time, linked to mobilising forces. For instance, the principles of economic and monetary unification, set up during the Hague Summit of December 1969, were signifying that the European Community was moving forward. This gradually took the form of a framework through which European countries could coordinate their foreign policies and work as a unitary actor in international affairs.⁸⁵⁷ The crisis in Cyprus was one of the first issues to be discussed within the remit of the Common Foreign and Security Policy, which highlighted the need for European Political Cooperation, and signified the very first case of European common action. In a sense, that it was the first time that the European Community acted on a foreign policy issue as a unitary force and not as several actors with a coordinated position.⁸⁵⁸

The idea of 'joint action' was further developed later after the Treaty of the European Union, signed in Maastricht on 7 February 1992 and took the form of an agreement in the European Council of 16-17 June 1997 in Amsterdam.⁸⁵⁹

⁸⁵⁶ The head of Interpol's Greek Bureau in Athens quoted in C Pirovolakis, 'Sex Trafficking Thrives in Greece', *Aljazeera* 06/06/2006. See, StopNow, 'Greece: Sex Trafficking Thrives', n.d. [last accessed: 10/01/12] [<http://www.stopdemand.org/afawcs0153418/CATID=7/ID=172/SID=569690288/Greece-Sex-trafficking-thrives.html>].

⁸⁵⁷ See, e.g., the Davignon Report, Part I, art. 8, which seeks progress in the area of political unification through cooperation in foreign policy matters, so 'as to bring nearer the day when Europe can speak with one voice'. Bulletin of the European Communities, 'Davignon Report, No. 11, 9-12', Office for Official Publications of the European Communities.

⁸⁵⁸ Kavakas, (2001), 15.

⁸⁵⁹ Reference made to the EU actions against trafficking under the policy developments that followed the Treaty on European Union, Treaty of Maastricht, OJ C 191 (1992) and established the

However, detailed reference to these developments surpasses the purposes of this Chapter. To this limited extent, though, it is useful to establish a few links between the national security narrative, the idea of security and of ‘joint action’ within Europe, and the subsequent instruments examined under Chapter 3, pertinent to trafficking in women. This is because a certain process of meaning attribution to security investments has been animating the discursive panoply of anti-trafficking. This process becomes much more meaningful and lucid in the examination of the national security narrative.

A clear distinction is most noteworthy; the application of security in Greece has been preoccupied with dominant constructions of nationalist interests, the integrity of the state and the autonomy of the nation. This dominant discourse has been used to justify formal and informal cooperation between international and regional mechanisms. To this, whenever there was a discussion on common foreign and security policy in Europe, the issue of Greek security from its neighbours had been represented as a pressuring priority.⁸⁶⁰ To a large extent, even though European integration contributed to a decrease in the influence exercised by the US, still, the model of Greece’s accession and integration was essentially represented as the fortification of national interests, with very specific domestic prioritisations in the domain of security.

This created a very distinct approach. On the one hand, Greece would express positive attitudes towards European integration; it would not compromise, however, the intergovernmental character of a Common Foreign and Security Policy, for maintaining its veto power and for negotiating anxieties relevant to the

three pillars of the EU, and later the Treaty of Amsterdam amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts, OJ C 340 (1997).

⁸⁶⁰ Kavakas, (2001), 35.

security and preservation of the national identity.⁸⁶¹ In that respect, the Greek case is specific but not unique among the European states.⁸⁶²

The National Politics of ‘Terror’

This section turns to the formation of the national network of *threats*. ‘War on trafficking in women’, in the context of Greece, is, again, only a single discursive link among many in the wider constructions of the ‘war on crime’.

Security Cooperation

While Greece was mainly preoccupied with the establishment of a democratic basis and the fortification of its national borders, in Europe the establishment of the TREVI group, in 1976, constitutes the first initiative to counter terrorism and to coordinate policing in the European Economic Community.⁸⁶³ TREVI continued functioning in the 1980s, when Greece entered the Community. Gradually, its remit broadened during that decade to include, among other offences, drug trafficking, which reflects a major shift in the global securitisation discourse from counter-terrorism to the ‘war on drugs’.⁸⁶⁴ The secrecy surrounding its constitutional agreement, being strictly confidential, renders its content unavailable for either scientific or educational purposes. While it was initially set up in order to combat terrorism, the final product embraces a much broader set of actions, applicable to diverse ‘wars’. *Public order, football*

⁸⁶¹ *Ibid.*

⁸⁶² S Xenakis, 'Organised Crime and Political Violence' in *Crime and Punishment in Contemporary Greece*, L K Cheliotis and S Xenakis eds. (Oxford: Peter Lang Publishing Group, 2011), 246.

⁸⁶³ Historically Greece has also exhibited an impressive record of involvement in international police cooperation. Contemporary anti-trafficking initiatives, therefore, should be situated within this context. For the development of the Greek police forces and the involvement of Greece in international police cooperation, see, Rigakos and Papanicolaou, (2003).

⁸⁶⁴ V Mitsilegas, 'The Impact of the European Union on the Criminal Justice System' in *Crime and Punishment in Contemporary Greece*, L K Cheliotis and S Xenakis eds. (Oxford: Peter Lang Publishing Group, 2011), 387.

hooliganism, organised crime at a strategic, tactical and technical level, and also, *drug trafficking, security at nuclear installations*, and lastly, broader ‘contingency measures to deal with emergencies’.⁸⁶⁵ In the 1990s, for instance, the ‘war on drugs’ was extended to the fight against transnational organised crime.

In Europe, the priority of fighting organised crime was justified in particular in the light of phenomena such as increased market integration and political events (e.g., the fall of the Berlin Wall) which led to Western fears of instability in the East. In this context, the 1990s witnessed the transformation of the European Community to the European Union, which was granted (primarily under the third pillar) powers to legislate in criminal matters.⁸⁶⁶

This evolution of security concerns is important at a level of prioritisations, as Greece had been an observer state in TREVI, and historically, has participated in most major security international and European organisations, the United Nations, the Council of Europe, the Organisation for Economic Cooperation and Development and NATO. In the domain of intelligence, the Hellenic Police has also participated actively in Interpol since 1946. The country’s geographical position has meant that cooperation with Interpol has commonly been used in investigations related to drugs, stolen cars, artifacts and stolen or lost travel documents.⁸⁶⁷ Greece has also been an active Schengen Member, accepted in 1992, being concurrently involved in the works of the European Drugs Unit and Europol.⁸⁶⁸ Within the same trajectory of international and national security, the country has also established a Border Guards service in 1998. Being an active member in these structures signifies that, at the level of institutional framework, Greece is fully actively integrated in the structures of and obligations posed by the

⁸⁶⁵ T Bunyan, 'Trevi, Europol and the European State', *Statewatching the new Europe*, 1993, 2.

⁸⁶⁶ Mitsilegas, 'The Impact of the European Union on the Criminal Justice System', 387.

⁸⁶⁷ Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 245.

⁸⁶⁸ Bunyan, 'Trevi, Europol and the European State'.

European Police Cooperation, and to that extent, participates in coordinated efforts to deal with the above-mentioned emergencies.⁸⁶⁹

In the anti-trafficking domain of criminalisation and securitisation, Greece has also achieved a record participation in order to actively contribute to the international and regional ‘war on trafficking’. At the inter-state level the Greek government has concluded bilateral agreements with countries of origin of victims (e.g., minors from Albania).⁸⁷⁰ Greece has also participated in regional initiatives, such as SECI (the Southeast European Cooperation Initiative) and B-SEC (the Black Sea Economic Cooperation). Under these initiatives, trafficking as a form of organised crime has been prioritised. To this, the Greek government has been cooperating with the (examined in Part I) Organisation for Security and Cooperation in Europe and the Stability Pact for South Eastern Europe in combating trafficking in human beings, ‘considered as a priority in their agendas’.⁸⁷¹

At the regional level, the *ARIADNE Network against Human Trafficking in South-East and East Europe* was established in 2005, on the initiative of the Human Rights Defence Centre (KEPAD). The members of the Network are seventeen NGOs from twelve countries of the region. Its objective has been the development of close and coordinated activities for combating human trafficking by undertaking joint activities aiming at providing assistance and protection to the victims and preventing the phenomenon. At the national level, on the initiative of

⁸⁶⁹ Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 245.

⁸⁷⁰ See, 'Terre Des Hommes Albania and the Transnational Action Against Child Trafficking Project', in IOM, 'Resource Book for Law Enforcement Officers on Good Practices in Combating Trafficking. March 2006', (Vienna: International Organisation for Migration and the Austrian Federal Ministry of the Interior (FM.I), 2006). Prepared within the Framework of the AGIS 2005 Project 'Comprehensive Training for Law Enforcement Authorities Responsible for Trafficking in Children/Minors'.

⁸⁷¹ Ariadne Network, 'Greece', 108.

IOM, a diplomatic forum was established in the end of 2005. The forum, composed of representatives of all competent Ministries, International Organisations, diplomatic authorities of countries of origin and NGOs, has been involved in promoting anti-trafficking coordinated actions. To this, IOM organises the meetings of the forum on a systematic basis, focusing on ‘contemporary challenging issues’.⁸⁷²

Specifically in the field of justice and home affairs, regional and border security, the Framework Programme on Police and Judicial Cooperation in criminal matters (AGIS) has become fully utilised in the domestic context. Education seminars have been funded to address specific needs competent to prosecutors and judges, and also a group of law enforcement officials has received specialised training for a period of two years in the framework of the EU AGIS project.⁸⁷³ With the view to protect victims’ security, however, participation in the AGIS II project has underlined the significance for a more ‘holistic’ approach to anti-trafficking. In that respect, the evolution of the AGIS project has focused on developing comprehensive professional training programmes.

Legal Developments and Security

The preceding narrative has already associated national and border security, and to some – limited – extent victims’ security with broader societal functions. A genealogical examination of the legal anti-organised crime developments in Greece, also, shows that organised criminality and terrorism have been intertwined; this has been a fusion with political implications. Immediately after

⁸⁷² *Ibid.*

⁸⁷³ For a comprehensive account of Community initiatives in relation to their cross-border aspects, see Hellenic Police, ‘Greece. External Borders Fund, 2007-2013’, (Athens: Ministry of Interior, Hellenic Police Headquarters/Finance Division, n.d.), 35-6.

the fall of the Greek dictatorship in 1974, Law 774 of 26 May 1978, to ‘Combat Terrorism and Protect the Democratic Polity’, was passed by the Hellenic Parliament. The law (L.774/1978) criminalised the conduct of two people acting in concert, who have been carrying arms or explosives, and have intended to commit or have committed a series of offences.⁸⁷⁴

This was criticised, however, as a political attack and a disciplinary mechanism, orchestrated by the post-dictatorship conservative government. Particularly PASOK (Socialist Party) and KKE (Communist Party) claimed that the legislation (L.774/1978) was not a product of domestic processes, but rather an attempt by a government under foreign pressure to engage in international cooperation on justice and home affairs matters.⁸⁷⁵ As such, the national counter-terrorism and anti-organised crime legislation can be seen to reflect the prevalent European security concerns at the time. Simultaneously, it was posing a series of crucial questions and challenges to the Greek political scene, related to issues of national freedom and political independence.

This law was subsequently abolished when the first PASOK government came into power in 1981. ‘The (then anti-EEC) socialists of *PASOK* claimed that the law was contrary to the rule of law and aiming to control protest and to use the security services for law enforcement’.⁸⁷⁶ In addition, it was argued that the general provisions of the Greek criminal law were adequate to address the pertinent acts, ‘with no need arising for specific counter-terrorism legislation’.⁸⁷⁷ As previously examined in Chapter 5, this argument has been repeated in the debate over subsequent anti-organised crime and anti-trafficking legislation.

⁸⁷⁴ Mitsilegas, 'The Impact of the European Union on the Criminal Justice System', 387.

⁸⁷⁵ Xenakis, (2004), 348.

⁸⁷⁶ Mitsilegas, 'The Impact of the European Union on the Criminal Justice System', 388.

⁸⁷⁷ *Ibid.*

However, a few years later in 1990, the new government of Nea Dimokratia (Conservative Party) introduced a new legislation (L.1916/1990) ‘on the Protection of Society from Organised Crime’, which forbade the publishing of terrorists’ proclamations. Mainly because the publishing of proclamations remained a commonly used tool by the ‘November 17’ organisation,⁸⁷⁸ until recently.⁸⁷⁹ The law was justified as necessary to protect the Greek citizens and the democratic institutions, with references also being made to developments in the Council of Europe.

It has been maintained that in the 1990 law the use of the terms ‘organised crime’ (in the title) and ‘criminal organisations’ (in the text) had effectively removed direct reference to terrorism. However, the reference to publishing terrorists’ proclamations fuelled fierce criticism by the press and by opposition parties. In specific, it was argued that ‘the term “organised crime” in the 1990 law was devised in order to sidestep left-wing protest, with organised crime acting as a substitute for terrorism for domestic purposes’.⁸⁸⁰ To the extent that the law was imposing specific restrictions on the press, it was also argued that the law infringed the right to freedom of the press and the right to freedom of expression; practices strongly reminiscent of the country’s authoritarian past.⁸⁸¹ Repeating earlier events, as soon as PASOK was re-elected in 1993, the 1990 law was abolished.

⁸⁷⁸ ‘November 17’ has been named after the 17 November 1973, student uprising, whose crushing by the military heralded the waning of support for the dictatorship (the dictatorial regime of the Colonels of 1967-74). It is a self-described Marxist-Leninist organisation, publicly launched in 1975 with the murder of the CIA station chief in Athens. See, Xenakis, ‘Organised Crime and Political Violence’, 268.

⁸⁷⁹ Xenakis, (2004), 348.

⁸⁸⁰ *Ibid.*

⁸⁸¹ Mitsilegas, ‘The Impact of the European Union on the Criminal Justice System’, 389.

This development created an apparent gap between international and national legal context. This is because, as examined in Chapters 2 and 3, during the 1990s combating organised crime was becoming a priority among European states, ‘with various policy initiatives aiming at ensuring the exchange of strategic and personal data between members states’.⁸⁸² Within this context, and under the pressure exercised by the implementation of the UN 2000 Organised Crime Convention, important demands for more systematic and accurate information on organised crime resulted in various establishments. The submission of organised crime statistics and the subsequent submission of trafficking statistics by the Hellenic Police, as well as the establishment of various committees at national level have been attributed to these pressures.⁸⁸³

In effect, a committee was set up in 2000 to study the development of legislation on organised crime, which led to the implementation of Law 2928/2001.⁸⁸⁴ This new development introduced new provisions *inter alia* on mitigating circumstances, the use of intelligence for monitoring suspects, the abolition of trial by jury, the enabling of DNA testing and the intensification of controls.⁸⁸⁵ As previously noted, this development introduced a detailed and comprehensive framework dealing with organised crime (applicable to trafficking) rather than terrorism.⁸⁸⁶ It had, however, specific applications on the November 17 trials.⁸⁸⁷ This was confirmed by the trial in 2003 of members of the ‘notorious 17

⁸⁸² *Ibid.*

⁸⁸³ See, e.g., *ibid.*, 390-1.

⁸⁸⁴ See also Chapter 5. Commonly referred to as ‘Troimonos’ (‘terror-law’), see, Xenakis, (2004).

⁸⁸⁵ For a discussion relevant to DNA tests see, I Mandrou, ‘4 Changes in the Anti-Terrorist Act’, *To Vima*, 22/04/2001.

For a detailed analysis, see Symeonidou-Kastanidou, (2007a).

⁸⁸⁶ See, Chapter 5.

⁸⁸⁷ For a detailed account, see, Xenakis, ‘Organised Crime and Political Violence’, 268-71.

November organisation, who were convicted on the basis of Article 187 of the Greek Criminal Code as amended by Law 2928/2001'.⁸⁸⁸

To that extent, the Greek anti-terrorist legal developments have attempted to maintain that Greece is no longer constrained by national concerns but responds to threats as an international player. By fulfilling international obligations, the state appeared to have strengthened and modernised its laws, in the fields of both 'prevention and repression, demonstrating – at the same time – respect for human rights'.⁸⁸⁹

Notwithstanding the passage of this law in 2001 and its potential to also include conduct by terrorist groups, sustained pressure has been placed on successive Greek governments to implement terrorism-specific measures adopted at EU-level post-9/11.⁸⁹⁰

Within this context, a further development, Law 3251/2004, implementing the Framework-Decision of June 2002 on the European Arrest Warrant⁸⁹¹ and amending the previously examined Law 2928/2001 (on criminal organisations and other provisions) came to substitute a rather problematic and time-consuming system of extradition.⁸⁹² Law 3251/2004 also introduced the new article 187A P.C., which reiterated previous provisions; however, it introduced, for the first time in the Greek Penal Code, the concept of terrorism as an act committed by an individual instead of a criminal organisation. Therefore, it criminalised individual terrorist acts without making them dependent upon the existence of an organisation. Moreover, the new article 187A P.C. included a rather expanded list of offences; this has been regarded as a mere attempt to 'translate' the pertinent

⁸⁸⁸ Mitsilegas, 'The Impact of the European Union on the Criminal Justice System', 391.

⁸⁸⁹ Council of Europe, 'Greece. Profiles on Counter-Terrorist Capacity. June 2006', (2006).

⁸⁹⁰ Mitsilegas, 'The Impact of the European Union on the Criminal Justice System', 391.

⁸⁹¹ Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States OJ L 190/1 (2002).

⁸⁹² For a detailed analysis and the difference between Greece and other Member States in the way that the Decision was implemented, see, Symeonidou-Kastanidou, (2007a), 154-7.

Framework-Decision.⁸⁹³ It also injected harsher penalties in an effort to criminalise a series of related acts, including threatening to commit a terrorist offence, directing a terrorist organisation (punishable with a minimum custodial sentence of ten years) and establishing or participating in a terrorist organisation.⁸⁹⁴

Its explanatory report reaffirms the intention and will of Greece to actively contribute to the formulation of a common European policy against international terrorism, within the remit of the European common area of freedom, security and justice. At the same time, its implementation instigated a rather problematic discussion with regard to who can be extradited, based on the national identity of the individual(s) involved. This discussion, clearly, took place in all national parliaments across the Member States upon implementation of the pertinent Framework-Decision. In the Greek parliament, in specific, it was reaffirmed that no Greek citizen will be extradited.⁸⁹⁵

Beyond the particular anxieties expressed, relevant to the national identity subject to extradition, and the suggested expansion of criminalisation and securitisation mechanisms, it becomes evident that the concept of terrorism under the Greek Law, targets acts that are conducted by members of criminal organisations. The preceding analysis then draws direct links between terrorism and the rather 'new' phenomenon of organised crime, in this specific national context. Consequently, it reiterates, at an official level, the construction of interlinked threats.

⁸⁹³ Also, Article 187A entered the concept of 'political offences' in order to limit criminalisation and protect fundamental rights enshrined in the Greek Constitution and the ECHR, see *ibid*.

⁸⁹⁴ See, Mitsilegas, 'The Impact of the European Union on the Criminal Justice System', 392; Symeonidou-Kastanidou, (2007a).

⁸⁹⁵ Symeonidou-Kastanidou, (2007a), 168.

Victims' Security

As previously discussed, securitisation processes also included human security sensibilities.⁸⁹⁶ What type of victims' security was imagined in the Greek 'anti-trafficking promise'? As explored at the beginning of this Chapter, issues of enforcement have emerged and have highlighted the fact that, in important occasions, victims' security has been neglected. It is, therefore, crucial at this stage to make reference to a few protective measures in the context of terrorism and, in specific, to a few developments pertinent to the protection of witnesses and victims in Greece (L.2928/2001, articles 9 and 10).

The issues of protection of witnesses, importantly, as well as the issue of compensation to victims have been sufficiently provided. These protections have been to a certain extent comparable to the provision of services for trafficking victims. For the specific techniques of protection of witnesses, it is stated that suitably trained police officers will be guarding witnesses, taking their statements by using electronic audiovisual means or visual transmission only, not recording their name, places of birth, residence and work, profession and age on the examination report; and on the basis of a justified order from the competent public prosecutor, the magistrate's court, they will be changing their personal data, as well as their profession. In the case of employees within the public sector, this can be done by transferring, moving, detaching for an indefinite period of time or even removing the individuals concerned from office.⁸⁹⁷

The protection measures are taken with the consent of the witness and, do not limit his/her personal freedom more than is necessary for his/her safety, and cease if the witness requests this in writing or does not cooperate to ensure their success.

⁸⁹⁶ See, Chapter 3.

⁸⁹⁷ See, e.g., Symeonidou-Kastanidou, (2007a).

During open court proceedings, it is usual for the anonymous witnesses to be called by the name mentioned in their examination report, unless the public prosecutor or a party requests the disclosure of their real name, whereupon the court orders the disclosure. As a safeguard against the abuse of the statements of anonymous witnesses, it is expressly provided that their statements alone are not enough to condemn a defendant. Likewise, such protection can be provided to the public prosecutor, the interrogator and the judges in the case.⁸⁹⁸

Based on the aforementioned developments, and insofar as terrorism has been constructed as a global threat, it has been argued that the Greek authorities have taken all the appropriate measures for the elimination of terrorism and the protection of international security. In addition, it has been reaffirmed that the Greek authorities take victims' security seriously and offer sufficient protection to the witnesses. The problem, however, lies on two important points of criticism. Firstly, these protections have been repeatedly criticised for their increased reliance on a rather broad array of offences and on the subsequent expansion of criminalisation and punishment. Secondly, critics have posed specific questions related to the use of electronic audiovisual means, the possibility of visual transmission, the anonymity of witnesses, and the possibility of amending personal data (L.2928/2001, article 9).⁸⁹⁹ In particular, they have maintained that the relevant provisions are influenced by conservative political post-9/11 trends that pose threats to restrict civil liberties and encroach upon the universality of basic human rights. The policies, hence, fuel prevailing anxieties relevant to citizens' confidence in state institutions and citizens' mistrust in these institutions. By extending the realm of punitiveness, through the declared goal of all pertinent

⁸⁹⁸ Articles 9 and 10, Law 2928/2001; and article 42, par 6, Law 3251/2004 'European Arrest Warrant'.

⁸⁹⁹ See, Symeonidou-Kastanidou, (2007a), 80-2.

legislative measures to enforce ‘police and judicial cooperation’, a problem emerges: the expansion of suppression and the restriction of civil liberties.⁹⁰⁰ Hence, by posing an immediate threat to civil liberties, this legislative framework was (once again) criticised on the grounds that it was pushed through, due to foreign pressure, dictating counter-terrorism action in light of the 2004 Athens Olympics.⁹⁰¹

Justifications and Reasoning

According to the analysis offered by Symeonidou-Kastanidou, the Greek Minister of Justice, in an effort to justify the post-9/11 security developments, presented the examined legal developments as the only measure of protection against ‘the next terrorist attack’.⁹⁰² The Minister, importantly, maintained, in his parliamentary assessment of terrorism, that contemporary terrorism is not only a source of violence but also a social scourge, global terrorist attacks have been transformed from small-scale targets to mass-destruction, ‘blind’ strikes, which tend to target civilians rather than specific subjects.⁹⁰³ Therefore, according to the Minister, there is no national response to terrorism, as there are no boundaries that can contain modern-type terrorism.⁹⁰⁴ Similarly, the European Union Committee has justified the Framework-Decision on Fight Against Terrorism based on democratic

⁹⁰⁰ See, E Symeonidou-Kastanidou, 'Towards a New Definition of Organised Crime in the European Union', *European Journal of Crime, Criminal Law and Criminal Justice* 15, no. 1 (2007b), 83, 84-9.

⁹⁰¹ See, Symeonidou-Kastanidou, (2007a).

⁹⁰² See, C Aradau and R van Munster, *Politics of Catastrophe. Genealogies of the Unknown* (Abingdon & NY: Routledge, 2011a), 34-9.

⁹⁰³ On risk, uncertainty and vulnerability, see, *ibid.*, 40-51.

⁹⁰⁴ Symeonidou-Kastanidou, (2007a), 197.

values and the rights and freedoms of citizens.⁹⁰⁵ According to the EU counter-terrorism strategy,

Terrorism is a threat that does not recognise borders and may affect states and peoples irrespective of their geographical location. EU States and citizens are not an exception. Individuals and groups who believe that they can advance their political aims by using terror pose a serious threat to the democratic values of our societies and to the rights and freedoms of our citizens, especially by indiscriminately targeting innocent people.⁹⁰⁶

Acts of terrorism are, therefore, criminal and unjustifiable, and must be treated as such under all circumstances. In that respect, to deal with the terrorist threat, the EU has devised a holistic framework – to prevent, protect, pursue and respond. Importantly, the chosen, preferred, imagined and constructed global framework is presented as the only solution:

After 9/11, the US and its allies could have decided that the most crucial objective was to strengthen international law in the face of global terrorist threats, and to enhance the role of international institutions. They could have decided it was important that no single group or power should act as judge, jury and executioner. They could have decided that the disjuncture between economic globalisation and social justice needed more urgent attention ...⁹⁰⁷

Instead, with the view to achieving a successful strategy to combat international terrorism, the legal frameworks and their political justifications crafted the language of risks and threats. In doing so, they thoroughly addressed the coordination between law-enforcement authorities and judicial systems, both

⁹⁰⁵ See, e.g., Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism OJ L 164/3, amended in 2008. See, also, Council Decision 2009/426 JHA of 16 December 2008 on the strengthening of Eurojust, OJ L 138/14, and amending Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust, OJ L 63, with a view to reinforcing the fight against serious crime.

⁹⁰⁶ See, European Commission, 'Fight against Terrorism', n.d. [last accessed: 07/03/12] [http://ec.europa.eu/homeaffairs/policies/terrorism/terrorism_intro_en.htm]. And, pertinent to 'civil protection', see, Europa, 'The Fight against Terrorism: Preparedness and Management of the Consequences', n.d. [last accessed: 02/02/12] [http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_terrorism/133220_en.htm].

⁹⁰⁷ D Held and K Young, 'The Principles of Effective Global Governance: Participations, Social Justice and Sustainability' (paper presented at the Conference: Nouveau Monde, Nouveau Capitalisme/New World, New Capitalism, Paris, 8-9 January 2009), 6.

within the EU and globally. Directing the attention to the ‘war on terrorism’, the applications of ‘war’ have been presented as the preferable, ‘holistic’ approach to protect and strengthen freedom, security and justice throughout the EU.

So far, all these elements have previously been examined under the international context of security, in Part I. However, the important added element, at this stage, is that the juxtaposition of national and international justifications shows that ‘our’ innocence is the fundamental value that needs to be protected, from ‘blind’, irrational, and, therefore, utterly unpredictable strikes, ‘indiscriminately targeting innocent people’. The official narratives, then, mobilise a mode of reasoning and apply forms of knowledge that ‘oscillate between the possible instead of the probable and the plausible instead of the true’.⁹⁰⁸ At the same time, these official narratives construct the discourse of ‘innocence’ – or rather, the presumption of innocence – that presents human security as a culturally intelligible strategy.⁹⁰⁹ This strategy aims to mobilise criminalisation and securitisation, surveillance technologies in the domestic context.

Surveillance Technologies: Terrorism and Trafficking

In June 2002, and amid mounting international pressure to track down terrorists before the 2004 Olympic Games in Athens, a bomb exploded prematurely in the hands of Savvas Xiros, a group member of November 17. The arrested group member was taken to hospital where, he provided information that led to a number of other arrests and the discovery of an arms cache.⁹¹⁰ The arrests were avidly represented in the media. Considerable media attention, particularly, received the

⁹⁰⁸ Aradau and van Munster, (2011a), 19.

⁹⁰⁹ See, S Buck-Morss, *Thinking Past Terror: Islamism and Critical Theory on the Left* (Athens: Alexandria Publications, 2005), 39.

⁹¹⁰ Xenakis, ‘Organised Crime and Political Violence’, 269.

narrative of the arrest of the number one most wanted terrorist, the ‘mastermind’ of November 17; the suspect arrived in a taxi at the General Police Department of Athens (GADA) to surrender himself.

The representation of the threat prior to him surrendering had constructed a monster, inhuman, cold-blooded killer, always armed with the ‘legendary .45-calibre’.⁹¹¹ Therefore, the picture of him arriving at the anti-terrorist unit by taxi did not, in the least, meet the stereotype of the preconceived embodied threat. Nineteen individuals were charged in total, and among those arrested were two individuals who had also been involved in the anti-dictatorship struggle.⁹¹² Since then new groups have risen, alongside the widespread social unrest of December 2008.⁹¹³

The observation that a terrorist group which had been lingering in the sphere of fantasy for decades, had remained, however, unidentified, and for which imagined securities had triggered the intensification of controls for years, raised questions as to why and how, in the midst of preparations for the Olympic Games,⁹¹⁴ at that particular situation, anti-terrorism was finally made effective, feasible, fast and harmless. This, also, raised further inquiries regarding the nature of political crimes, the emergence of terror and the severity of the criminal justice

⁹¹¹ The organisation’s first known attack took place in December 1975, when the CIA’s Athens station chief was shot with a .45-calibre pistol, since then the weapon became irrevocably associated with the attacks of November 17.

⁹¹² November 17 was formed in part to retaliate against the junta and all its symbolic connotations. Most notably, resistance to capitalism, to Europeanisation, to the US influence and to any external political influence, was among the ideological claims put forward.

⁹¹³ The initial demonstrations of December 2008, following the shooting of teenager Alexis Grigoropoulos, were aimed against alleged police incompetence and brutality, however, the scope of the movement soon broadened to encompass protest against youth unemployment, social and economic inequalities, corruption, state inadequacy, higher education reforms and other collective grievances. See, S Economides and V Monastiriotis, eds., *The Return of Street Politics? Essays on the December Riots in Greece* (London School of Economics, The Hellenic Observatory, 2009). See, also, the inspiring analysis offered by Costas Douzinas, C Douzinas, *Resistance and Philosophy During the Crisis* (Athens: Alexandria Publications, 2011).

⁹¹⁴ See, P S Bouklis and T Fouskas, 'Athens 2004 Security Measures. Crime Policy and Olympic Games' (BSc Dissertation, Panteion University, 2004).

response, which potentially needed to be modified and adjusted to the scale of terror.

2004 Olympics: panoptical surveillance

In 2004 the Olympic Games were ‘returned to where they belonged, to their mother country’ (as was constantly reported by the Greek media). This festive return, however, constituted a major policing concern for the Hellenic Police. In specific, for security issues associated to terrorism, ‘illegal immigration’ and ‘trafficking in human beings’.⁹¹⁵ ‘The Athens 2004 Olympics became a testing ground for the latest anti-terrorist panoptic technology, and the “biggest security operation in peacetime Europe”’.⁹¹⁶

Regardless of financial costs and efficiency, in 2004,⁹¹⁷ Greece was impelled to participate in a new international security alliance and to buy the most up-to-date security and surveillance technology, ‘in order to secure the support and confidence of its international counterparts’.⁹¹⁸ Issues of national security and national vulnerability from the threat of terrorist attack, illegalised migration and trafficking were circulated on a daily basis, alongside reports of the extraordinary financial burden imposed by the Olympic Games (e.g., infrastructure, security, organisation).⁹¹⁹

⁹¹⁵ G Marnellos, 'State Department: Human Trafficking - Greece Is on the Black List. Strong Reactions by the Ministry of Public Order', *Eleutherotypia* 13/06/2003.

⁹¹⁶ M Samatas, 'Surveillance' in *Crime and Punishment in Contemporary Greece*, L K Cheliotis and S Xenakis eds. (Oxford: Peter Lang Publishing Group, 2011), 426.

⁹¹⁷ In 2004 Nea Dimokratia (Conservative Party) came into power.

⁹¹⁸ Samatas, 'Surveillance', 426.

⁹¹⁹ See, e.g., Embassy of Greece, '2004: US Press on Athens 2004 Olympics', Hellenic Republic, Embassy of Greece, Washington, DC, n.d.; also, A Shipley and C Whitlock, 'In Athens, It's Safety at All Costs', 12/08/2004.

Just before the 2004 Olympics began, approximately 70,000 Greek security personnel were patrolling Athens and competition venues scattered around the country, while 1,000 security cameras and a couple of blimps were keeping an electronic eye on the proceedings.

Indeed, Athens as the Olympic capital was transformed during the summer of 2004, with a highly sophisticated surveillance security system to shield the Games from land, air and sea. Heated debates were triggered by the presence of the camera-laden ‘Zeppelin’ – hired to boost air and land security during the Olympics –, for fear it would infringe on people’s privacy.⁹²⁰ Also, electronic surveillance was integrated with ‘dataveillance’ through data links and the matching of SIS (Schengen Information System) blacklists with those of Europol.⁹²¹ A network of interconnected systems was expected to facilitate decision-making from a distance, ‘far from the front lines of policing’.⁹²²

According to Minas Samatas, the Athens Olympics ‘super-panopticon’ was based on the ‘Command, Control, Communications, and Integration’ (C4I) system, which was initially intended for military purposes.⁹²³ The system was boosted by the overt presence of surveillance cameras and, of course, the conventional monitoring carried out by the Hellenic Police. The purpose of the system in maintaining the image of Olympic security was successfully managed, according to Samatas, particularly since the system ‘was delivered seriously flawed only a few weeks prior to the commencement of the Games’.⁹²⁴ The functions of ‘imaginary’ security, however, were, also, successful in perpetuating the promise of security and in the construction of threats.

Trafficking: surveillance and victims

⁹²⁰ See, USA Today, ‘Greek Group Wants to Ground Olympics Security Zeppelin’, n.d.

⁹²¹ See, Chapter 3.

⁹²² Samatas, ‘Surveillance’, 427.

⁹²³ *Ibid.*, 421-42.

⁹²⁴ *Ibid.*, 427.

Among the security concerns expressed prior to installing the array of surveillance measures examined previously, trafficking in women and children was presented as one of the most pressuring concerns, insofar as these concerns appear to have been reflected in similar threat assessments issued by organisations such as Europol.⁹²⁵ Trafficking amongst other organised criminal activities such as ‘illegal immigration’ and ‘drug trafficking’ have consistently proved to be by far the most common subjects of police investigations.⁹²⁶ While political tensions over illegalised migration have mounted both domestically and in European politics, in the Greek security affairs, actors intensified their own focus and pressure for action pertinent to trafficking in women.

The links between the management of inter-related threats and security structures are evident in the description provided by Grigoris Lazos. According to his description, trafficking in women is a top priority for law enforcement officials and the government. The anti-trafficking force, according to Lazos, is made up of officials from the Ministry of Interior and the Ministry of Public Order, and experts in the field of immigration and trafficking.⁹²⁷ Moreover, trafficking in women appears to be linked to terrorism as an issue of honour: ‘[t]he police officers are taking the matter very seriously. It’s a question of honour for them, just like the 17N [November 17] terrorist group’.⁹²⁸

Regarding trafficking victims’ security, and with specific reference to the preventive and protective measures implemented by the Greek authorities, a paper has been prepared by the Greek Embassy (Hellenic Republic Embassy of Greece)

⁹²⁵ See, e.g., Europol - European Police Office, 'OCTA 2009: EU Organised Crime & Threat Assessment', 2009.

⁹²⁶ Xenakis, 'Organised Crime and Political Violence', 260.

⁹²⁷ Grigoris Lazos quoted in Tzilivakis, 'New Fight to Stop Sex Trade. Protagonists in the Fight to End Sex Slavery in Greece Say Public Awareness of the Matter Must Go Hand in Hand with Law Enforcement Efforts'.

⁹²⁸ *Ibid.*

in Washington D.C. entitled 'Greek Actions for the Suppression of Trafficking in Human Beings' (2004). The paper has highlighted an integrated programme of actions, which were assumed or placed in motion in 2004 for the suppression of trafficking in human beings.⁹²⁹ The programme makes specific reference to the 2004 Athens Olympic Games, 'Measures Especially for the Period of the Olympic Games', and states that the Greek Ministry of Foreign Affairs would finance two special activities relating to victims' protection: the 'provision of free legal aid'; and 'prevention- information concerning contagious diseases'. Under the 'provision of free legal aid', an agreement was signed with the chairpersons of the Bar Associations of the five Olympic cities (Athens, Thessaloniki, Patras, Heraclion, and Volos) for the provision of free legal protection and aid to the victims of human trafficking, covering the period of the Olympic Games until 15 October 2004.

Under the preventive action concerning contagious diseases, however, it was stipulated that the Ministry was supporting a foreign language programme aiming to prevent a possible upsurge of contagious diseases during the period of the Olympic Games to 'foreign visitors and possible victims of human trafficking'. Contradictorily, at the same time more lenient measures pertinent to the regulation of sex work were implemented in order to facilitate the 'increased demand for sexual services' during the Olympics.⁹³⁰

It is then safe to assume that these measures are to be examined as 'emergency' measures in the area of victims' protection; only to be used in an

⁹²⁹ Embassy of Greece, 'Greek Actions for the Suppression of Trafficking in Human Beings. Human Trafficking for the Purpose of Sexual and Financial Exploitation Integrated Program 'Actions for the Suppression of Trafficking in Human Beings'', Hellenic Republic, Embassy of Greece, Washington, DC, n.d. [last accessed: 07/02/12] [<http://www.greekembassy.org/Embassy/Content/en/Article.aspx?office=1&folder=189&article=15996>].

⁹³⁰ IOS tis Kyriakis Eleutherotypia, 'Olympic Prostitution in Athens for 2004', 22/06/2003.

effort to take the situation away from the spotlight of the Olympic Games. To this, the reference to ‘contagious diseases’ communicates directly to sexual purposes, and to the protection of public health, rather than to victims’ protection *per se*. Besides, the increased demand for sexual services during Olympic Games and similar major events (e.g. World Cups) has been investigated by international organisations. Subsequently, efforts have been made to counter trafficking during these events. Issues of demand and underpinning heteronormative assumptions, however, are being reproduced in these discussions at the same time that security and criminalisation concerns are being raised.⁹³¹

In fact, during the same period, in July 2004, security structures were actually used as a mechanism to expel and punish victims. The list of human rights violations is long and the multiple social problems have been thoroughly acknowledged.⁹³² For instance, it was reported that a 13-year-old female victim of trafficking and of sexual exploitation had been held in Amygdaleza [detention centre] under deportation orders. She was released, however, and placed in a special hostel when an adult inmate alerted the local representatives of *Mèdecins sans Frontières* to her pregnancy.⁹³³ According to the same report, the exploitative practices are not limited to victims of trafficking. Illegalised migrant women awaiting deportation are also vulnerable to exploitation and insecurity,

In addition to its concerns about minors held at Amygdaleza, the organization has also received allegations that some of the male guards in that detention centre may have engaged in practices that violate rules regarding the treatment of prisoners. In particular, the organization received allegations that within the past year, male guards at the centre have entered

⁹³¹ See, e.g., J. Hennig et al., 'Trafficking in Human Beings and the 2006 World Cup in Germany', (International Organisation for Migration, 2006), 6.

⁹³² Anna Diamantopoulou, European Commissioner responsible for Employment and Social Affairs, for instance, raised multiple concerns in relation women’s and victims’ security and the exploitative structural conditions. At a conference in September 2002, she stressed that the ‘bottom line is profit’. Quoted in Malarek, (2004), 46.

⁹³³ Amnesty International, 'Greece. Out of the Spotlight: The Rights of Foreigners and Minorities Are Still a Grey Area', 32-3.

the women's dormitory rooms at night, offered alcohol to detainees and demanded sexual favours.⁹³⁴

Keeping in mind the above security developments and their diverse, punitive and disciplinary applications, the question '*whose security?*' examined in Chapter 3 can be awakened, in order to remind us that upon examination of the national context, clear responses have been provided to our questions. Obviously, I do not imply that the Greek social context is the exception. For instance, a country mission report on the Netherlands notes that trafficking victims are housed in penal institutions rather than shelters for domestic violence victims during their period of stay, while the extension of this period is contingent on the victims' cooperation in the law enforcement.⁹³⁵ The examples are multiple, and both enable and limit the exercise of punitive logics.

Women's Security and/or 'Happy Trafficking'

Recent discussions regarding 'street politics' and the broader scope of the December 2008 movement have destabilised the dominant traditional notions of national security and have attempted to install a pressuring discussion on social security.⁹³⁶ It is in this context that social demands have been articulated and a 'freedom from fear' discourse has emerged as a counteraction to the dominant debates on the Greek financial crisis. Yet in the context of trafficking in women, a new threat - posed by organised crime - has been identified by the Greek Ministry of Public Order and the International Organisation for Migration, based on official

⁹³⁴ *Ibid.*

⁹³⁵ Ertürk, 'Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Yakin Ertürk : Addendum : 15 Years of the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, (1994-2009): A Critical Review', 14.

⁹³⁶ See, e.g., Research Institute for European and American Studies, 'Greece's Forgotten Root Challenge: Human Security', RIEAS, 2011 [last accessed: 15/12/11] [<http://www.rieas.gr/research-areas/editorial/1432-greeces-forgotten-root-challenge-human-security.html>].

assessments.⁹³⁷ '[A] new phenomenon so-called "happy trafficking" is on the rise, where victims enjoy a degree of limited freedom and a small financial reward for their services. As a result, the more the level of victims' consent increases, the more the possibility of testifying against their trafficker diminishes'.⁹³⁸

In other official accounts, the ideological functions of the term are a little more complex,⁹³⁹ '[i]n Greece, the emergence of more women as trafficking suspects is the result of a change in strategy by organized crime'.⁹⁴⁰ To this, in the same article it is sustained that '[t]raffickers are always one step ahead of the police – their latest trick is to use their victims for recruitment ... As the tactic relies on psychological exploitation rather than violence, it is perversely referred to as "happy trafficking"'.⁹⁴¹ Similarly, '[c]riminal organizations show an amazing flexibility in finding new routes, new modi operandi and new ways to overcome the law. For instance, lately we talk of "smiling trafficking", where the victims are promised of their freedom provided they recruit new members in that vicious circle'.⁹⁴²

The concept of 'happy trafficking' is then rather complex and poses important security questions. Firstly, it describes a shift in the nature of the relevant security concerns. In specific, from victims' security, the focus turns to victims as threats (and perhaps, again, to state security). In turn, the nature of violence and victimisation also changes, from physical to psychological (coercion). Secondly, it depicts different levels of consent and exploitation. In

⁹³⁷ The term aims to describe a new trend in trafficking in women. See, Ariadne Network, 'Greece', 102.

⁹³⁸ *Ibid.*

⁹³⁹ Similar to the issues examined under Chapter 4.

⁹⁴⁰ The International Herald Tribune, 'In Greece, a New Twist in Sex Trade'.

⁹⁴¹ *Ibid.*

⁹⁴² P Panouris, *Speech of the Secretary General of the Greek Ministry of Justice, Mr. Panagiotis Panouris, Event Held at the American Congress with the Subject: 'Trafficking in Persons: Modern Day Slavery'*, 13 March 2007, (Hellenic Ministry of Justice, 2007), 2.

doing so, however, it offers an alternative narrative about victims' utilisation in the criminal justice (I recall, 'the possibility of testifying against their trafficker diminishes'). For the ideological functions identified here, which is only the beginning of a focused future inquiry on the security functions of our cultural attitudes toward victims, 'happy trafficking' as a security narrative is crucial. It is crucial, especially because it takes place after years of feminist struggles, and despite the fact that the women's movements have helped us recognise debates on rape, and analyse sexual and gender violence.⁹⁴³

Greece: identity, security and freedom

This section bridges understandings of the biometric identifiers, as security tools, explored under the international, abstract context and the particular application of these 'infallible' techniques in Greece.⁹⁴⁴ It results in an exploration of the strategic uses of identity cards. Drawing on Otherness,⁹⁴⁵ the recognition, identification or authentication of the Greek national leads to a concomitant growth in the identification of the Other, the external, the subjects left outside the lines of citizenship. This is highly pertinent as we revisit the redrawing of the line between the victims and the perpetrators of trafficking in women, under the national prism, as a mechanism that has much broader securitisation and externalisation capacities than the ones already explored.⁹⁴⁶

⁹⁴³ See, e.g., Elias, (1986), 48-9.

⁹⁴⁴ See, J Lodge, 'Transparency, Justice and Territoriality: The EU Border Challenge' in *Security Versus Freedom? A Challenge for Europe's Future*, T Balzacq and S Carrera eds. (Aldershot & Burlington: Ashgate, 2006).

⁹⁴⁵ Borrowing the term from Castoriadis, (2005). In the particular context of the construction of national identities, as utilised by Anna Triandafyllidou, see Triandafyllidou, (2000).

⁹⁴⁶ See, J Swarts and N M Karakatsanis, 'The Securitisation of Migration: Greece in the 1990s', *Journal of Balkan and Near Eastern Studies* 14, no. 1 (2012), 33; G Nikolopoulos, 'Internationalisation of Criminal Policy and Criminalisation of Immigrants in the 'Area of Freedom, Security and Justice': An Overview', *The Contemporary Criminality, its Confrontation and the Science of Criminology - Essays in Honour of Prof. J. Farsedakis* 2, no. 1 (2011), 1385.

Since the end of World War II, a system of personal ID cards, issued by the Hellenic Police, has been in place in Greece for the purposes of security. These are of significant importance for both adults and minors. The cards are mandatory for a plethora of reasons. For instance, entry in official examinations or other educational purposes, when for identification purposes the ID cards, *tautotites*, are mandatory and should be issued to (and by) any Greek national, twelve years old or above, who lives permanently or temporarily in Greece (Law 1599/1986). All nationals must carry this document at all times and be prepared to present it upon request by the Greek authorities, in stop and search instances and for identification purposes. It is also a valid travel document within the Schengen states, while Greek citizens cannot issue other travel documents in absence of a valid ID card.

An important debate on the issue of religion as a mandatory field of the Greek ID cards was stirred, in April 1993, by a parliamentary discussion regarding the connection between the Greek Orthodox Church and the state, as it was reflected through the mandatory, at that time, field of religious denomination. The suggestion to remove the mandatory nature of the relevant field was rejected by both the Church and the majority of the ministers. This was registered as a failed attempt to disentangle the relation between the State and the Church due to populist concerns, while the issue of identity cards and religion denoted increasing political risks to any government that would consider altering the recorded *status quo*.⁹⁴⁷

The issue is by no means trivial nor uncomplicated, the Greek Helsinki Monitor, Greece's major, transnationally networked human rights organisation, prominent in the field of anti-trafficking, has devoted a separate section to

⁹⁴⁷ See, e.g., the relevant to political leaders critique, Swarts and Karakatsanis, (2012).

mapping out the issue, as it was represented in June 2000 by the Greek press.⁹⁴⁸ The catalogue of the articles is indicative of the multiple issues attached to security, national identity, racism and nationalism. The catalogue is also indicative of the state responsibility to protect data, decompose databases and the particular use of biometric identifiers with respect to human rights. Even today that the issue has been officially resolved and the controversial section has been removed, individual cases give evidence in support of a certain deep-rooted resistance to new generation ID cards.

The technical paradox of biometrics, in further detail, concerns the well-documented tension between the semblance of swift authentication of an individual's identity (notably in crossing borders and in economic transactions), the well-known problems of data decomposition (and cost), and concerns over their misuse – in cloning and forging – by criminal bodies, which are often exacerbated by the possibilities of intelligence systems.⁹⁴⁹ With the putative advantages not fully explained to the citizens, with particular reference to instruments like the SIS II, governments' rationale to persuade citizens of the advantages of biometric identifiers is often dubious.⁹⁵⁰ As a consequence, the ideological paradox of biometrics upholds the particular national investments. For instance, in 2001, the Special Identity Card for ethnic Greeks from Albania underlies the effort to document the exact number of ethnic *Greek Albanians* (*Vorioepiotes*), and further expands the possibilities of ID cards as a means of regulating migration. Even though the explicit purpose of the cards was to treat

⁹⁴⁸ Greek Helsinki Monitor, 'Should Religion Be Indicated on IDs?', n.d. [last accessed: 01/09/11] [<http://www.greekhelsinki.gr/greek/articles/taytotites.html>].

⁹⁴⁹ Lodge, 'Transparency, Justice and Territoriality: The EU Border Challenge', 269.

⁹⁵⁰ See, D Bigo, 'Reflections on Immigration Controls and Free Movement in Europe' in *Constructing and Imagining Labour Migration. Perspectives from Five Continents*, E Guild and S Mantu eds. (Burlington: Ashgate, 2011).

co-ethnics from the former Soviet Republics as returnees and as a preferential path to naturalisation, doubts as to whether these were fulfilled have been voiced.⁹⁵¹ Ultimately, the cards granted them eligibility for specific welfare benefits, however, their holders were not granted Greek citizenship, causing numerous legal problems and unease among the population.⁹⁵²

Conclusions

Interlinked risks and threats that form the national network of insecurities and their technologies were explored. From terrorism, organised crime and trafficking in women to technologies that aim to articulate clear distinctions between groups and subjectivities. In this Chapter, I argued that in the national context, the discursive construction of victims as agents of threat destabilises traditional notions of victims' security and, inevitably, of victimhood. By installing context-specific security concepts, such as the contradictory term 'happy trafficking', the Greek case study unveils the ways in which particular subjectivities establish the need for gendered threat assessments. 'Pre-existing assessment practices are used to identify criminogenic aspects of women's lives and to filter women into relevant programmes'.⁹⁵³ In that sense, an explanation is offered, which aims to justify why the anti-trafficking promise remains unfulfilled: the anti-trafficking approach *is* balanced and stabilised, however, trafficking victims are redeployed as (national) threats. Therefore, victims' security is perversely redefined as a potential threat.

⁹⁵¹ R Gropas and A Triandafyllidou, 'Migration in Greece at a Glance', ELIAMEP Occasional Paper, 9.

⁹⁵² Council of Europe, 'European Commission against Racism and Intolerance (ECRI) Third Report on Greece', (ECRI (2004) 24, 2004), 19.

⁹⁵³ Hannah-Moffat, 'Re-Imagining Gendered Penalties: The Myth of Gender Responsivity'.

Chapter 7

Imaginary Penalty: trafficking, rights and victims in Greece

Introduction

This chapter explores the set of rights and entitlements that the Greek anti-trafficking regime has imagined. Taking a step back, in order to be free of past assumptions, the question now is: have the Greek actors articulated a rights-led approach in the context of trafficking in women? And if so, what do the Greek actors mean by saying that they view the issue of trafficking from a human rights perspective? As explored earlier, the discursive construction of rights is a fundamental ingredient of trafficking in women as an imaginary penalty.⁹⁵⁴ The main principle of my investigation then suggests a particular relation between national and international imaginary penalties. It is the concurrent application of diverse legal cultures and normative standards, of prohibitions and rights, as well as the symbolically negotiated meaning of these penalties that allow for the contingent, parallel national–international establishment of anti-trafficking.

In the international context, the language of human rights was configured as tempering or correcting criminal law. Promoting victims' rights (as a set of articulated demands) along with the aspirational discourse of freedom – as freedom from fear, freedom from violence and security – has therefore been mediating the effect of materialised victims' services. In this respect, the balance between criminal law and human rights is considered as the condition of being

⁹⁵⁴ Chapter 4.

entitled to freedom and liberty.⁹⁵⁵ In effect, instead of exposing criminal law as the adversary of freedom and justice, criminalisation processes have been stabilised as the instrument of victims' rights, security and freedom.

Yet this has not been the only product of rights discourses and technologies. Dominant representations of who is to be protected have redrawn the focus from the aetiology of offending to the symbolic significance of the vulnerable, destructible embodiment. As previously maintained, by underlying the significance of vulnerable, destructible, gendered embodiment, not only are criminalisation and securitisation processes legitimised, naturalised and perpetuated, but dominant forms of destructible subjectivity also produce a domain of thinkability and nameability. Indeed, how dominant representations have avidly portrayed the female victim has also been investigated.

Subsequently, this chapter turns to the Greek anti-trafficking structures, and investigates the discursive territories where human rights have been violated or protected. Reflected through documentary sources and relevant to the national context, the case study offers rich, analytic descriptions of how global trends and national policies have been realised at this local level. As previously established, the analysis of official texts aims to map out the effects of the relevant policies on conceptualising rights in the context of anti-trafficking. Hence, I interrogate in greater detail constructions of victims and the concept of victimhood in the articulation of rights. As Pat Carlen has explained, this task involves 'the constant questioning (and maybe erasure) of the most taken-for-granted concepts'.⁹⁵⁶

To achieve this 'questioning', I focus on victims' rights and victims' services not as an index of governmental efforts, but as a source of significant information

⁹⁵⁵ See, Carlen, 'Radical Criminology, Penal Politics and the Rule of Law', 23.

⁹⁵⁶ *Ibid.*

in accordance with the cogent theoretical account of ‘rights’ offered earlier in Chapter 4. In this respect, the evaluation of governmental initiatives surpasses the laid down purposes of this analysis, since this very evaluation constitutes a source of data. The data collected, then, have been issued by various actors, and reflect diverse and often conflicting ideologies. These materials, however, also show how the specific actors have organised their activities based on the ideological traces that they have conveyed. To this extent, diverse levels of critique reflect both differences in delivering services as well as different ideological contributions to the national field of anti-trafficking.

In effect, the criticism put forward by national and international human rights mechanisms has already offered an imperative context within which my investigation takes place.⁹⁵⁷ To mention only a few concerns that have been raised: 1) in most cases the provision of victims’ services is conditional on victims’ cooperation with the authorities. As a result, the current system exposes the victims not only to traffickers, but also to subsequent violations within the criminal justice system. 2) There are numerous problems related to victims’ identification (e.g. deportation without assessment, inadequate services, failure to issue police guidelines, fear of reprisals). 3) There are also specific obstacles to the provision of victims’ services (e.g. the documented practice of ‘cooperation in exchange for protection’, the threat of deportation, inadequate witness protection, brief reflection period, lengthy trial proceedings, limited access to reparation, and inconsistent health care and assistance).⁹⁵⁸ These concerns are useful because they have already pointed out the (practical and conceptual) inadequacies of the current

⁹⁵⁷ See, also, Chapter 4.

⁹⁵⁸ See, e.g., Amnesty International, 'Greece: Uphold the Rights of Women and Girls Trafficked for Sexual Exploitation'.

victims' services that anti-trafficking has put forward in this specific national context.

My analysis suggests that the discussion on victims, as initiated in the anti-trafficking context, carries an essential, symbolic value. This is different from the use-value, discussed earlier and, unlike previous discussions, it investigates the materialised victims' services as a constraint on the limitless potential of human rights. By assembling and analysing a set of official documents, official documents deriving from both the Greek state (Hellenic Police and competent ministries) and from NGOs and IOs (relevant to victims' services), I offer my account of the meaning of the materials that have been uncovered. I propose that the rights language has been used in this specific discursive realm and has offered a typical, comprehensible and credible account of the type of victims' services that are 'reasonable and practical' for meeting the needs of trafficking victims.⁹⁵⁹

However, this utilisation of the rights language offers a very specific and limited account of how human rights, as a tool, can be used in order to bring about legal and social change. Consequently, this narrow interpretation of human rights conceals the potential for diverse materialisations of the rights language. Insofar as human rights are perceived not as the articulated promise to combat or even to protect, but as the promise of a future, in which people are not 'degraded, enslaved, abandoned, or despised',⁹⁶⁰ the alternative options to criminalisation and securitisation are unlimited. This is, of course, under the condition that 'we' are prepared to re-imagine.

⁹⁵⁹ For more information on the methodological implications of this approach, refer to the introductory Chapter. Also, for the use of official documents in the construction of reasonable, practical, authentic and credible evidence in social research, their *authenticity*, *credibility*, *representativeness* and *meaning*, see, Bryman, (2004), 381.

⁹⁶⁰ Karl Marx quoted in Douzinas, (2000), 145.

Greek Anti-Trafficking and Rights Articulations

Victims of Trafficking in Greece: neutralising violence

Trafficking in women has been studied in the context of Greece as a phenomenon that is linked to prostitution and the exploitation of migrant women.⁹⁶¹ The links between transnational organised crime, transnational policing and trafficking have also been thoroughly investigated,⁹⁶² as well as the technicalities of the new legislative framework, L.3064/2002.⁹⁶³ So far, my analysis has explored how trafficking in women has been considered and re-inscribed as valid knowledge, as an activity that is based on global networks of organised crime. In effect, the official narrative has reproduced the somatic and social exploitation of female (illegalised) migrants, victims of transnational organised crime and trafficking. What has been erased from this narrative, however, is the living and working spaces within which this exploitation takes place and the particular relations and practices that sustain these (marginal) spaces. To this end, Gabriella Lazaridis offers a fruitful account of the ethnicity, age and racialised exclusions that intersect with sexist relations and practices within Greek society.⁹⁶⁴ The term 'spaces' is used by Lazaridis to connote the 'margins of the margins', the

⁹⁶¹ See, Chapters 5 and 6. Also, Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece'; Lazaridis, (2001); Lazos, (2002a); Lazos, (2002b); Lazos and Zanni, 'Trafficking in Greece in 2002'.

⁹⁶² G Antonopoulos and J Winterdyk, 'Techniques of Neutralizing the Trafficking of Women. A Case Study of an Active Trafficker in Greece', *European Journal of Crime, Criminal Law and Criminal Justice* 13, no. 2 (2005), 136. Also, for media representations of organised criminality, and to that extent, representations of trafficking in women, and the construction of the criminal 'other', see, G Antonopoulos, "Are the "Others" Coming?": Evidence on 'Alien Conspiracy' from Three Illegal Markets in Greece', *Crime, Law and Social Change* 52, no. 5 (2009), 475.

⁹⁶³ Chapter 5. See, also, Symeonidou-Kastanidou, 'Human Trafficking in the International Context and the Criminalisation Approach to It under the Greek Law'; Dimitrainas, 'Combating Human Trafficking after L.3064/2002'; Sykiotou, 'Gendered Criminality: An Attempt Towards a Critical Approach'; E Papathanasopoulos, 'Human Trafficking and the Reflection Period under L.3386/2005' in *Human Rights and Criminal Law*, L Kotsalis and G Triantafyllou eds. (Athens: Sakkoulas Publications, 2007).

⁹⁶⁴ Lazaridis, (2001).

‘periphractic spaces’.⁹⁶⁵ In other words, the term ‘spaces’ is used to signify the exclusionary practices that strategically mobilise these ‘fenced’ territories in the first place. Her analysis shows that the living and working conditions (‘spaces’) of the women (‘victim-survivors’) rest upon their isolation and individualisation. To this extent, the previously explored narrative that portrays women as being randomly victimised by strangers, or women accidentally getting caught in the web of the sex industry serves particular purposes and, ultimately, conceals broader relations and practices within contemporary societies.⁹⁶⁶ Representations of victims, according to Lazaridis, reiterate specific norms on the one hand and conceal social practices on the other. I would like us to consider these practices further.

Previous empirical inquiry has offered useful explanations that account for women’s trafficking victimisation, in terms of techniques used by traffickers to neutralise violence against women and, hence, to justify human rights violations. The basic premise of this inquiry is that whether an individual will obey or disobey societal rules is relevant to that person’s ability to rationalise or appropriate a particular transgression.⁹⁶⁷ In the context of trafficking, the harm caused by the traffickers has been neutralised through the use of various discursive techniques. Traffickers have used these discursive techniques ‘to justify their activities, protect their image and themselves from self-blame, and neutralise their sense of guilt’.⁹⁶⁸ Prominently, the denial of victimhood has been stressed: ‘[t]he delinquent/criminals view their activities as not being wrong, and as a real victim

⁹⁶⁵ See, I Psimmenos, 'The Making of Periphractic Spaces: The Case of Albanian Undocumented Female Migrants in the Sex Industry of Athens' in *Gender and Migration in Southern Europe*, F Anthias and G Lazaridis eds. (London: Berg, 2000).

⁹⁶⁶ In relation to sexism, see the analysis offered by Lazaridis, (2001), 67.

⁹⁶⁷ See, Antonopoulos and Winterdyk, (2005), 137.

⁹⁶⁸ *Ibid.*

being absent'.⁹⁶⁹ Within this context of 'real victimhood' and of neutralising violence, a discourse on structural inequalities is often used in order to actually support the pertinent human rights violations.⁹⁷⁰

In the research conducted by Georgios Antonopoulos, for instance, the neutralisation narrative of a trafficker draws on economic inequalities:

[W]hen they [the women] were in their countries they did not have anything to eat and they would sleep with someone just to have a plate of food ... Now, they have money, they live in good houses, they have their clothes, underwear, jewellery, and they pay nothing for them ...⁹⁷¹

Then, returning to Lazaridis's analysis, one of the main functions of these exclusionary practices, in articulating knowledge about trafficking victims, is the stigmatisation and marginalisation of foreign women (resulting in their primary or secondary victimisation).

As a result, even when the narrative drifts away from sensationalised representations of organised criminality, the factor of structural economic inequalities is mobilised to conceal and oppress. This neutralisation of the victim (and the violation), according to Lazaridis, reflects the way women, sex, women's rights and women's bodies are de-valued in Greece. At the same time, Lazaridis focuses on a very specific instance of this devaluation and maintains that a barter system 'where sex is exchanged for non-deportation' exists and is being replicated.⁹⁷² It seems, therefore, that the success or 'failure to protect the victims and punish the perpetrators' is often an intricate system of social (re)production.

From the above and insofar as concepts similar to 'happy trafficking' produce knowledge about the 'real victim', can we assume that this knowledge has been used in order to suggest solutions? If not, have actors used this knowledge as

⁹⁶⁹ *Ibid.*, 142.

⁹⁷⁰ See, also, Chapter 4.

⁹⁷¹ Antonopoulos and Winterdyk, (2005), 137.

⁹⁷² Lazaridis, (2001), 89-90.

a means of neutralisation at an official level? And if so, has the discourse on structural inequalities also been used as an underlying justification for inefficiencies or omissions? I apply these questions to the anti-trafficking and rights discourses articulated by official actors.

Victims' Care Provision: between sex work and sex trafficking

Documenting the state organisations and NGOs involved in the provision of victims' services pertinent to trafficking in women, Lazaridis concludes from her field work, conducted between winter 1998 and spring 1999,⁹⁷³ that very few organisations give support 'to prostitutes' and victims of trafficking in Greece. She adds that only a few academics from the Panteion University in Athens have conducted research on 'violence against prostitutes' and trafficking in women. Specifically, Lazaridis makes reference to Grigoris Lazos and his team at Panteion University.⁹⁷⁴ During her field work, Lazaridis also identified the Marangopoulos Foundation for Human Rights, which was working on research projects on relevant issues. Moreover, Lazaridis makes reference to the 'non-aligned women's movement' and civil service departments, which were involved exclusively with 'the health of "labelled" [*charactirismenes*]' prostitutes, like the health departments in every prefecture in Greece and the Athens sexually transmitted diseases clinic'.⁹⁷⁵ With specific reference to the sexually transmitted diseases clinic, Lazaridis stresses the inadequacies of their structures; mainly their being understaffed and with no permanent medical staff. Lazaridis's findings aim to

⁹⁷³ *Ibid.*, 73.

⁹⁷⁴ *Ibid.*, 90.

⁹⁷⁵ *Ibid.*, 77.

show that there was no health care provision or, indeed, any care provision, which dealt exclusively with the problems faced by victims of trafficking at the time.

However, only a few years later, in 2004–2006, Papanicolaou's field work mapped out a diverse and interconnected field of specialised anti-trafficking actors. With particular reference to sex work, however, his account maintains that the Greek anti-trafficking structures were constituted time and again under the influence of the 'abolitionist' and 'client-hostile' overtones of the US TIP Reports. Hence, the demands for creating a policing anti-trafficking core that would cooperate with ministries and NGOs (NGOs being at the periphery), with the aim of eliminating trafficking in women, according to Papanicolaou, has been a US TIP Report conceptualisation imposed on the Greek structures:

[It] is not an exaggeration to say that the TIP Report has been a factor of organisation in the Greek anti-trafficking campaign, firstly by paving, year after year, the way for the anti-trafficking campaign's subsequent steps at the level of demands for policy reform and, secondly, by securing the campaign's prior achievements to the extent that it directly included the levels of public funding and support for infrastructure creation as criteria for the assessment of Greek government's anti-trafficking policies.⁹⁷⁶

Indeed, my own research findings, from the qualitative analysis of documentary sources that I retrieved from actors active in the field, collected during the years 2008–2009, support Papanicolaou's account with regard to the level of organisation of the Greek anti-trafficking regime of knowledge. By the time I started my investigation, the new legislative framework had been in place for quite a few years and all actors had modified their vocabulary to incorporate the legal framework. Thus, in most instances, there were very brief references to '3064' or to '233' in documented discussions pertinent to the provision of

⁹⁷⁶ Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 214.

services, and that was an adequate amount of information to denote the legal background and the available solutions. In addition, I very rarely encountered explicit anti-sex work narratives,⁹⁷⁷ while there was an expert, ‘well-worked’, dominant narrative about women’s victimisation as a transpiring articulation cutting across ideological differences among actors. An obvious connection between trafficking and sex work in the area of policing, however, which emerged from the archival investigation, showed that there were instances where the competent police department for crimes against morality (Tmima Ithon)⁹⁷⁸ had maintained a level of involvement in trafficking cases.

In line with Papanicolaou’s findings, at the time of my search for documents relevant to anti-trafficking structures and victims’ services, the civil society actors involved in pertinent services had already achieved a high level of organisation, as an interconnected field of actors with both nationally and transnationally recognised social action. This evolution of a network of services, with their potential for interconnected actions, has been remarkable as a sign of adaptable national structures, as well as a clear indication of the power of international anti-trafficking discourses and technologies. To some extent, however, I was able to trace, in 2009, the first signs of a ‘crisis’ in the Greek anti-trafficking project. Complaints about ‘strategic’ funding had already been acknowledged as the underlying reason for many inconsistent initiatives and for organisations that were ‘breaking under pressure’.⁹⁷⁹

Worse, during the course of writing up my findings, and while I was keeping in touch with actors from the field for the purposes of potential archival updates

⁹⁷⁷ In the sense of suggestions to eliminate the sex industry.

⁹⁷⁸ See, references made by Lazaridis as to available statistical data by Asfalia - Tmima Ithon, in Lazaridis, (2001), 83.

⁹⁷⁹ See, e.g., K Koukouzikis, 'Xenelasia Vs Philoxenia: 1-0', Hellenic Foundation for European & Foreign Policy, 2011.

that would have a significant impact on the anti-trafficking formations (legislative or policy-related), important changes took place regarding financial support for victims' services. The financial crisis was having a 'domino effect' on the funds made available to services for the victims of crime. Announcing the establishment of long-term and short-term shelters for women victims of domestic violence and trafficking in fourteen municipalities across Greece, scheduled to be set up in May 2012, the Greek Prime Minister, Loukas Papademos, described the situation, in December 2011, as a battle:

These days our country is involved in a double battle: the one is related to the fiscal consolidation and the economic reconstructing [of the Greek state], in order to rebalance the growth trajectory of the economy and in order for us to defend our place in the Eurozone. Meanwhile, the second battle is against the consequences of the financial crisis ... The Greek government in cooperation with the municipalities and the Greek Church decided to reinforce our actions to strengthen employment initiatives and social solidarity.⁹⁸⁰

A Holistic Approach: intelligence-led designs and civil society

The urgency for an immediate Greek anti-trafficking response is well-documented.⁹⁸¹ In July 2001, Human Rights Watch issued a 'Memorandum of Concern: Trafficking of Migrant Women for Forced Prostitution into Greece' (HRW Memorandum).⁹⁸² The HRW Memorandum acknowledged, as a positive development the joint ministerial decision by the ministers of public order and interior, signed in May 2001, providing for a 'work management group on trafficking' to develop, coordinate and implement anti-trafficking policy in

⁹⁸⁰ Statement of the Greek Prime Minister, see, To Vima, 'L. Papademos: '150.000 New Vacancies During the First Three Months of 2012', 27/12/2011.

⁹⁸¹ See, e.g., Amnesty International, 'Greece: Uphold the Rights of Women and Girls Trafficked for Sexual Exploitation'. And, in the US TIP Reports, e.g., US, 'Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report'; US, 'Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report'.

⁹⁸² In the memorandum Greece has been criticised for punishing victims while their traffickers enjoy impunity, see, Human Rights Watch, 'Memorandum of Concern: Trafficking of Migrant Women for Forced Prostitution in Greece', 2001.

Greece. Moreover, according to the HRW Memorandum, the Police Brigadier General and Director of the International Police Cooperation Division, Nikolaos Tassiopoulos (Ministry of Public Order, Athens), had provided further information to Human Rights Watch in a letter dated 29 May 2001. According to this letter, the working group would consist of police officials, representatives from the Ministry of Foreign Affairs, the General Secretariat for Equality and the International Organisation for Migration, as well as the national representative from the European Observatory on Trafficking and a sociologist. Within the remit of the management group, according to the correspondence, was the implementation of a national action plan aimed at

[T]he prevention and suppression of trafficking and the protection of victims' rights. Within one year from the establishment of the group, it is required to report on the trafficking situation in Greece; introduce legislation on trafficking; develop a model for a special office on trafficking within the Greek police; create a trafficking archive; and develop a plan for the voluntary repatriation of trafficking victims.⁹⁸³

From this initial conceptualisation of anti-trafficking, it becomes evident that the Hellenic Police has been leading both the correspondence with human rights organisations and the important structural design of anti-trafficking. In this respect, reading the HRW Memorandum, expressing its faith in the Greek 'anti-trafficking promise' raises a few further questions.

To begin with, according to the HRW Memorandum the main problems in Greece involved: 1) the absence of a comprehensive anti-trafficking legislation; 2) the low number of prosecutions for trafficking under existing criminal laws; 3) the lack of witness protection programmes for trafficking victims to facilitate their participation in prosecutions; 4) the absence of government-sponsored services for all trafficked women, including shelter, medical care, psychological support, and

⁹⁸³ *Ibid.*, 2.

assistance with other basic needs; 5) the ongoing detention and deportation of trafficking victims; 6) the complicity of police officers in trafficking in women.⁹⁸⁴

Therefore, despite the important reference to victim-centred initiatives, the HRW Memorandum reaffirms the use of trafficking victims by the criminal justice system, and yet stresses the importance of ‘witness protection programmes’. Also, the item pertinent to the alleged ‘complicity of police officials’ (item 6 above), instead of raising questions about the initial conceptualisation of the anti-trafficking initiative led by the police, only features as one of the points that once properly addressed, controlled and punished, trafficking can be abolished.

Moreover, further criticism of the Greek structures, as previously explored, has been ongoing by the US TIP Reports. A decisive point of criticism has been the lack of inclusion of civil society organisations in the Greek anti-trafficking structures. As noted by Papanicolaou,

[O]nce the target for the introduction of a special legislative framework on trafficking had been accomplished in 2002, the NGOs [through diplomatic pressures exercised by the US TIP Reports] pressed for increased participation both in the operational aspects of anti-trafficking as well as the provision of victim welfare.⁹⁸⁵

Indeed, the materialisation of initiatives under external pressure has been evident. At a governmental level, since August 2004,⁹⁸⁶ through an initiative of the Greek government, and specifically the Ministry of Justice, a high-level inter-ministerial committee was formed, which prepared an integrated National Action Plan against trafficking in human beings. This programme constitutes the second most

⁹⁸⁴ *Ibid.*

⁹⁸⁵ Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 214.

⁹⁸⁶ See, Chapter 6. Since the Olympic Games were hosted in Athens, 2004 has been a key date for Greece and was promising to transform Athens in many different ways. According to the special report regarding the ‘high security measures’ as part of the ‘Olympic security’, the main concern in terms of crimes policed was the protection from terrorism and organised crime, see S Tsenes, *Olympic Security 2004: Terrorism and Organised Crime* (Athens: Hellenic Police, 2006).

significant anti-trafficking development (after the formation of OKEA),⁹⁸⁷ and has been aiming for the political coordination of the co-competent Ministries. To this end, the programme has been aiming to cover the whole spectrum of actions related to trafficking, from locating, recognising, fully supporting and offering shelter to victims, issuing a temporary residence permit also valid as a work, or granting voluntary repatriation according to each individual case, to education and labour integration of the victims who remain in Greece. The programme also includes initiatives that aim to strengthen the sensitisation of the population, and the development of training programmes for the judiciary and the police force. In the context of this programme, the General Secretariat for Gender Equality of the Ministry of the Interior, Public Administration and Decentralisation, places women victims of trafficking, who have received a temporary residence and work permit according to Article 34, paragraph 7 of Law 3274/2004, in work positions, in cooperation with the Greek Manpower Employment Organisation, in the framework of common programmes.

With reference to non-governmental elements, the investment in civil society organisations gained official recognition in 2005. The establishment of a ‘permanent forum’ for the exchange of information and best practice, between the competent ministries and NGOs, was institutionalised after the enactment of L.3064/2002. This establishment was based on the principles of victims’ rights and the recognition of a set of entitlements applicable to trafficking victims, as laid down by the P.D. 233/2003. In this framework, the ‘Memorandum of Cooperation on Combating Trafficking in Persons and for Providing Aid to the Victims’ was signed between the jointly competent secretaries, twelve NGOs and

⁹⁸⁷ See, Chapter 5.

the International Organisation for Migration. According to the views expressed at the time, this institutionalisation was vital, since it ‘lifted many coordination problems’ and facilitated NGO access to the screening and referral process.⁹⁸⁸

As easily extrapolated from its title, the network of heterogeneous actors that were officially institutionalised with the ‘Memorandum of Cooperation on Combating Trafficking in Persons and for Providing Aid to the Victims’, set out a dual purpose: a) criminalisation and punishment of the criminal networks, and b) human rights assistance and provision of services to the victims. Under this memorandum, the government’s involvement was to be strengthened by an inter-ministerial committee of all the competent ministries (Justice, Interior, General Secretariat for Gender Equality, Foreign Affairs, Employment and Social Protection, Health and Social Solidarity and Public Order).

For the part of civil society, the NGO voices were to be articulated by a multifaceted group including such organisations as the NGOs Arsis and Solidarity, the Centre of Rehabilitation of Victims of Torture and Other Forms of Abuse, the Centre for Defence of Human Rights (KEPAD), the Greek Council for Refugees (GCR), the European Women’s Network, the International Society for Support to Families (DESO), the NGO Klimaka, the programme StopNow, and the organisation Smile of the Child. Additionally, in the memorandum, the participation of the International Organisation for Migration (IOM) was also institutionalised. In subsequent collaborations between civil society organisations more actors also participated, such as the Greek Section of Amnesty International and international organisations with a long-standing presence in Greece such as

⁹⁸⁸ See, e.g., Panouris, *Speech of the Secretary General of the Greek Ministry of Justice, Mr. Panagiotis Panouris, Event Held at the American Congress with the Subject: ‘Trafficking in Persons: Modern Day Slavery’, 13 March 2007,*

Doctors Without Borders (*Médecins Sans Frontières*) and the Doctors of the World (*Médecins du Monde - Greece*).⁹⁸⁹

Hence, surely the ‘victim welfare’ element may have been encouraged and, indeed, enforced by ongoing international influence, as suggested by Papanicolaou’s analysis. However, it is not only the particular form of foreign intervention that instituted this conceptualisation of victims’ services as a heterogeneous ‘arrangement’.⁹⁹⁰ Insofar as civil society has been conceptualised, to a great extent, as agents of change and resistance to punitive structures, the functionality of this heterogeneous group of actors in their cooperation with intelligence-led initiatives, within anti-trafficking as an imaginary penalty, is not to be underestimated. I argue that the conceptualisation of victims’ services (and to that extent, civil society) configured as tempering or correcting punitive and intelligence-led initiatives – in its phantasmatic idealisation of specific victims’ services –⁹⁹¹ was propelled into an endless repetition of itself. This repetition was then set into action in the form of juridical, intelligence and civil society intervention.

Groups, Ideologies and Victims

Following the above line of thought, the investigation of the conceptualisation of victims’ services is an integral part of this imaginary penalty. Hence, this section explores the Greek anti-trafficking actors as an interdependent productive regime of knowledge, with its effects on the legitimisation of the wider system of disciplinarity and control. I argue that the repetition of the anti-trafficking

⁹⁸⁹ See, Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece', 326.

⁹⁹⁰ See, also, the analysis offered by Robert Elias in relation to the multiple political motives and functions that shape the victim services domain, Elias, (1986), 190-2.

⁹⁹¹ Drawing on Judith Butler, see, Butler, 'Imitation and Gender Insubordination'.

structures does not occur despite the tensions that become apparent between conflicting ideologies and competing actors. On the contrary, I observe that it is this initial ‘conceptual deficiency’ that produces these tensions, struggles and mechanisms, and creates subjectivities. To facilitate this discussion, I look at the relevant actors in further detail and, in doing so, I suggest that the diverse orientation of these actors can be broadly classified into three groups: 1) rights-based, 2) faith-based, and 3) security-led. These groups have overlapping sub-categories and ideologies that cut across the borders I am trying to impose here in order to conceptualise the multifaceted target of this regime.

Rights-Based Actors

The two main components that carried the language of gender equality and human rights into the broader anti-trafficking state initiatives, as well as into the civil society mobilisation against trafficking, have been the General Secretariat for Equality and its research centre, the Centre of Research for Equality Issues (KETHI - *ΚΕΘΙ*), and at the level of civil society, the Centre for Research and Action on Peace, (*ΚΕΔΕ – ΚΕΑΕ*).

KETHI’s role has been vital in many respects. It would therefore be a misrepresentation and underestimation of its actions to say that its contribution has been merely related to the production of knowledge pertinent to trafficking victims. Regarding the rights discourse, KETHI issued in 2001 an important overview of legal definitions relating to what constitutes trafficking, how victims of trafficking are to be defined, how victimisation occurs in this context and what

human rights issues are at stake.⁹⁹² An overview of the trafficking in women literature and the linkage between trafficking in women, sex work and sexual exploitation, as presented in the national and international literature, was compiled again in 2001.⁹⁹³ Regarding violence against women, in 2003 the first national epidemiological research project on domestic violence was published by KETHI. Its results portrayed a rather alarming picture, showing that 56 per cent of the women participating in the research had been experiencing violence (psychological, physical or sexual).⁹⁹⁴ However, the extent to which these results have influenced subsequent policy initiatives is unknown.⁹⁹⁵ Moreover, with a view to engage with issues linked to trafficking in women, during the years 2007 and 2008 KETHI issued a number of publications relevant to migration and trafficking, and to women refugees and asylum seekers in Greece.⁹⁹⁶

With respect to anti-trafficking actions, during the time I was collecting material for this research (mainly in 2008), KETHI was organising seminars and awareness raising campaigns in cooperation with governmental agencies and NGOs in Bosnia/Herzegovina, Kosovo and Albania, under the framework of 'Prevention and Support to Victims of Trafficking in Persons'. In Greece KETHI, in cooperation with IOM Athens, organised a one-year capacity building training

⁹⁹² G Tsaklagkanou, *Transnational Trafficking* (Athens: KETHI, 2001).

⁹⁹³ D Lazari and I Laliotou, *Trafficking in Women, Prostitution, Sexual Exploitation. Overview of Greek and International Literature* (Athens: KETHI, 2001).

⁹⁹⁴ V Artinopoulou et al., 'Domestic Violence against Women: First National Epidemiological Research', (Athens: KETHI, 2003).

⁹⁹⁵ Since the publication of the report a new law has been introduced, Law 3500/2006 which came into effect on 24 January 2007. However, according to the Greek Helsinki Monitor the main problem is pertinent to the provision of social welfare, see, Greek Helsinki Monitor, 'Action 1. Report on Domestic Violence and Trafficking of Women in Greece, Annex Trafficking of Women'. See, also, the conclusions offered by KETHI based on a second research conducted the period between 01/01/2002 and 31/10/2006, KETHI, 'Domestic Violence. Main Conclusions. Research Conducted by KETHI', 2006.

⁹⁹⁶ See, e.g., K Drouga, *Guide for Consultants: 'Trafficking in Women'* (Athens: KETHI, 2008); L Maratou-Alipranti et al., *Women's Migration in Greece. The Findings of the National Research Conducted by KETHI* (Athens: KETHI, 2007); S Apostolaki et al., *Guide for Women Refugees: Rights and Obligations* (Athens: KETHI, 2008).

project, implemented in ten cities throughout the country. In all these initiatives IOM Athens has been an important partner regarding the formation of knowledge for the victims of trafficking and the available solutions to the problems of victims' identification and repatriation.

It is worth-mentioning at this stage that IOM Athens has also been involved in a rather diverse set of activities, from organising educational seminars to raise awareness among students in Greece, to raising wider awareness and promoting the rights of migrant women and women victims of trafficking in Greek society (funded by the International Development Cooperation Department (YDAS)/Hellenic AID, of the Greek Ministry of Foreign Affairs). Under the European initiative EQUAL and in cooperation with the Development Partnership to Promote Equal Rights for Trafficked Persons (ASPIDDA), IOM Athens has organised information seminars on trafficking in women. Its involvement in raising awareness and participation in the broader anti-trafficking structures, and, more specifically, the ongoing cooperation between IOM Athens and the Greek Ministry of Foreign Affairs with regard to trafficking in women serves as a constant reminder that the underpinning elements of the rights language have been used in delivering policy – tangible results pertinent to illegalised migration.⁹⁹⁷

Of equal importance, at the level of civil society, the Centre for Research and Action on Peace, (KEDE – *KEΔΕ*), a women's NGO founded in 1988,⁹⁹⁸ launched in December 2002, until December 2004, the project StopNow I, and from October 2004 until September 2006 StopNow II, funded by YDAS/Hellenic Aid. These projects have probably provided the most influential accounts for the

⁹⁹⁷ See, Chapters 1, 2, and 4.

⁹⁹⁸ KEDE, 'Stopnow 1 and Stopnow 2', Centre for Research and Action on Peace, n.d. [last accessed: 07/01/12] [<http://www.kede.org/index.php?do=article&pcid=134>].

official formation of the Greek anti-trafficking narrative.⁹⁹⁹ To locate some further interconnections in this discursive field of social action, the main research for StopNow was conducted by Grigoris Lazos (at Panteion University). Lazos's analysis of the organisation of forced prostitution and the role of criminal networks has been used to exercise political pressure on the Greek state and has been a leading knowledge-base for the subsequent anti-trafficking measures implemented. In particular, the alarming statistical data provided by StopNow have been repeatedly quoted in the years that followed the research.¹⁰⁰⁰ An equally active project spawned by KEDE, aimed at empowering women, has been WINPEACE (Women's Initiative for Peace), which promotes friendship between Greek and Turkish women.¹⁰⁰¹

The study of the Greek sex industry and the trafficking in women for the purposes of sexual exploitation, funded by 'Stop Now' and the Greek state, shed light on the linkage between prostitution, migration and sex trafficking victims, categories that are often inseparable.¹⁰⁰² The demand for sexual services is described as the underlying factor behind the commodification of women and the sex (modern-day) slave trade.¹⁰⁰³ In these descriptions constructions of gender and sexuality are evoked: 'one million men – about 30 percent of the nation's sexually active population – call on these women regularly (about twice a month) to satisfy

⁹⁹⁹ See, e.g., Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing'; Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece'.

¹⁰⁰⁰ It was sustained that from 1990 to 1997 the number of foreign women forced into prostitution in Greece multiplied tenfold from 2,100 to 21,750, and fell to 17,200 by 2002, see, Lazos and Zanni, 'Trafficking in Greece in 2002', 7.

¹⁰⁰¹ Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 208.

¹⁰⁰² See, e.g., Lazos, (2002a); Lazos and Zanni, 'Trafficking in Greece in 2002'.

¹⁰⁰³ In Papanicolaou's analysis extensive reference has underlined the 'hero' attitudes underpinning the modern-day slavery discourse, see, Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 217.

their erotic whims and impulses'.¹⁰⁰⁴ Certainly, the representations enforce associations between trafficking, sex work, and the 'nation's sexuality', and express significant considerations relevant to international feminist *praxis*.

For instance, a distinguished organisation, internationally recognised for its contribution to the Greek anti-trafficking structures, defines its work as 'support and restoration of individuals in prostitution'.¹⁰⁰⁵ These initiatives have arguably focused on the 'victims'. However, to a certain extent, they have been insufficiently sustained and have yet to lead to a feminist backlash that would press for the implementation of an independent structure for victims and witnesses of crime. In this context, focusing on victims has been rather problematic.

For the very first time in the Greek context, at an official level, the emergence of victims' services in the field of human trafficking is inscribed with great urgency and importance. This development goes far beyond the preceding, punitive and police-intelligence driven ideologies that supported pertinent gendered, provisions.¹⁰⁰⁶ What is more, in the broader area of conceptualising penalties and victimhood in the Greek context, there is a lack of data for comparing previous narratives related to the role of the victims in the Greek criminal justice system. This is an important absence; therefore, trafficking in

¹⁰⁰⁴ Tzilivakis, 'New Fight to Stop Sex Trade. Protagonists in the Fight to End Sex Slavery in Greece Say Public Awareness of the Matter Must Go Hand in Hand with Law Enforcement Efforts'.

¹⁰⁰⁵ Reference made to 'Nea Zoi', see, US, 'Trafficking in Persons Report 2008', US Department of State, 2008, 42.

¹⁰⁰⁶ See, Hellenic Parliament, 'Report on Draft Law 'Amendment of Provisions of the Penal Code and the Code of Criminal Procedure Regarding the Protection of Citizens from Punishable Acts of Criminal Organisations''. Also, see, article 323 Greek P.C. in relation to slavery and the new provision under article 323A prior to Law 3064/2002. In addition, the new legal framework came to update Law 1419/1984, under which the Hellenic State recognises as legally protected rights the rights to *sexual freedom* and *sexual life*. With this Law for the first time in Greece the equal right to protection between men and women has been recognised. However, before the Law 3064/2002, the previous legal regime was explicit in the women-specific aspect of trafficking as a gender-specific crime. According to article 351 P.C., the victim was identified as female by the legislator 'when someone by use of force, deceitful means, threat, force or abuse of power or other forceful means keeps against their will a female either a minor or an adult, or they forcefully prostitute them'.

women unambiguously constitutes a key indicator of a shift in the dominant official narrative regarding both governmental interests and state capacities in responding to victim concerns.

Historically, KEDE should be seen as an organisation whose general field of activity has been relevant to international peace, gender equality and women's rights. KEDE was presided over by Margarita Papandreou, an active member of the Greek feminist movement and former wife of the late socialist Prime Minister Andreas Papandreou (PASOK). In this respect, KEDE, particularly in its initial formation, has reflected the early ideological formation of the post-junta women's movement of the 1970s and 80s. To understand a little more the broader political situation within which KEDE was developed, reference should be made to the fact that critics often called Margarita Papandreou's feminism a mere phenomenon of the Greek *metapolitefsi* ('transition to democracy') or a by-product of her loyalty to her husband, 'claiming that PASOK established a women's auxiliary only to expand its electoral basis'.¹⁰⁰⁷ It is, then, safe to assume that the formation of civil society groups has been connected to forces of change, but they have also triggered criticism and resistance, which should be read through the lens of the *metapolitefsi* politics, particularly in the area of foreign interventionism.

To a large extent, KEDE's contemporary position on trafficking reflects human rights and perhaps labour rights sensibilities: '[a]t any rate, these women would have wanted to practice prostitution freely – in other words to keep their earnings in their own pockets, to chose their clients freely (i.e. to have the right to

¹⁰⁰⁷ G Van Steen, 'Margarita Papandreou: Bearing Gifts to the Greeks? ', *Journal of Modern Greek Studies* 21, no. 2 (2003), 245, 247.

refuse a client or a client's special request').¹⁰⁰⁸ It also reflects universal values and exploitation:

The notional straight line of human rights, which defines a minimum that has to be enjoyed by all in the context of a democratic law abiding society, is far beyond their [the victims'] day-to-day standard of living and far beyond their expectations. Humiliation and degradation are taken for granted and so is exploitation.¹⁰⁰⁹

It is important to consider KEDE, however, as only one fragment of the wider network of civil society actors in Greece. According to relevant research, the main carrier of the anti-trafficking campaign in Greece has been an initiative known as the Galatsi Group.¹⁰¹⁰ The Galatsi Group emerged in 2001–2002 and comprised a range of organisations, from different cities and diverse activist fields.

Its fundamental objectives were the prevention of trafficking and advocacy for assistance to victims of trafficking, and to facilitate reintegration. Mainly because of the diversity of these organisations, the initiative did not develop an official face and was loosely organised on the basis of monthly meetings to discuss developments, exchange feedback on activities, and establish action plans.¹⁰¹¹

From the Greek section of Amnesty International, the Centre of Support of Victims of Ill-treatment and Social Exclusion, the Centre for the Rehabilitation of Victims of Torture and Other Forms of Ill-treatment to the Centre for Support of Family of the Holy Archdiocese of Athens, the Galatsi Group has comprised diverse actors. A few have been officially included in the Memorandum of Cooperation, while others preserve a level of independence in terms of official cooperation with the Greek anti-trafficking authorities.

To preserve the economy of this analysis and since the main points of the rights components of victim services for trafficking victims have been laid down, I will only make a brief reference to three more civil society actors. I mention these

¹⁰⁰⁸ Lazos and Zanni, 'Trafficking in Greece in 2002', 29.

¹⁰⁰⁹ *Ibid.*, 30.

¹⁰¹⁰ Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece', 325.

¹⁰¹¹ *Ibid.*

because I find their contribution unique in the anti-trafficking structures, being predominantly linked to their overall activist history. First, the European Network of Women, a women's organisation that is interconnected with groups and individuals throughout Europe. The European Network of Women, during the years of my investigation, has been offering accommodation (shelter) for time periods ranging from one week to several months and has been providing psychological support to victims.¹⁰¹² The Network also operates an SOS Hotline, which has filled an important gap in the area of victims' support for trafficking victims in Greece.

Second, the Greek Council for Refugees, founded in 1989, whose function has been crucial not only in the area of trafficking but also in relation to refugee and asylum issues in Greece. Its legal department specialises in issues relevant to humanitarian assistance and the legal representation of refugee and asylum applicants in Greece.¹⁰¹³ For victims of trafficking, the Greek Council for Refugees has been in cooperation with the Anti-Trafficking Directorate of the Hellenic Police and the competent judicial authorities in order to facilitate the process of victims' identification and contribute to the provision of both legal and social assistance for victims.

Last, the Greek Helsinki Monitor (GHM), founded in 1992, which since then has been affiliated to the Minority Rights Group – International.¹⁰¹⁴ GHM monitors, publishes and lobbies on human rights issues in Greece and,

¹⁰¹² European Network of Women, 'European Network of Women Actions', n.d. [last accessed: 05/08/2009]

[<http://www.irini-equal.gr/dge.htm>].

¹⁰¹³ Greek Council for Refugees, 'Greek Council for Refugees', n.d., [last accessed: 01/03/12]

[<http://www.gcr.gr/en/node/52>].

¹⁰¹⁴ See, Greek Helsinki Monitor, 'Greek Helsinki Monitor', n.d. [last accessed: 01/03/12]

[<http://www.greekhelsinki.gr/bhr/english/profile.html>]; Minority Rights Group - International, 'Minority Rights', n.d. [last accessed: 01/03/12]

[<http://www.minorityrights.org/?lid=326>].

occasionally, in the Balkans, as part of a wider human rights network. Based on GHM's affiliations and memberships, this network has comprised the International Helsinki Federation,¹⁰¹⁵ the International Freedom of Expression Exchange (IFEX), the Euro-Mediterranean Human Rights Network (EMHRN), the Southeast Europe Media Organisation (SEEMO), OneWorld.Net and the World Organisation Against Torture (OMCT).¹⁰¹⁶ It is best known for its anti-conformist discourse in defending the rights of minorities in Greece, including ethnic, religious and sexual minorities, and for its aggressive critique of discriminatory institutional practices, hate speech and state violence.¹⁰¹⁷

This organisation, which has numerous interconnections and collaborations with local, regional and global human and minority rights NGOs, has been issuing, usually jointly with other NGOs, detailed annual reports, as well as parallel reports to UN Treaty Bodies. Among other actions, GHM has prepared specialist reports on ill-treatment of minority communities in Greece and on the Greek minorities in Albania and Turkey. With regard to trafficking in women, insofar as trafficking is conceptualised as a gender violence and illegalised migration problem, GHM situates the issue in structural root causes, namely in institutionalised xenophobia

¹⁰¹⁵ The International Helsinki Federation was forced to close down in November 2007, see, International Helsinki Federation, 'International Helsinki Federation', n.d. [last accessed: 01/03/12] [<http://www.ihf-hr.org/>].

¹⁰¹⁶ International Freedom of Expression Exchange, 'International Freedom of Expression Exchange', n.d., [last accessed: 01/03/12] [<http://www.ifex.org/>]; Euro-Mediterranean Human Rights Network, 'Euro-Mediterranean Human Rights Network', n.d. [last accessed: 01/03/12] [<http://www.euromedrights.org/en/>]; South East Europe Media Organisation, 'The South East Europe Media Organisation', n.d. [last accessed: 01/03/12] [<http://www.seemo.org/>]. OneWorld.Net, 'Oneworld.Net', n.d. [last accessed: 01/03/12] [<http://uk.oneworld.net/guides/>]; The World Organisation Against Torture, 'The World Organisation against Torture', n.d. [last accessed: 01/03/12] [<http://www.omct.org/>].

¹⁰¹⁷ See, e.g., Greek Helsinki Monitor, 'Greek Helsinki Monitor Reports on Greece', n.d. [last accessed: 01/03/12] [<http://www.greekhelsinki.gr/english/reports/GHM-Reports-Greece.html>].

and sexism.¹⁰¹⁸ With specific reference to Greek anti-trafficking developments, two main points commonly appear in GHM's criticism. One is related to victims' treatment: '[v]ictims of trafficking in Greece continue to be treated like criminals. As individuals without papers, they are detained in prison pending deportation for working illegally in Greece'.¹⁰¹⁹ The second point is pertinent to the judicial mechanisms and the effectiveness and accountability of the broader criminal justice system: '[a]lthough Greece has incorporated the term "trafficking in human beings" in Law 2605/98 with which Greece has ratified the Europol agreement, the term has never been invoked officially before the Greek court of law'.¹⁰²⁰

In this respect, GHM is the source that has fed a series of interventions by transnational NGOs in the Greek situation with regard to trafficking, on the basis of a fierce and consistent human rights criticism and activism.¹⁰²¹ Ultimately, GHM's insistence on the root cause of xenophobia and racism has been underpinned by an awareness of the fact that the Greek government's response to

¹⁰¹⁸ See, e.g., Greek Helsinki Monitor, 'Greek Helsinki Monitor & Minority Rights Group - Greece - 1995 Activity Report', n.d. [last accessed: 01/03/12] [<http://www.greekhelsinki.gr/english/profile/annual-activities1995.html>]; Greek Helsinki Monitor and The World Organisation Against Torture, 'Violence against Women. Report Prepared for the Committee on the Elimination of Discrimination against Women at Its Exceptional Session of 5-23 August 2002 Considering Greece's Compliance with Its Obligations under the UN Convention on the Elimination of All Forms of Discrimination against Women, July 2002'.

¹⁰¹⁹ Greek Helsinki Monitor and The World Organisation Against Torture, 'Violence against Women. Report Prepared for the Committee on the Elimination of Discrimination against Women at Its Exceptional Session of 5-23 August 2002 Considering Greece's Compliance with Its Obligations under the UN Convention on the Elimination of All Forms of Discrimination against Women, July 2002', 17. Greek Helsinki Monitor, 'Press Release 13 February 2009, Dysfunctional the Response to Trafficking by the Police and the Judicial in Greece', (2009).

¹⁰²⁰ Greek Helsinki Monitor and The World Organisation Against Torture, 'Violence against Women. Report Prepared for the Committee on the Elimination of Discrimination against Women at Its Exceptional Session of 5-23 August 2002 Considering Greece's Compliance with Its Obligations under the UN Convention on the Elimination of All Forms of Discrimination against Women, July 2002', 17.

¹⁰²¹ Human Rights Watch, 'Greece: Recommendations Regarding the Draft Law for the 'Fight against Trafficking of Human Beings and the Provision of Aid to the Victims of Crimes Related to the Financial Exploitation of Sexual Life', 8 March 2002', 2002. And, also, see, Human Rights Watch, 'Memorandum of Concern: Trafficking of Migrant Women for Forced Prostitution in Greece'.

the problem has been intricately conditioned by the need to defuse international interventions, leaning towards more police action.¹⁰²²

Faith-Based Actors

The 19th-century anti-slavery campaign (against the ‘white slave trade’)¹⁰²³ has influenced contemporary ‘moral crusaders’, whose impact is significant in the establishment of anti-trafficking initiatives. Contemporary anti-trafficking public letters have been generated by increasing evangelical involvement, and by activists and academics who have been seeking to put pressure on

[P]oliticians to use their influence to combat this evil. Examples include open letters to President Bill Clinton and congressional leaders to support US anti-trafficking legislation (June 1999 – 130, mostly Evangelical, signators); to Secretary of State Powell urging the removal of the Netherlands and Germany from the State Department’s Tier One status [reference made to the US TIP Reports] as countries successfully combating trafficking (April 2002 – over 100 US Christian and human rights organizations signators); to President Vladimir Putin opposing Russian legalization of prostitution (September 2002 – 185 signators).¹⁰²⁴

Similarly, in Europe, faith-based organisations have been active in publicising relevant material and in taking steps to provide protection and care for women victims. The international Catholic charity, Caritas, for instance, ‘organizes prevention campaigns, operates safe houses, and assists in the repatriation of trafficked women’.¹⁰²⁵ Typically, the faith-based types of assistance to victims may include among other types of support: 1) shelter, medical assistance, food and clothing; 2) social, psychological and spiritual assistance; 3) legal and financial assistance; 4) moral support for victims in legal proceedings

¹⁰²² Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 211.

¹⁰²³ See, Introduction.

¹⁰²⁴ Elliott, 'Faith-Based Responses to Trafficking in Women from Eastern Europe', 10.

¹⁰²⁵ *Ibid.*, 13.

and meetings with police; 5) help with contacting other services including doctors and advice centres.¹⁰²⁶ It has been argued that the main dimension the faith-based initiatives can add to aftercare is ‘compassion based on the conviction that the spiritual healing of the Great Physician is the best hope for overcoming the pain, brokenness, and trauma suffered by trafficking victims’.¹⁰²⁷ Along these lines of faith-based intervention, Caritas Hellas, has been considered as an important local branch of Caritas and has contributed to knowledge-production. Hence, according to its estimates up to 90,000 people were believed to have been trafficked into Greece in 2000, mainly from Eastern Europe.¹⁰²⁸

Another important faith-based organisation is ‘New Life’ (‘Nea Zoi’). Nea Zoi was founded as a non-profit organisation in 2006, and has been based in the centre of Athens since then. Its mission has been to ‘rehabilitate individuals involved in prostitution by addressing their physical, emotional and spiritual needs through outreach work and relationship building by developing exit strategies in partnership with local churches and local and governmental initiatives’.¹⁰²⁹ Nea Zoi focuses on reaching out to men and women working in prostitution (mostly in street prostitution) in Athens, and offers ‘hope, assistance, support and alternatives, desiring to see men and women empowered by God for a new life’.¹⁰³⁰

Motivated by God’s love, Nea Zoi visits red light districts of Athens where they offer friendship, advice and opportunities for a change, believing that a

¹⁰²⁶ *Ibid.*

¹⁰²⁷ *Ibid.*, 14.

¹⁰²⁸ Amnesty International, 'Greece: Uphold the Rights of Women and Girls Trafficked for Sexual Exploitation', 3.

¹⁰²⁹ See, Nea Zoi, 'Nea Zoi Program Support', Stavros Niarchos Foundation, n.d. [last accessed: 06/08/09]

[http://www.snf.org/index.php?ID=grants_EN&Rec_ID=886].

¹⁰³⁰ Nea Zoi, 'Greece - Athens (Nea Zoi)', International Teams, n.d. [last accessed: 01/02/12] [http://www.iteams.org/wws/europe/athens_neazoi.shtml].

relationship with a loving God is the foundation for lasting transformation.¹⁰³¹

Importantly, Nea Zoi has identified specific socioeconomic factors that have increased the risk of trafficking, such as poverty, unemployment, corruption, the degradation of cultural values (work ethic and gender roles), and the global economic crisis.¹⁰³² To fulfil the rehabilitative and healing potential of the exit strategies it promotes in the context of trafficking, Nea Zoi has been working with ‘ALL people in prostitution’ since what ‘often begins as trafficking ends as “choice”’.¹⁰³³ Among its activities, a prominent initiative has been funded by the Stavros Niarchos Foundation. According to this, Nea Zoi has been working towards the implementation of a vocational day programme with a job placement component for ‘exploited women to exit prostitution’.¹⁰³⁴

Moreover, the Centre for the Support of the Family, KESO (*Kentro Stiriksis Oikogeneias*),¹⁰³⁵ which was established by the Archdiocese of Athens and the Church of Greece in 1999, has been operating as a service of the Archdiocese of Athens with a view to conduct campaigns on issues such as the ‘crisis of the Greek family, the foundation of the conservation and growth of the Nation’ and the ‘biological annihilation of the Greek nation’, as well as to offer charitable support

¹⁰³¹ See, INV.gr, 'Selected Charities and NGOs in Greece', INV.gr, n.d. [last accessed: 06/06/11] [http://www.invgr.com/ngos_greece.htm].

¹⁰³² Nea Zoi, 'Power Point Presentation 'Take a Stance against Trafficking, Help a Prostituted Person to Change His/Her Life'', (Athens n.d.).

¹⁰³³ *Ibid.*

¹⁰³⁴ See, Nea Zoi, 'Nea Zoi Program Support'.

¹⁰³⁵ Interconnections with: DEKEA - (Network of Volunteers for Combating Human Trafficking), International Organisation for Migration (IOM – Mission in Greece, Athens), NGO SOLIDARITY (Athens), Rehabilitation Centre for Victims of Torture and Other Forms of Abuse (C.R.T.V., Greece), Research and Support Centre for Victims of Maltreatment and Social Exclusion (C.V.M.E., Greece), and with ASPIDDA, 'A.S.P.I.D.D.A., Developmental Partnership to Promote Equal Rights for Trafficked Persons Combating Exploitation - Creating Perspective', n.d. [last accessed: 17/01/12] [<http://www.aspidda.org/English/Default.aspx>].

to diverse sensitive groups.¹⁰³⁶ From the drug users, the ‘victims of abortions’, the victims of domestic violence and their children to the victims of trafficking, KESO has utilised a synthesis of humanitarian and religious discourses.¹⁰³⁷ Notably, KESO has maintained that trafficking is a national issue. This conceptualisation is of particular importance. In the past abortion was also depicted as a national issue, the so-called ‘demographico’ (demographic). ‘Demographico’ was meant to describe the perceived national problem of low birth rate, which was ongoing throughout the 1990s. Abortion was portrayed by the press as an anti-patriotic/treasonous act in a country where low birth rate was a national issue.

By linking the wider framework of the ‘biological annihilation of the Greek nation’ to trafficking in women, one can observe that not only have naturalised gender representations been influencing perceptions of victims, but they have also been informing the institutional motives behind delivering gendered victim services. In the case of ‘demographico’, for instance, women were seen as mothers of the nation. In effect, women’s bodies were mobilised as part of an agenda for certain political configurations of subjects (Greek Orthodox mothers, female citizens, and Greek Orthodox heterosexual male citizens). Simultaneously, religion was used to advance a particular racialised notion of Greece and ‘Greekness’.¹⁰³⁸ Thus, the existence of ‘periphractic’ spaces, as examined above, is constructed as a necessary precondition, linked to the reproduction of the nation (against the ‘annihilation of the nation’) and the enjoyment of freedom.¹⁰³⁹ Within

¹⁰³⁶ Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 209-10.

¹⁰³⁷ For the aims of KESO, see, KE.S.O., 'Centre for the Support of the Family', n.d. [last accessed: 15/03/12] [http://www.iaath.gr/index.php?option=com_content&view=article&id=219&Itemid=491].

¹⁰³⁸ Halkias, (2004).

¹⁰³⁹ For the prioritization of illegalised migration at a national level, see, e.g., N Roussis, 'They 'Forgot' the Anti-Trafficking Protocol, Greece and Turkey Have Signed but Not Ratified the Protocol', *Eleutherotypia* 17/06/2009.

this framework, the construction of women migrants (victims or not) as ‘Others’, to whom the right to legitimate speech is denied – being therefore portrayed as *abjects* – becomes highly pertinent.¹⁰⁴⁰ Under the shield of victimhood, women become recognisable as subjects, and yet they only penetrate the sphere of subjectivity through the notion of victimhood. Victimhood then is both a legitimating mechanism and an *abject* position.¹⁰⁴¹

Then, KESO’s approach to trafficking in women and children is also rooted in the idea that trafficking poses a threat to the Greek family. Therefore, it is very clear that KESO’s approach to the issue reflects a conservative philosophy in relation to any sexual experience that takes place without the sanction of the Church and does not support the reproduction of the nation and the family.¹⁰⁴² Beyond the ideological importance of KESO’s institutional motives, its intervention developed a practical relevance from an early stage, as the organisation was in a position to mobilise the Church’s already well-established infrastructure and obtain additional funds to provide shelter and support for women. These actions have often been executed in cooperation with other organisations, including the International Organisation for Migration.¹⁰⁴³

During the period of my investigation, the Church of Greece NGO ‘Solidarity’ had a prominent role in the area of victims’ services. Accommodation, legal advice, medical treatment, psychosocial support, assistance in finding work, in-house language courses as well as support during meetings with governmental agencies are only a few of the services provided. Specifically, in 2008 Solidarity

¹⁰⁴⁰ See, Aradau, (2008), 47.

¹⁰⁴¹ See, *ibid.*

¹⁰⁴² See, Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece', 326; Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 210.

¹⁰⁴³ Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 210.

offered accommodation to 18 trafficking victims (for the official statistical figures, see Table 1). Most of the victims received medical treatment, while a number of them had been repatriated through IOM Athens. Lastly, reference should also be made to the action of Kivotos, ‘a multi-ethnic youth centre, run by a Greek Orthodox priest and dedicated to rescuing youngsters from the brink of social exclusion’.¹⁰⁴⁴

Table 1
Comparative table of cases, perpetrators, freed victims
and officially identified victims for the years 2003–2008

YEARS	2003	2004	2005	2006	2007	2008
CASES	49	65	60	70	41	40
ALLEGED PERPETRATORS	284	288	202	206	121	162
FREED VICTIMS	93	181	137	83	100	78
OFFICIALLY IDENTIFIED VICTIMS	28	25	20	34	17	16

[Source: Hellenic Police; published in Greek Helsinki Monitor press release, 13 February 2009]

Security-Led Initiatives

Security-led initiatives as an assemblage of intelligence, securitisation practices and rights discourse deprivilege the binary between victims’ services (and the utilisation of the rights language) and intelligence. In doing so, this assemblage exemplifies the fact that victims’ services are to be read in conjunction with security bodies and technologies. This is, in fact, reflected in the legal instruments. As previously explored, in the Greek context, the legislative anti-trafficking

¹⁰⁴⁴ Kivotos, see, INV.gr, 'Selected Charities and NGOs in Greece'.

framework has been adapting under new pressures and policy changes, and has conceived a set of specialised services pertinent to victims of trafficking. This is not a trivial development as it shows that the broader national criminal justice system, influenced by the contemporary international conceptualisation of anti-trafficking measures, has remained open to change and to structural ‘corrections’ that have been represented as being inspired by progressive, victim-sensitive and, to some extent, gender-sensitive attitudes.

The EU and IOM Project AGIS, for instance, set out the ‘Establishment of the Network and Joint Training for Operational Law Enforcement Officers, NGOs and IOs in Fighting against Human Trafficking into EU Member States’. It has been funded by the EU and the governments of Belgium, Greece, Turkey and Italy, and was implemented in the years 2003, 2005 and 2006. In Greece, this initiative had particular implications among which was the establishment of the Law Preparatory Committee. It is this Committee, set up in cooperation with the competent ministries and the Hellenic Police, which has been appointed to introduce to the Greek Parliament a bill for the ratification of the UN 2000 Anti-Trafficking Protocol, aimed at introducing a holistic framework. Under the auspices of this framework, priority has been given to the identification and protection of victims, and to the establishment of shelters and pertinent agencies that would facilitate the victims’ rehabilitation process.

Also, a bilateral agreement between Albania and Greece, signed in 2005 and focusing on the transnational protection and humanitarian repatriation of children, was ratified on 25 August 2008, with the new Law 3692/2008.¹⁰⁴⁵ The implementation of L.3692/2008 includes prosecution and prevention activities in

¹⁰⁴⁵ See, M Shuteriqi, D Pippidou, and D Stoecklin, 'Transnational Protection of Children: The Case of Albania and Greece: 2000 - 2006', (Terre des Hommes, 2006).

both countries, as well as cooperation in the identification of victims, the individual assessment of each case and repatriation and reintegration in the country of origin. In this respect, the reference to victims under security-led initiatives reflects a very specific and rather narrow conceptualisation of which actions are to be taken with a view to protecting victims.

Regarding securitisation, presented as an issue of prevention and within the broader framework of ‘protective’ measures, the Ministry of Foreign Affairs has been especially competent in cases that involve third-country nationals, particularly those who are in need of a Schengen visa to enter Greece. This is due to the obligations that apply to Greece as a member state of the Schengen territory.¹⁰⁴⁶ In effect, any actions taken by the Ministry of Foreign Affairs have been portrayed as being sensitive to preventing human rights violations. This applies even when these actions involve the implementation of increased controls and the launch of investigations to determine whether visas have been obtained in fraudulent ways, since by enacting stricter controls the pertinent authorities have claimed that victims’ identification is facilitated.¹⁰⁴⁷

Shelters

Under Greek law, trafficked victims are entitled to free medical, pharmaceutical and hospital care throughout the period they are entitled to protection and assistance, i.e. throughout the period they cooperate with enforcement. This exceeds the requirement for minimum emergency care required in the Council of Europe Convention on Action against Trafficking in Human Beings.

¹⁰⁴⁶ See, Chapter 3.

¹⁰⁴⁷ See, also, Klimaka NGO, ‘Klimaka, Non-Governmental Organisation for the Development of Social and Human Potential’, 2006-2008 [last accessed: 01/02/12] [<http://www.klimaka-cosmos.net/mod.php?p=serbia&m=trafficking>].

An important first step in the area of setting up and potentially monitoring shelters in Greece has been the establishment of the inter-ministerial Group Against Human Trafficking mentioned earlier.¹⁰⁴⁸ The Group Against Human Trafficking has promoted the change in the legislative framework and has coordinated the information and sensitisation of the public about the phenomenon of trafficking. However, this committee set up only an informal referral system coordinated by the National Centre for Social Solidarity – EKKA.¹⁰⁴⁹ EKKA has been the main governmental entity responsible for providing protection and accommodation to trafficking victims. In 2008, EKKA operated two shelters for trafficking victims, one in Athens and a second in Thessaloniki. In the past, EKKA has also referred victims to NGOs, either for the purposes of accommodation or for legal or counselling services, which shows that there are indeed important interconnections between pertinent actors.

However, it has been widely acknowledged that many women have difficulty in accessing health care in state hospitals because of the lack of awareness among hospital staff of the social aspects of trafficking and anti-trafficking legislation.

According to the testimony of NGO representatives:

Only when we accompany the victims in the hospital and explain to the personnel there what the situation is, what the [2003 Presidential] Decree stipulates, as well as the fact that our organisation, although not on the list of organisations mentioned in the Decree, has a memorandum of cooperation with the authorities in assisting victims of trafficking, do they agree to look at the case. In effect, we need to carry a big file with the relevant paperwork to the hospital each time.¹⁰⁵⁰

¹⁰⁴⁸ See Chapter 5.

¹⁰⁴⁹ EKKA is supervised by the Greek Ministry of Health, runs a telephone helpline, operating 24 hours a day, seven days a week, aiming at providing direct assistance to victims of abuse and trafficking. It also operates four shelters, one of which is for identified victims of trafficking and provides short-term accommodation, counselling and psychological support to women and children victims of abuse and/or trafficking Ariadne Network, 'Greece', 110.

¹⁰⁵⁰ Amnesty International, 'Greece: Health Professional Action: Trafficked Women: Inadequate Time for Psychological Recovery', (EUR 25/005/2007, 2007a), 3.

The issue of shelters and the role of service providers is then highly important, yet extremely under-represented in literature.¹⁰⁵¹

Unsettling Grounds

The problem, however, lies here. Prior to the implementation of the main legal anti-trafficking instrument, the Greek anti-trafficking campaign consisted primarily of NGOs and campaign groups of diverse orientation, maintaining a focus on the regulation of sex work: anti-prostitution, anti-trafficking and pro-sex work. With the emergence of trafficking as an issue that required severe state responses and intensive cooperation among these groups, the ideological differences between NGOs, which have been more complex than in the sole reference to the regulation of sex work, became evident. This has resulted in low levels of cooperation and interconnection, and a stark deficiency in delivering urgent, coordinated actions.¹⁰⁵²

As the cooperation between actors developed, these organisations found a conflicting common ground in human rights and anti-slavery advocacy, heavily borrowing elements of rhetoric and practice from international anti-trafficking developments that unfolded around this same period.¹⁰⁵³ As with the previously explored system of legal knowledge, being imported to Greece,¹⁰⁵⁴ similarly, a

¹⁰⁵¹ The A21 Campaign, 'The A21 Campaign, Our Strategy', n.d. [last accessed: 05/06/10] [<http://www.thea21campaign.org/index.php/en/home/our-strategy>]; G Linardou, 'The International Business of Red Lights', *Eleutherotypia* 15/07/2007. See, also, D Popotas and A Kalyva, 'The Pimp-Baker Who Became a Sponsor', *Proto Thema* 15/07/2007.

¹⁰⁵² Lazaridis, (2001); Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece'.

¹⁰⁵³ See, Papanicolaou, (2008a); M Ditmore and M Wijers, 'The Negotiation on the UN Protocol on Trafficking in Persons', *Nemesis* 19, no. 4 (2003), 79; G Soderlund, 'Running from the Rescuers: New US Crusades against Sex Trafficking and the Rhetoric of Abolition', *NWSA Journal* 17, no. 3 (2005), 64; J Outshoorn, ed. *The Politics of Prostitution. Women's Movements, Democratic States and the Globalisation of Sex Commerce* (Cambridge & NY: Cambridge University Press, 2004).

¹⁰⁵⁴ See, Xenakis, (2004); Chapter 6.

certain system of victims' services has also been imported to Greece.¹⁰⁵⁵ Most importantly, the initiatives taken were reliant on the international capacity to transfer project-design and generate funding: '[t]here cannot be national strategies and policies with occasional funding given by the EU. When this funding stops the structures stop working as well'.¹⁰⁵⁶

In contrast to the development of the international anti-trafficking campaign, Greek anti-trafficking, under the influence of international structures, emerged at this specific historical moment, its major function being the response to an emergency. This dominant strategic function, however, lacked an indigenous background of feminist theorisation around violence against women, the commercialisation of sex and the objectification of the female body, and it failed just as much to develop an articulated feminist voice that clearly reflected the Greek situation.¹⁰⁵⁷

Moreover, while European social policy has made provisions relevant to women's rights, and the principle of equal pay, equal work and the appropriate absorption of women into workforce, Greece has not yet been able to realise this goal.¹⁰⁵⁸ Hence, the issues of domestic violence and the victimisation of women have emerged in public and in research agendas only during the past decade.¹⁰⁵⁹ Equally, important questions regarding the social position of women, including migrant women, in Greek society have begun to be explored only recently.¹⁰⁶⁰ As

¹⁰⁵⁵ *Ibid*; Papanicolaou, (2008b).

¹⁰⁵⁶ Lazaros Petromelidis, Director of Greek Council for Refugees, quoted in Amnesty International, 'Greece: The Dublin II Trap: Transfers of Asylum-Seekers to Greece', (EUR 25/001/2010, 2010), 26.

¹⁰⁵⁷ Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece', 324-5.

¹⁰⁵⁸ Halkias, (2004), 35.

¹⁰⁵⁹ See, e.g. Artinopoulou et al., 'Domestic Violence against Women: First National Epidemiological Research'; K V Sklavou, *Domestic Violence and Social Integration of Migrant Women* (Athens: Sakkoulas Publications, 2008). N Kourakis, ed. *Gendered Criminality: A Penal and Criminological Approach to Gender* (Athens: Sakkoulas Publications, 2009).

¹⁰⁶⁰ Papanicolaou and Bouklis, 'Sex, Trafficking and Crime Policy in Greece', 324.

a result, these anti-trafficking discourses and technologies at the time of the introduction of the anti-trafficking structures ‘began to serve as the organising logic of the state’s punitive response to illegal migration’.¹⁰⁶¹ In this process, then, anti-trafficking added one more strategy to the wide practices of ‘periphractic’ governance.

Data in context: statistics and victims

National Statistics

Greece has been presented in official narratives as a destination and transit country for trafficking in Europe.¹⁰⁶² The financial crisis of 2009-2011 had, however, a major impact on these perceptions. Amidst the financial crisis, a shift has been reported, according to which Greece has increasingly become a transit rather than a destination country for victims and, overall, a less attractive destination for migrants.¹⁰⁶³ Yet the construction of a ‘fence’ or ‘wall’ on Greece’s border with Turkey, to successfully deter ‘illegal migration’ and trafficking, is still considered as the best answer to the problems (despite the cost for this fence).¹⁰⁶⁴ In this sense, the periphractic spaces examined earlier, are not just a figure of speech but a rather pragmatic ‘solution’.

In the construction of problems and solutions, conflicting statistical reconstructions, also, produce notions of risk and threat that justify the emergence

¹⁰⁶¹ *Ibid.*, 309.

¹⁰⁶² See, Hellenic Police, 'Statistical Data on Human Trafficking', Hellenic Republic, Ministry of Interior, 2003-2011, [last accessed: 02/01/12] [http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=12106&Itemid=429&lang=]; US, 'Trafficking in Persons Report 2007'; Amnesty International, 'Greece: Uphold the Rights of Women and Girls Trafficked for Sexual Exploitation'.

¹⁰⁶³ See, M Delithanassi, 'Frontex Is Permanently Present at Evros', *Kathimerini*, 11/02/2011.

¹⁰⁶⁴ *Kathimerini*, 'Fence on the Greek-Turkish Border to Be Prepared in Five Months', 19/01/2012.

of periphractic governance.¹⁰⁶⁵ Even in previous years when the relevant official reports were arguing that a substantive number of victims can be found in Greece at any time, the official narrative, being supported by quantitative data, appeared to be rather incomplete, borrowing elements of anti-trafficking knowledge, again from the international terrain.¹⁰⁶⁶ Hence, despite the large number of victims that were believed to exist in Greece, the authorities only started to document victims and explicitly articulate their interest in protecting women victims of trafficking in 2002 and 2003, which is the same year as the Presidential Decree 233/2003 was introduced with a view to install and regulate victim protection.

This contribution is highly significant and constitutes a shift in the crucial issue of crime reports, for which Greece has been receiving ongoing criticism.¹⁰⁶⁷ Nevertheless, even after the initiation of official statistical reporting, the Hellenic Police submitted data for 'victims' and 'trafficking' in general. This was on the one hand perceived as an improvement based on the previous complete absence of data. On the other hand, it posed important questions regarding the efficiency of Greek anti-trafficking knowledge.

Specifically, according to official sources in 2006, Greece spent 1 million dollars on improving victims' services and on specialised anti-trafficking programmes.¹⁰⁶⁸ However, according to the official statistics in 2006, a total of 83 victims were recognised as such, while in 2005 the equivalent number was 137, which indicates a significant decline in the area of victims' identification (see,

¹⁰⁶⁵ See, also, C Aradau, 'Commentary' in *Crime and Punishment in Contemporary Greece. International Comparative Perspectives*, L K Cheliotis and S Xenakis eds. (Oxford: Peter Lang Publishing Group, 2011b), 341.

¹⁰⁶⁶ US, 'Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report', 71.

¹⁰⁶⁷ Ongoing requests put forward in the US TIP Reports; for the importance of this see Papanicolaou, 'Policing Sex Trafficking in Southeast Europe. A Theoretical Case Study of Transnational Policing', 154.

¹⁰⁶⁸ See, US, 'Trafficking in Persons Report 2007', 198.

Table 1). However, what is not clear under the umbrella term ‘Assistance and Protection’ is the exact type of service that was provided, or whether that particular type of assistance was followed by the deportation or repatriation of the victim to their country of origin or their integration in the Greek society (see Table 2).

Table 2
Hellenic Police 2007
Assistance and Protection to Victims (Articles 323A & 351)

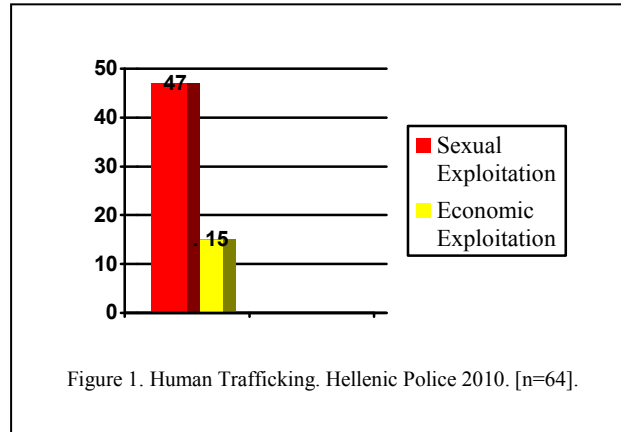
NATIONALS OF THE COUNTRY	Provision of Assistance & Protection	Order by the Public Prosecutor	Cooperation between GOs & NGOs	Cooperation with Diplomatic Authorities	Cooperation with IOM
BULGARIA	7	3	4	13	5
NIGERIA	3	3	3	3	-
UKRAINE	3	3	3	-	-
ROMANIA	12	3	14	11	9
RUSSIA	10	5	5	1	1
Final Set	35	17	29	28	15

[Source: Hellenic Police 2007]

To this extent, these figures give evidence of a clear discrepancy between NGO (large numbers) and police data. They also attest that there is a second discrepancy regarding funds made available and efficiency in identifying victims. These discrepancies, or rather institutional use of the ‘politics of numbers’, do not raise questions about the usefulness of raids, the desirability of criminalisation and securitisation measures. Instead, as stressed by Aradau, they are taken as the ‘result of insufficient administrative measures and legal procedures to tackle trafficking’.¹⁰⁶⁹ In effect, the fortification of criminalisation and securitisation measures is not just desirable but naturalised, while the harm caused by the intensification of pertinent measures is neutralised.

¹⁰⁶⁹ Aradau, 'Commentary', 345.

It then comes as no surprise that data fields are incomplete or that they have failed to reflect categories of gender and ethnicity.¹⁰⁷⁰ Also, the research category representing the exact form of trafficking was only introduced in 2010 (see Figure 1).



This is because official statistics are in fact mobilised as a strategy in the ‘concrete systems of punishment’, with their both ‘negative’ and ‘positive’ effects, to maintain the punitive mechanisms.¹⁰⁷¹ Knowledge-production, then, serves enforcement purposes, a complimentary role to the new legal anti-trafficking technologies.

Conclusions: victims in context

Texts on rights, victims and victimhood have been examined in this chapter. What is considered to be a ‘victim’ of the pertinent criminal acts changes throughout the years, and is contingent upon the cultural, historical and political context, along

¹⁰⁷⁰ For instance see Hellenic Police, ‘Comparative Statistical Data of Cases, Perpetrators and Victims between 2006 and 2007’. Also, the Hellenic Police issued data in relation to gender, for the victims of trafficking (no distinction made) for the year 2007 only, see Hellenic Police, ‘Statistical Data: Victims of Human Trafficking (Arts. 323a & 351)’, Hellenic Republic, Ministry of Interior, http://www.astynomia.gr/index.php?option=ozo_content&lang='..'&perform=view&id=319&Itemid=259&lang=.

¹⁰⁷¹ Foucault, (1991), 25.

with notions of security and rights.¹⁰⁷² The intersection of security, criminalisation and rights discourses in relation to the gendered victims of human trafficking captures this particular ‘birth’ of the national, anti-trafficking, ‘rights’ regime of knowledge. In particular, I have investigated the ways that victims’ rights discourses have been used in order to offer ‘adjustments’ to the conceptualisation of the national anti-trafficking structures, as an imaginary penalty.

Fundamentally, the specific legislative developments that took place in Greece under broader political and legal developments in the field of criminal justice and human rights, established a distinctive approach in the way that security, criminalisation and human rights narratives were integrated in the utilisation of the victims in court proceedings. This does not denote, however, that the Greek utilisation of victims in criminal trials is unique. Rather, it shows that the victims’ contribution to providing evidence in the criminal court proceedings stabilised in this national context a set of ‘strategies of the relations of forces supporting, and supported by, certain types of knowledge’.¹⁰⁷³ This knowledge, then, has been context-specific and has conveyed national conflicts.

Mainly victims have been introduced as witnesses that need to be protected in order to provide evidence against the alleged perpetrators in court proceedings. To this extent, for the first time, anti-trafficking has raised demands for improved gendered victim services in this particular context. The main interest then lies in protecting victims/witnesses rather than in implementing a set of measures with a view to protect human rights’ entitlements.

¹⁰⁷² A Koukoutsaki, *Drug Use, Homosexuality. Attitudes of Non-Compliance between Penal and Medical Controls* (Athens: Kritiki Publications, 2002).

¹⁰⁷³ M Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977* (NY: Pantheon Books, 1980), 194-6 quoted in Agamben, (2009), 2.

Hence, in the field of victims' services, victim-specific strategies have institutionalised concepts such as the 'reflection period'. These have opened a new horizon in the way victims are valued and have indeed promised to stress the 'human rights' dimension rather than criminalisation. At the same time, not only the use-value of the victims/witnesses becomes evident, but also the existence of certain political tensions, as to who is to be 'granted' the 'victim' label and who is to be considered worthy of protection and for how long (for instance, specific entitlements last until the end of the screening, 'reflection period').

The lack of structure underlying the cooperation between diverse actors, with conflicting interests and aims, contributes to a further realisation of the limited scope of human rights in this context. However, these tensions instead of being counter-productive seem to work in the formation of a multidimensional and polyphonic field of legal and social activity. Beyond the destabilisation of certain norms, this new framework has come to reinscribe gender stereotypes in relation to victims, recognise 'culturally legitimate' victims, and distinguish between subjects that deserve official recognition and subjects that are to be contained in periphractic spaces.¹⁰⁷⁴

To this extent, the investigation of victims of trafficking, in this context, shows that the dominant discourse builds on notions of illegalised migration and sex work, as discussed in Chapter 4. The relevant legislation, by exclusively raising issues pertinent to victims' services (and criminalisation), *assumes* that Greece has resolved issues of gender inequality and the social position of women, including migrant women. By focusing on issues at the periphery of victimisation, the Greek anti-trafficking actors also *assumed* (for the period investigated here)

¹⁰⁷⁴ See, Elias, (1986), 17.

that they could cooperate and offer services to victims without setting clear objectives and without having a clear view of what the problems are. Consequently, in this context, human rights were portrayed as a missing language; once it was found, and properly used, trafficking could be abolished.

Chapter 8

Conclusions: re-imagining

They all call you a statue right away.
Right away I call you a woman
Not because the sculptor
surrendered you to the marble
as a woman
and your thighs promise generations
of beautiful statues
—a clean harvest of immobility—
But because your hands are tied.
Everywhere I turn
I see your hands are always
tied.
That's why I call you a woman.
I call you a woman
because you always end up
a captive.

Kiki Dimoula 'Mark of Recognition',
[‘Σημείο Αναγνωρίσεως’, *Το Λίγο του Κόσμου*, 1994]¹⁰⁷⁵

Conclusions

In the Introduction of this thesis, the antithesis between a criminalisation and a human rights approach to trafficking raised the question of anti-trafficking. Both of these seemingly antithetical approaches have sought to articulate how toxic trafficking in women is, and what the best way to eliminate it could be. To understand this antithesis, I have used the concept of ‘imaginary penalties’. This is because, at a rather practical level, the term ‘imaginary’ advances an

¹⁰⁷⁵ Quoted in a revised version of the paper E Douka-Kabitoglou, 'Beauty and the Beast: Re-Membering the Woman / Poet' in *Women / Poetry in Britain and Greece*, E Douka-Kabitoglou ed. (Thessaloniki: University Studio Press, 1998). See, E Douka-Kabitoglou, 'Fantasies of the Feminine in Contemporary Greek Women Poets'.

understanding of institutional goals¹⁰⁷⁶ pertinent to anti-trafficking structures.¹⁰⁷⁷ To that extent, I have focused on the institutional goals put forward by the criminalisation and the human rights approach to trafficking in women. I have found that these ‘institutional goals’ were forming a tripartite structure of prosecution – prevention – protection. This structure was, then, easily translated into criminalisation, security and human rights discourses.

I set out to investigate what happened to the antithesis between criminalisation and human rights that initially appeared to be assembling neat categories of conceptualisation; this antithesis has been compartmentalising legal knowledge. My interest in fleshing out the convivial relations between distinct yet entangled articulations led me to interrogate each term of the criminalisation – security – human rights discursive terrain separately. While I rested on the hypothesis that these terms are, to some extent, antagonistic, and indeed discontinuous, I found it hard to position the lines between anti-trafficking goals. Also, when the official (legal and policy) discourses engendered the issues at stake, slippery contours of gender markings destabilised the institutional resonance of anti-trafficking goals. My questions focused on the development of this powerful discursive domain of mutually reinforcing serial habitations of discipline and control.

Firstly, I focused on the international level and I asked how, through criminalisation discourses, we have come to ‘imagine’ that by using the vehicle of intensified controls, severe punishments and ‘zero tolerance’ practices/technologies, trafficking can be abolished.¹⁰⁷⁸ The answer was not

¹⁰⁷⁶ See, Carlen, 'Imaginary Penalties and Risk-Crazed Governance', 4-6.

¹⁰⁷⁷ This conceptualisation has been influenced and inspired by the work of Claudia Aradau, see, Aradau, (2008).

¹⁰⁷⁸ Chapters 2 and 5.

simple, or trivial. Very specific explanations of crime were put forward that formed a punitive ideological basis on which security constructions were increasingly utilised. The most striking aspect of this inquiry was that the criminalisation approach set goals, mobilised legal knowledge, imposed duties, action plans and services, and gave a sense of ‘order’, ‘as if’ all the criminalisation goals were achievable. These goals were multiple. They involved trafficking in women, (illegalised) migration, the regulation of sex work, and specific constructions of organised criminality (to mention only a few). In realising these goals, however, specific constructions of subjectivity were also put forward. The female victims, the female (illegalised) migrants and the female criminals involved in smuggling, all evoked particular narratives with female protagonists.

Secondly, my analysis focused on the dynamics of the inclusion and exclusion of subjects or indeed institutions of security.¹⁰⁷⁹ From international security to human security, criminalisation was presented as the antidote that would suppress insecurity. This conceptualisation destabilised the opposition between human security and criminalisation to such extent that criminalisation was almost discharged from its semiotic resonance with the ever-encroaching demand for controls, disciplinary structures and criminal governance. Simultaneously, the human security aspect also reflected the expansive discursive boundaries of this tripartite construction: insofar as knowledge about the security of the state and the security of the individual were deliberately blurred, disciplinary rules were to be articulated through the language of protection. In effect, trafficking in women was conceived as a threat against states and

¹⁰⁷⁹ Chapters 3 and 6.

individuals, while it naturalised a notion of political urgency in the post-9/11 temporalities.

Thirdly, I turned to human rights in search of protections, since most of the institutional goals have justified their urgency through victims' representations and their contribution to the protection of victims' rights.¹⁰⁸⁰ However, the normativised punishment paradigm was, again, present. The functions of discipline were much more complex under the rights-led approach and directly targeted individuals. Present idealised versions of gender were put forward in a manner that led to exclusion.¹⁰⁸¹ These versions of gender were either to condemn gendered attitudes or to apply narrow conceptions of victimisation and victimhood. In doing so, it was registered that the 'real' victims also comply with specific gender (or indeed intersectional) narratives.

By following criminalisation and its rich field of 'traditional', punitive structures our discussion opened up a discursive space for the language of security. Particularly in the form of threats, security was imagined and re-imagined over and over again. Different types of being secure and different suggestions for becoming secure were presented and analysed. However, the deeper I delved into these suggestions, the more I found that rights were coming into play. All three contributed to the evolution of the 'anti-trafficking promise'. This should be understood as the ongoing practices of setting goals, adjusting measures, calculating efficiency and achieving perpetuation. In that respect, I investigated anti-trafficking as an imaginary penalty.

¹⁰⁸⁰ Chapters 4 and 7.

¹⁰⁸¹ Carline and Pearson, (2007), 107.

Performative Tensions

The term ‘performativity’ in the context of security was meant to be used productively and analyse alternative issues to security and gender, and their interconnections.¹⁰⁸² Since our discussion was compelled to focus on women, security raised a series of ‘assumptions’ about the threats and risks in the context of trafficking. Criminalisation and human rights materialised these assumptions. It is not that anti-trafficking laid down the rules, a set of normative, totalising demands – according to Butler – with which individuals then had to comply. On the contrary, it has been a set of ‘actions mobilised by the [regulatory] law, the citational accumulation and dissimulation of the law that produces material effects, the lived necessity of those effects as well as the lived contestation of that necessity’.¹⁰⁸³ Our discussion then has really been a discussion about assumptions, the lived contestation of those assumptions and their perpetuation, both in the form of a penalty and in the reproduction of ‘sexed’ subjects.

Six slightly diverse articulations were mapped out from the examination of the anti-trafficking promise at an international level through criminalisation – security – human rights, and at a national level through the national battles between sites of power and resistance. This project has thus developed into a challenge that aims to provoke and perhaps expand the way we think of how penalty works and what consuming effects it has on articulations of our rights and freedom, by offering only a snapshot of a wider network of conflicts, penalties and rights articulations.

¹⁰⁸² Using ‘gender performativity’ as a method, see, Loizidou, (2007), 26.

¹⁰⁸³ Butler, (1993), 12.

Re-imagination

My inquiry was influenced by the project, according to which to analyse the ways in which ‘meaning serves to establish and sustain relations of domination is motivated not just by a desire to describe and explain the world, but by a desire to criticise and change it’.¹⁰⁸⁴ In that sense, to engage in a discussion by using as a primary analytical tool the term ‘imaginary’ presupposes that you are driven by a sense of structural injustice and that you are already engaging in the process of re-imagination. This does not involve a mere discursive investigation, a limited *askesis*. Rather, to highlight this aspect: the concept of imaginary penalties asserts that ‘the rhetoric has become the reality’.¹⁰⁸⁵

Hence, perhaps my ‘single’ concern has focused on the problems of transition; not on the transition itself. By this I do not mean to suggest that we can re-imagine a better penalty ‘if only’ we negotiate the tensions between its conflicting ‘goals set and goals achieved/results’ process. Actually, while I am writing this final section, I am still cautious that this line of thought might be used to suggest that ‘we’ need to improve ‘our’ tripartite anti-trafficking structure, to re-adjust it and try again. In that sense, I am aware of the weaknesses of my project, and of the fact that re-imagination suggests the invention of a new language; while I kept repeating gendered fantasies, even when it was to criticise them.

However, this is the first time that the use of ‘imaginary penalties’ has been utilised in this area. Therefore, this project sought to bring into anti-trafficking debates the often neglected critique of imagination as the primary force that can transform and deterritorialise regulatory norms. Equally, as a conclusive point, the

¹⁰⁸⁴ Marks, (2000), 121.

¹⁰⁸⁵ Carlen, 'Imaginary Penalties and Risk-Crazed Governance', 5.

use of the term 're-imagination' dictates a shift from existing approaches in the field and suggests a different discussion on structural inequalities and structural transitions.

Emma Goldman, in a momentous critique published at the beginning of the 20th Century, on the emergence of traffic in women as a legal issue with structural root causes, criticises the normative production of knowledge pertinent to trafficking in women. Normative accounts, according to Goldman, have been seeking to introduce the issue of trafficking as a new challenge, a 'sad' and yet 'great discovery', an underground, hidden problem of our times. Goldman, then, makes the following observations:

Just at present our good people are shocked by the disclosures that in New York City alone one out of every ten women works in a factory, that the average wage received by women is six dollars per week for forty-eight to sixty hours of work, and that the majority of female wage workers face many months of idleness which leaves the average wage about \$280 a year. In view of these economic horrors, is it to be wondered at that prostitution and the white slave trade have become such dominant factors?¹⁰⁸⁶

From this perspective, Goldman further questions '[h]ow is it that this evil, known to all sociologists, should now be made such an important issue?', and maintains: 'to assume that the recent investigation of the white slave traffic (and, by the way, a very superficial investigation) has discovered anything new, is, to say the least, very foolish'.¹⁰⁸⁷ Today, trafficking in women is still masquerading as 'new', even though it reiterates gendered forms of victimisation and sexual violence, 'old' discourses. This naivety has been prominent in official narratives: 'mankind goes on its business, perfectly indifferent to the sufferings and distress of the victims of prostitution. As indifferent, indeed, as mankind has remained to our industrial

¹⁰⁸⁶ E Goldman, 'Anarchism and Other Essays', Mother Earth Publishing Association, 1911 [last accessed: 10/11/11]

[<http://www.marxists.org/reference/archive/goldman/works/1910/traffic-women.htm>].

¹⁰⁸⁷ *Ibid.*

system, or to economic prostitution’.¹⁰⁸⁸ In this sense, both the language of criminalisation and human rights as well as the language of security and gender has been engaged in a process of resistance, resisting both re-imagination and change.

Re-imagination in this radical, emancipatory sense is the subject of future engagement. As with the Myth of Sisyphus, trafficking has been devoted to a futile search for meaning, clarity, solution, end and ‘happiness’, a catharsis. The deployment, then, of the continuum between criminalisation - security - human rights has circumscribed the radical potential of emancipatory discourses and has restrained their remit. It has camouflaged the matrix of inequalities by suggesting solutions that either promote harsher penalties for traffickers or promise the provision of benevolent intervention intended to protect the interests of the victims. As such, it reaffirms, in a celebratory, triumphant way, the ‘innocence’ of the wider terrain within which these two conflicting discourses – criminalisation, on the one hand, and human rights, on the other – are mobilised. Both ends of this dichotomy are linked in tension with one another by security discourses. Revolving inquiries around this three-dimensional compound metaphor prioritise a model: each dimension – leaving their limitations aside – competes against the others or strategically cooperates with them for the best possible solution in the war on trafficking.¹⁰⁸⁹ Their prioritisation, however, renders invisible other demands that could, perhaps, construct different, less fragmented, articulations of equality and freedom. Drawing on Loizidou and Ramshaw, then, we may ask, is another world possible than the one that criminalisation – security – human rights

¹⁰⁸⁸ *Ibid.*

¹⁰⁸⁹ See, e.g., DeStefano, (2007).

have entrenched us in?¹⁰⁹⁰ And if so, can ‘we’ break out from preconceptions that cast subjectivities?

Dimoula’s poem suggests that in the world mediated by discourses [*logos* – the calling of something] ‘we’ need to engage in deconstructing this condition of captivity, the intrinsic captivity in social, legal, aesthetic or other representations of women. By saying this Dimoula breaks out of the national, male-dominated, ‘monumental’ Greek poetry and suggests alternatives to hegemonic narratives. Anti-trafficking, as an imaginary penalty, and its re-imagination suggest the transformation of ‘statue’-like, contemporary, legal and social histories.

¹⁰⁹⁰ See, E Loizidou and S Ramshaw, 'Flesh, Bones and Other Matters', *Australian Feminist Law Journal* 29, no. 1 (2008), 3, 5.

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