

SHE WAS A PASSIVE “VICTIM” IN NEED OF RESCUE: UNDERSTANDING THE
GENDERED CONSTRUCTIONS IN INTERNATIONAL ANTI-TRAFFICKING LAW

By

JESSICA LYNNE PEET

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To my mother and grandmother, the strongest women I know

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LIST OF ABBREVIATIONS

Ad Hoc	Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
CATW	Coalition Against Trafficking in Women
EU	European Union
GAATW	Global Alliance Against Trafficking in Women
IGO	Inter-governmental Organization
ILO	International Labor Organization
IOM	International Office of Migration
NGO	Non-governmental Organization
Protocol	United Nations Protocol to Prevent Suppress and Punish Trafficking in Persons Especially Women and Children
SRSC	Special Rapportuer on the Sale of Children
SRVW	Special Rapportuer on Violence Against Women
Trafficking Protocol	United Nations Protocol to Prevent Suppress and Punish Trafficking in Persons Especially Women and Children
UN	United Nations
UNHCHR	United Nations High Commissioner on Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office of Drugs and Crime
USTVPA	United States Trafficking Victim's Protection Act

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Jessica Lynne Peet

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Cochair: Laura Sjoberg
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In 2003 a new international anti-trafficking agreement, known as the Palermo Protocol, was implemented. This agreement was negotiated to address human trafficking at the international level and to provide a model for domestic anti-trafficking legislation. This project interrogates the gendered constructions found in the Protocol. It argues that these constructions create a feminine “trafficking victim” and a masculine state which impacts the success of international anti-trafficking law. Specifically, these constructions limit who is identified as a trafficked person as well as understandings of what constitutes trafficking.

The Protocol advances a security framework as the way to address human trafficking. This framework is based upon a specific narrative about human trafficking and perpetuates dominant ideas, or rules, about feminine passivity, masculine protection and feminine sexuality. Using a feminist constructivist approach and discourse analysis, the language of the text is examined to identify the influence of three alternative narratives upon the drafting of the Protocol. Evidence of gendered rules regarding agency, protection and sexuality are all found in the text. These rules are

perpetuated by the narratives and construct a particular type of “trafficking victim,” a gendered construction that does not adequately capture the multiple and varied identities of trafficked persons. This project argues that until the narratives about human trafficking are enlarged and the gendered rules they perpetuate are changed, the success of anti-trafficking law will continue to be debated.

CHAPTER 1 UNDERSTANDING THE PALERMO PROTOCOL

In December of 2000, the United Nations Convention Against Transnational Organized Crime was opened for signatories. Adopted along with this convention were three protocols.¹ One of the protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as the Palermo Protocol),² was hailed as a new tool to fight human trafficking. Its goal was to prevent trafficking, protect victims and punish traffickers. However, ten years later, the impact of the Palermo Protocol on combating human trafficking is debated. While it has served as a model for national anti-trafficking legislation, human trafficking is still prevalent.³ Why has the Palermo Protocol not lived up to its initial expectations?

Different actors put forth different perspectives to answer this question. Elites argue that while the Palermo Protocol may not curtail human trafficking to the extent hoped, the security framework advanced by the Protocol is its strength.⁴ Individuals working in the non-profit sector, who have direct contact with victims, argue that the

¹ The three protocols include the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Protocol against Smuggling of Migrants by Land, Air and Sea and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. The Firearms Protocol, while part of the Convention, was not negotiated in time to open for signatories in December of 2000 and thus was adopted in May of 2001.

² Throughout this project I will, at different times, use Palermo Protocol, Trafficking Protocol and Protocol to refer to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

³ The United States State Department releases a *Trafficking in Persons* report each year which evaluates state's actions to combat human trafficking. In recent years the report has stopped attempting to quantify human trafficking though it acknowledges that it is still rampant. In 2004 it was estimated that 600,000-800,000 individuals are trafficked within and across borders each year (Office to Monitor and Combat Human Trafficking 2004).

⁴ Taken from a phone interview with Dimitri Vlassis, secretariat of the Palermo negotiations which produced the United Nations Convention Against Transnational Crime and its Protocols, particularly the Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children. This interview occurred on June 18, 2010.

main failing of the Palermo Protocol is the very framework it advances.⁵ The security framework that was put into place through the Palermo Protocol arises out of a specific narrative on human trafficking. Multiple narratives exist at the international level, each which produces a specific framework in which to address human trafficking. The Palermo Protocol is unique in that it promotes a state security framework rather than a framework which focuses on the safety and interests of the individuals who are trafficked. Why did states choose to implement a security framework over alternative frameworks that exist, such as a human rights or migration framework? And why is this framework failing to adequately combat human trafficking and aid trafficked persons?

As this project demonstrates, gendered narratives and the gendered social rules they manifest are central to the framework chosen. This project argues that the gendered state of rule these rules create impacts the success of the Palermo Protocol. “Gender inheres in all international politics” as Elisabeth Prugl and Brigit Locher point out (2001a: 116). This project finds that the construction of international agreements is no different. Gendered narratives surround human trafficking determining the strategies chosen to combat it. Gendered rules of agency, feminine sexuality and masculine protection form the foundation upon which the Palermo Protocol is constructed and constitute the state of rule that governs anti-trafficking policy. These gendered rules and the state of rule they create impact whom is identified as a “trafficking victim,” the result being that very few individuals who are trafficked are identified as such. The gendered

⁵ Taken from a presentation by Barbara Limonwska at the National Workshop on Reviewing Trafficking in Women and Children: Intra and Inter-Sectoral Dialogue and Strategic Planning held in Kolkatta, West Bengal, India March 24. While various NGOs advocated the creation of an international agreement addressing human trafficking using a human rights framework, integrating the Protocol into the Convention Against Transnational Crime resulted in states adopting a security framework dominated by law enforcement approaches.

category created through the narratives and institutionalized through the Protocol is detrimental to trafficked persons because it so narrowly defines “trafficking victim.”⁶ It is also detrimental to women, not just trafficked women, because it advances stereotypical ideas which construct women as passive victims. The narratives demonstrate the working of gendered rules and rule because the narratives put forth particular stories about human trafficking and trafficked persons. These stories create dominant representations of the trafficking process and “trafficking victims,” representations which govern who is identified as a “trafficking victim” and the construction of anti-trafficking strategies.

Using a feminist constructivist approach and the method of discourse analysis to examine anti-trafficking law, this project explores rules and rule found in anti-trafficking law. It examines the social rules that compose gender as well as the narratives surrounding human trafficking and the gendered rules they incorporate. It analyzes these rules and the state of rule produced in order to understand the effect of gendered frames upon the construction of international law.

This chapter presents the puzzle driving this project as well as the thesis. In the following chapters a case is built to demonstrate that the construction of “trafficking victim” is gendered through discourse and the various narratives about trafficking these discourses produce. This gendered identity has become incorporated into the Palermo Protocol which has influenced national legislation across the globe. However, this

⁶ Throughout this project I place the phrase trafficking victim in quotations. This is to denote that “trafficking victim” is a constructed category that does not adequately capture the experience or identities of trafficked persons.

gendered identity is detrimental to actual trafficked persons because it defines trafficking so narrowly.

Chapter 2 gives an overview of the research conducted on human trafficking. Many factors contribute to human trafficking which makes conceptualizing and defining trafficking difficult, even with a definition put forth by the Palermo Protocol. This lack of conceptual clarity has contributed to the rise of three discourses about human trafficking: the security discourse, the human rights discourse and the migration discourse. These discourses are explored because they give rise to the three alternative narratives on human trafficking that influenced the negotiations that produced the Protocol. The chapter ends with an explanation of the methods employed in the project and the empirical context. This project employs a method of discourse analysis to examine and understand how language used in the Protocol constructs specific actors, particularly “trafficking victims.”

Chapter 3 discusses the analytical approach taken in this project. Combining the theoretical frameworks provided by constructivism and feminism, this project employs a feminist constructivist approach. Beginning with a discussion of constructivism, attention is focused on the concepts of rules and rule as explained by Nicholas Onuf (1989; 1998). Rules, such as directive-, instruction- and commitment-rules provide guidelines for action and when combined form a state of rule. Identifying the tools that Onuf’s work provides demonstrates the relevance of a constructivist approach to this project. However, constructivism does not provide all the tools because it is lacking in its treatment of gender. Feminism must be combined with a constructivist approach in order to foreground gender. The feminist constructivist approach was pioneered by

Elisabeth Prugl (1998; 1999) and Birgit Locher (2007) and attention is given to the contributions of their work. The chapter ends with an explanation as to why a feminist constructivist approach is the most appropriate approach to employ in order to understand the gendered narratives about human trafficking and the gendered rules they perpetuate. A feminist constructivist approach also provides tools for the conceptualization of gender and the ways in which femininity and masculinity regulate the actions of men and women. This is further explored in Chapter 4.

Chapter 4 examines gender through the paradigm of rules and rule. It begins with a discussion of why the concepts of rules and rule are helpful for understanding gender and its effects. Gender, the roles assigned to masculine and feminine agents as well as the relationship between masculinity and femininity, is constructed through instruction- and directive-rules. These rules inform women and men about appropriate feminine and masculine behaviors. These rules are supported by the consequences that occur when men and women display characteristics and behaviors that are not appropriately masculine or feminine. After applying the framework of rules and rule to gender, I examine three forms of gendered rules: protection, agency and sexuality. These are the gendered rules most apparent in anti-trafficking law and, as this project demonstrates, these gendered rules construct “trafficking victims” as well as traffickers and states in specific gendered ways.

Chapter 5 addresses the narratives that surround human trafficking. These narratives tell a specific story about human trafficking. Each narrative links human trafficking to a different cause. It constructs specific actors in the story about human trafficking and provides alternative strategies to combat it. As this chapter explores, the

narratives construct actors with specific gendered identities. These narratives and the gendered identities they create are important because of their influence on the drafting of the Protocol which is the subject of Chapters 6 and 7.

Chapter 6 focuses on historical anti-trafficking agreements and the negotiations that produced the Protocol. Beginning with the movement that led to the first anti-trafficking agreement in 1904, the similarities and differences of anti-trafficking responses over time are observed. Attention is devoted to the gendered rules that are evident in these historical agreements, thus demonstrating that gendered rules have continually influenced approaches to understanding and combating trafficking. Attention then turns to the negotiations that produced the Protocol. The evolution of the Protocol is traced focusing on the changes made to the text as well as the issues debated over the course of the negotiating sessions.

Chapter 7 evaluates the negotiations through feminist constructivist lenses, foregrounding the influence of gendered narratives. Beginning with the security narrative, the language and framework produced by the Protocol are examined. The security narrative dominated the negotiations. This is evidenced by the language employed in the text as well as the anti-trafficking strategies produced by the Protocol. Attention then turns to the human rights framework. The human rights framework exerted some degree of influence upon the negotiations. However, the language of the human rights provisions is always weaker than the provisions related to state security. The migration narrative is also examined. This was the least influential of the three narratives. Often the language of the Protocol negates the provisions provided by this narrative. The end result is a document dominated by the security narrative which

devotes greater attention to the security of states than to the rights of trafficked individuals.

Chapter 8 takes the framework of rules and rule and applies it to the Palermo Protocol. The three forms of rules identified by Onuf are all found in the Palermo Protocol. The narratives create instruction-rules about trafficking. Ideas about protection, agency and sexuality form the gendered directive-rules. The Protocol itself is composed of commitment-rules because it commits states to particular actions. These three forms of rules are explored in depth in order to understand how they construct and institutionalize the gendered category of “trafficking victim.” Together these three forms of rules construct gendered agents, identities and interests. They also create a state of rule that governs the identification and actions of state towards “trafficking victims” as well as anti-trafficking strategies they implement.

Chapter 9 concludes the project. The main argument of this project is reiterated and its contributions are evaluated. The questions which began this project are revisited and the answers to these questions are provided. The chapter ends with a discussion on potential ways to improve anti-trafficking strategies so that human trafficking is effectively addressed.

CHAPTER 2 UNDERSTANDING HUMAN TRAFFICKING: DEFINITIONS AND RESEARCH

Human trafficking is not an easy concept to understand or define. One reason for this is that trafficking can take a variety of forms. Some individuals are forced across international borders while others willingly migrate only to find themselves in exploitative situations. In some cases smuggling may start the trafficking process while in others it may begin with a false job offer. Complicating the matter is the fact that some individuals may identify as being trafficked while others will deny it regardless of the evidence presented to them. Taken together these factors create conceptual ambiguities.

This chapter will attempt to delineate the concept of human trafficking by focusing on definitions and causes. It will also address the research being conducted on human trafficking in an effort to better understand the issue. Research on human trafficking has slowly evolved to include dimensions of gender, but gender is often operationalized in terms of biological sex. Research on the ways in which gender constitutes human trafficking and the category of “trafficking victim” is still lacking. This project attempts to fill that gap. In order to familiarize the reader with the methods employed in this project a discussion of discourse analysis follows the review of the literature. The chapter ends by turning attention to the empirical evidence that will be presented and analyzed, with attention focused on the activities that led to the negotiations of the Palermo Protocol and its parent agreement, the Convention Against Transnational Organized Crime.

Human Trafficking

Attention to human trafficking has greatly increased in the past three decades. While human trafficking had been addressed in international agreements beginning in

the early 20th century, awareness of trafficking resurged in the mid-1990s when it became evident that individuals were being trafficked from post-communist countries into Western Europe. This was coined the “Natasha Trade” and research focused on Eastern European women trafficked into the sex industry (Hughes 2000). This phenomenon served as the impetus for the drafting of the Palermo Protocol. It also led to the passage of national laws aimed at combating human trafficking such as the United States Trafficking Victims Protection Act (US TVPA) and the European Union’s Framework Decision 2002/629. National media also picked up the stories as did the entertainment industry. Stories about sex trafficking became the basis for multiple movies and television shows.¹

Though simplified, these stories as well as the research conducted on human trafficking uncovered the multiple factors that contribute to an individual’s vulnerability to being trafficked. Poverty is a major factor driving migration and human trafficking. Poverty and the lack of economic and social opportunities it presents mean individuals migrate in search of better options. Globalization compounds this by wiping out local industries and the labor opportunities they would have provided. Globalization also contributes to the growth of border flows which leads to increased opportunities to migrate, albeit illegally. Each of these factors escalates the likelihood of trafficking and when they are compounded it creates conditions ripe for exploitation.

Racial discrimination can also increase an individual’s need or desire to emigrate. Discrimination increases the insecurity of the individual and provides the impetus for migration. Conflict is also a contributing factor to trafficking. If a state is embroiled in

¹ See e.g. Holly (2006); Trade (2007); Taken (2008); Law and Order: SVU (2010).

conflict an individual's ability to meet his or her basic needs is affected. An inability to meet basic needs encourages the desire to emigrate. Certain factors can also increase immigration to particular countries. Countries with legalized prostitution create an increased demand for prostitutes (Holman 2008).² This is a demand which can be filled with individuals looking for new opportunities. Countries that outlaw prostitution can also contribute to human trafficking because there is an increased demand for individuals who will work in the sector illicitly. Both of these scenarios open a market that individuals (and criminal organizations) will move into and fill with trafficked persons. All of these factors increase migration, legal and illegal, which create the conditions for trafficking to occur (Cameron and Newman 2008: 22-51).

These multiple factors make defining trafficking difficult. Prior to the Palermo Protocol a widely recognized definition of trafficking did not exist. The Palermo Protocol was unique in that it established a definition of what constitutes human trafficking. The Palermo Protocol defines trafficking as

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or the position of vulnerability or of the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (Protocol 2000).

The Palermo Protocol defines human trafficking by three elements: coercion, movement and exploitation (Skrivankova 2006: 229). The first element is coercion. This is part of

² Countries with legalized prostitution include Austria, Denmark, Germany, Greece, Hungary, Iceland, Latvia, Mexico, New Zealand, the Netherlands, Senegal, Singapore, Switzerland, Turkey and parts of Australia (Mossman 2007).

the method of recruitment. This coercion may be very overt, as in the case of abduction, or it may be covert, as in the case of fraud and/or deception. The second element is movement. Movement is a required component of trafficking. In the Palermo Protocol, this is movement across borders and generally occurs from developing to developed countries. This covers a significant amount of trafficking, but it turns a blind eye to domestic trafficking, for example from city to city or from rural to urban areas (Guinn 2008). The final element of trafficking is exploitation. This exploitation largely occurs at the destination but can also occur during transit.³ These three elements distinguish trafficking from other forms of exploitation such as smuggling or slavery. As a Global Alliance Against Trafficking in Women (GAATW) report states, “It is the combination of transport with exploitation, both the means and outcome which distinguish trafficking from simply being smuggling or slavery” (Pearson 2000: 30, supra. 16).

While the Palermo Protocol provides a definition of human trafficking, the definition was purposefully left broad. This means confusion remains as to who is “truly” trafficked. This confusion results from several factors. First, exploitation is not specifically defined in the agreement. Though there was debate over whether and how to define exploitation during the negotiations, the final decision was to leave the actual definition of exploitation to individual states implementing the Protocol. This lack of consensus over what specifically constitutes exploitation results in the narrow application of the label “trafficking victim” to trafficked persons and thus varying degrees

³ Exploitation was one of the more contentious debates in the drafting of the Palermo Protocol. States had disagreements over exactly what constituted exploitation and how it should be defined. Discussions over defining exploitation in the Palermo Protocol occurred at session two (Travaux Préparatoires 2006: 333), session five (Travaux Préparatoires 2006: 339) and session nine (Travaux Préparatoires 2006: 344). These debates centered on how to define exploitation, what acts should be included in a definition of exploitation and how narrow or broad such a definition should be. Ultimately the definition was left broad and up to the interpretation of states (Outshoorn 2005: 150).

of enforcement of anti-trafficking law. For example, some states choose to define exploitation as sexual exploitation focusing only on the trafficking of women and children for the purposes of prostitution. In doing so these states do not devote resources to aiding individuals engaged in other forms of trafficking such as trafficking in men for the purposes of labor or the trafficking of women for domestic services (Chuang 1998; Chapkis 2003).⁴ To focus only on sexual exploitation or only on women and children denies that human trafficking occurs to individuals of different sexes, genders and ages, or that it occurs for purposes other than prostitution.

Another factor contributing to the confusion over who is “trafficked” is that trafficked persons constitute a hidden population. Trafficked persons do not readily come forward to identify themselves for a variety of reasons. This may be because they are currently in a situation of exploitation, they fear retribution against themselves or their family members, or perhaps they have broken laws in either the destination country or their home country and fear prosecution or deportation (Hughes 2000; Laczko 2005). This leads to many of the statistics on human trafficking being based on anecdotal evidence rather than empirical evidence (Ali 2005).

Reliance on anecdotal evidence points to another reason for the lack of conceptual clarity surrounding human trafficking. While the Palermo Protocol provided a standard definition of human trafficking, researchers operationalize and quantify this definition in different ways. Operationalizing human trafficking and “trafficking victim” depends upon a variety of things, including the framework employed in the research, the organization carrying out the research, as well as the individual researchers’

⁴ In fact as Christine Chin (1998) points out, sometimes trafficking in women for the purposes of domestic services is not only condoned but encouraged by the state.

ontological and epistemological biases. For example, whether trafficking is defined as sexual slavery versus migrant abuse impacts the research design and the data that are collected (Gozdziak and Collett 2005: 107).

Finally there is fluidity to the trafficking-smuggling continuum which can obscure who is a “trafficked person.” Some organizations use the words almost interchangeably, obscuring the differences between smuggling and trafficking to focus on how smuggling and trafficking occurs by similar methods, routes, and groups (see e.g. Raymond and Hughes 2001: 22). Although the Convention on Transnational Organized Crime created two separate protocols to address this issue, the Smuggling Protocol⁵ does not provide a definition of smuggling. The result is that smuggling and trafficking are not strictly delineated concepts. Contributing to the complexity is the ease in which an individual can start out as a smuggled migrant and quickly become a trafficked person due to an exploitative situation of forced labor (Buckland 2008). Gender is also a factor in the distinction between smuggling and trafficking. Research on the gendered components of trafficked person versus smuggled migrant show that women are often constructed as “innocent” trafficked victims while men are constructed as “guilty” smuggled migrants. As Wendy Chapkis (2003), in her work on the USTVPA, states, “legislation works to neatly divide ‘violated innocents’ from ‘illegal migrants’ along the lines of sex and gender.” This points not only to the feminization of trafficked persons,⁶ but also to

⁵ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime (A/RES/55/35).

⁶ Feminization is the application of traits associated with femininity to individuals, organizations, or states. Feminization can occur to anyone or anything and is not necessarily correlated to an individual's sex (Peterson 2010).

the way gendered rules, which this project explores, constitute the category “trafficking victim.”

Compounding these issues is the fact that research on human trafficking is relatively recent. Much of the research conducted has been undertaken by international organizations working across policy areas, such as the United Nations Office of Drugs and Crime (UNODC), International Office of Migration (IOM), United Nations High Commissioner on Human Rights (UNHCHR), and United Nations High Commissioner for Refugees (UNHCR). Most of this research focuses on creating a “profile” of human trafficking, looking at characteristics of victims (age, sex, nationality), the factors contributing to individuals’ vulnerability, characteristics of source versus destination countries, and, to a lesser extent, trying to determine who is a “trafficker.”⁷ Research on human trafficking also spans a variety of fields. Journals in the fields of anthropology, social work and sociology, women’s studies, law, health policy and more recently, political science have all published articles in human trafficking.⁸ The next section will take up this research addressing general themes that arise as well as the various discourses on human trafficking. These discourses give rise to three paradigmatic frameworks to understand and address human trafficking: the security approach, the human rights approach and the migration approach.

Researching Human Trafficking

Several themes can be identified in the empirical research conducted on human trafficking. The main theme to come out of this research is the lack of reliable and valid

⁷ For a general discussion of research methods and findings see the 2005 special issue of *International Migration* 43 (1/2).

⁸ See e.g. Chapkis 2003; Haynes 2004; Brennan 2005; Taylor 2005; Davidson 2006; Nam 2007; Giordano 2008; Goździak 2008; Risley 2008; Bernstein 2010; Gallagher and Person 2010.

data to be found on human trafficking (see e.g. Chuang 2005; Savanoa and Stefanizzi 2007; Goździak and Bump, 2008). As many researchers point out, trafficking and the patterns of irregular migration under which trafficking can be subsumed are clandestine activities. As stated previously, trafficked persons constitute a “hidden population” of individuals who do not readily identify themselves. The fear of stigma attached to being labeled a “trafficking victim” is strong (Tyldum and Brunovskis 2005). This leads to a host of problems, the main one being that most research and data is based upon, at best, estimates, and at worst, guesses. This lack of reliable evidence points to one of the reasons narratives become important to understanding this issue. In the absence of reliable data actors must look to other means in order to provide meaning and shape their position regarding human trafficking. Narratives provide a way for actors to frame their understanding of the issue and also provide strategies to address it.

A second theme that arises out of the research on human trafficking is the overwhelming emphasis on women and children (see e.g. Raymond and Hughes 2001; Kempadoo et al. 2005; Chuang 2006; Aradau 2008). Despite empirical evidence that men are trafficked, men are rarely researched as trafficked persons. Researchers treat them as irregular or economic migrants (Chapkis 2003). The emphasis on women and children provides evidence that gendered rules constitute trafficking. The logic is that women are victims, trafficked persons are victims, hence “trafficking victims” are women. Men are agents thus they are not recognized as “victims” even though research has confirmed that they are (Ali 2005). Casting trafficking as something that largely or only occurs to women and children reinforces particular gendered tropes regarding women’s agency, protected status and sexuality. It also has the effect of feminizing all

“trafficking victims.” If trafficking is thought to be something that largely occurs to women and children and research supports this assumption, then the category of “trafficking victim” is constituted as feminine. Thus all trafficked persons become feminized regardless of biological sex.

A third theme that arises out of the research is the amount of attention paid to sex trafficking and the relative dearth of attention paid to labor trafficking or trafficking that does not include some form of sexual exploitation (see e.g. Raymond and Hughes 2001; Berman 2003; Brunovskis and Tyldum 2004; Farr 2004; Feingold, 2005). Despite the empirical evidence that human trafficking occurs in a variety of industries, most attention is still directed towards sex trafficking. Attention to sex trafficking is a common theme throughout the history of the “anti-trafficking movement” which began in the late 19th century. The focus on sexual exploitation also reinforces the gendered nature of human trafficking. Prior to the Palermo Protocol trafficking was only addressed in terms of prostitution at the international level.⁹ Trafficking for prostitution is a dominant narrative about human trafficking, one that operates on gendered rules regarding women’s sexuality and passivity. These gendered rules reinforce the feminization of “trafficking victim” and impact the types of strategies implemented to help trafficked persons.

In addition to these general themes the research conducted on human trafficking puts forth three distinct discourses. These discourses provide paradigmatic approaches to addressing human trafficking as well as three distinct narratives about human

⁹ A cursory glance through the titles of previous international agreements on trafficking demonstrates the close link to prostitution (see e.g. International Convention to Suppress the White Slave Traffic of 1910 or the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others).

trafficking. Each discourse concentrates on “trafficking victims,” traffickers and the method of trafficking, however they diverge in the way that they address the issue of human trafficking.

Security

The first paradigmatic approach can be labeled as the security approach. In International Relations the concept of security most often uses the state as the referent. During the Cold War, security scholars were largely focused on military statecraft (Baldwin 1997: 9). It was assumed that only states possess militaries, thus the focus was on the state. While there have been attempts to enlarge the concept of security, for example defining it from a feminist (Tickner 1992; Sjoberg 2010) or human (Axworthy 2001; Paris 2001) perspective, the conflation of security with state still dominates mainstream approaches to security.¹⁰ The security approach casts human trafficking as an issue of state security with attention directed towards the permeability of borders and the activities of transnational organized crime. Research within this discourse focuses on the role of the law enforcement and other actors within the security sector. Cornelious Friesendorf (2007) identifies five strategies that result from the security discourse or, as he prefers, an anti-trafficking security governance approach. These strategies include legal measures such as laws criminalizing trafficking, prosecution, protection, and prevention in the countries of origin and destination. Most attention however, is paid to the first two strategies. Friesendorf concludes that measures of prevention are less emphasized and implemented than measures of prosecution.

¹⁰ A cursory glance at the titles of the articles in the 2011 issue of *Security Studies* 20 (1) shows that each article addresses either some aspect of state or conflict. A cursory glance of *International Security* 35 (4) reveals similar results.

Another strand of the security discourse focuses on how issues become securitized. This approach draws on the work of the Copenhagen School. In this conception “‘security’ is defined not as an objective condition but as the outcome of a specific social process” (Jackson 2006: 300). This literature looks at how the issue of human trafficking became a security issue, paying specific attention to how “issues are securitized through discursive ‘speech acts’”(Jackson 2006: 301). While the securitization of human trafficking is beyond the scope of this project, the contribution of this literature is its recognition that discourse and speech have a direct role in the construction of threats. This project takes that insight and applies it to the construction of “trafficking victim” in international law.

Human Rights

The second paradigmatic approach can be labeled the human rights approach. This literature is most closely associated with nongovernmental organizations (NGOs) and activists working with trafficked persons, sex workers, and immigrants. It frames human trafficking as a violation of human rights. This discourse draws attention to how trafficked persons are often treated as illegal migrants deserving deportation rather than as individuals trapped in an abusive and exploitative situation. This discourse advocates the implementation of a rights-based approach to human trafficking and trafficked individuals. A rights-based approach focuses more on protection and prevention than prosecution. It advocates for the protection of individuals identified as “victims” through the provision of social services. A rights-based approach also focuses on prevention through the provision of information campaigns that inform individuals about their vulnerabilities to and the dangers of trafficking. A large part of the human rights discourse focuses on the rescue and rehabilitation of trafficked persons. Certain actors

within this discourse have begun to complicate the idea of rescue by recognizing that “rescue” can have negative consequences such as double victimization (the individual is first victimized by the trafficker and then by law enforcement officers).¹¹ However rescue and rehabilitation is still a large part of the human rights discourse as well as the narrative this discourse produces.

The human rights discourse can be further broken down into two distinct and competing views which center on the debate over prostitution. One view, put forth by Kathleen Barry (1979; 1995) and following in the footsteps of Josephine Butler (1896; see also Barry 1979: 14-38; Barry 1995: 91-121), conflates all prostitution with exploitation. Prostitution is always a violation of human rights and therefore a human rights approach to trafficking must also focus on the abolition of prostitution (Doezema, 2002; see also Barry et al 1983; Raymond and Hughes 2001; Bindel 2006, cited in Lobasz 2009). The other view classifies prostitution as work. Abolishing prostitution should not be the focus of a human rights approach. Instead the goal should be the regulation of prostitution to ensure that sex workers have recourse to demand better rights (Kempadoo and Doezema, 1998).

Migration

The final paradigmatic approach addresses human trafficking as a migration issue and places it within the broader context of irregular migration. This discourse arose more recently than the previous two. It is most closely associated with academics and scholars of international law, though increasingly there are some intergovernmental

¹¹ This was one of the major issues raised at the National Workshop on Reviewing Trafficking in Women and Children: Intra and Inter-Sectoral Dialogue and Strategic Planning held in Kolkatta, West Bengal, India, March 24-26, 2010.

organizations (most notably the International Labor Organization) who advocate this framework as the way towards understand the process of trafficking and why people are vulnerable.

The foundation for this discourse comes from several sources. Lawyers and scholars critiquing current anti-trafficking legislation within various national contexts (such as the US, and the Balkans) have been a major contributor (Haynes 2004; Friman and Reich 2007). Activists and academics critiquing national laws on prostitution have also added their contribution (Doezema 2002; Desyllas 2007). Sex workers rights advocates have drawn attention to the various inconsistencies and problems of current anti-trafficking measures enriching this discourse as well (Kempadoo 1998; Kempadoo 2005). Finally, academics have also drawn attention to human trafficking through the paradigm of migration (Salt and Stein 1997). This discourse focuses on how laws can perpetuate and reproduce particular ideas of who is an authentic “trafficking victim” and how laws perpetuate particular myths about trafficked persons. It focuses on combating human trafficking by increasing legal avenues of migration and improving legal provisions to migrants in all industries.

A Gap in the Literature

Each of these discourses focuses on a different aspect of human trafficking and advocates alternative strategies to combat it. However these discourses largely do not explore the gendered aspects of human trafficking except to note that it often happens to women. Gender has been recognized as influencing one’s vulnerability to human trafficking but gender analysis is still under-utilized. This is a glaring gap in the discourses about and research on human trafficking because gender is constitutive of trafficking and the construction of “trafficking victim.” Trafficked bodies and trafficking

laws are gendered but these gendered dimensions are not problematized. Gendered dynamics of woman/victim, man/perpetrator are assumed rather than analyzed. To understand human trafficking it is necessary to deconstruct the discourses about gender (and race and sex) that are found in trafficking narratives and anti-trafficking agreements. These gendered discourses and the gendered rules that they manifest perpetuate simplistic perceptions about “trafficking victims” as well as ideas about women and femininity. This project seeks to fill this gap.

When gender is addressed in the research on human trafficking it is often treated as a variable. Gender is operationalized as biological sex in order to illuminate how situations are different for women versus men. Gender analysis, rather than analysis on the basis of sex, is required in order to “specify the rules of gender in particular contexts and describe interlinking patterns” (Prugl 1999: 14). While continued research into all aspects of human trafficking is still needed, research on human trafficking must also move beyond the simplistic understanding that human trafficking is a “gendered phenomenon”—i.e. that one’s gender (or sex) influences the vulnerability to and the experience of trafficking. Feminist research must focus on uncovering and illuminating the ways in which human trafficking is *constituted* by gender.

Feminists have begun to broaden the research on human trafficking by taking into account women’s lives and lived experiences. They have also moved beyond the individual to focus on the construction of categories central to human trafficking. Feminist research foregrounds gender by drawing attention to the ways in which the category of “trafficking victim” is constructed. These “constructions of human trafficking rely upon and reproduce gender and racial stereotypes” (Lobasz 2009: 322). Jennifer

Lobasz argues that “It matters *how* trafficked persons are socially constructed. . . .this more critical insight should be recognized as one of feminist theorists central contributions to the study of human trafficking” (2009: 339, emphasis added).

This project takes this line of inquiry a step further. It is not only interested in how gender is integral to the construction of the category of trafficked person, it interrogates how gender constitutes the frameworks employed to think about, understand and ultimately address human trafficking. It asks how gendered frameworks influence international law and policy created to address this issue. In order to answer this question the gendered rules that constitutes trafficking will be explored as well as the gendered state of rule they create. It is a gendered state of rule that governs the creation of international anti-trafficking law as well as the behaviors of the actors around this issue. Feminist scholarship argues that we must “consider the implications of how trafficked persons are produced as subjects” (Lobasz 2009: 344). This project considers these implications by exploring the gendered narratives that produce gendered subjects and how those gendered subjects become represented, reproduced and reinforced through international agreements. It does this by focusing on how the category of “trafficking victim” is constructed through language and alternative discourses.

Methodological Approach: Discourse Analysis

The gendered rules explored in this project result from speech acts based in language. Language is important to human beings because it defines humans as social beings and differentiates them from other animals (Lieberman 1998: xiv). Language is also central to the construction of social identities (Ochs 1993: 288). Language is central to this project because language is the basis for international agreements. To read and understand an international agreement one must be able to understand and

interpret the language in which it is written. Language is also central to this project because it not only constructs social identities but genders them as well. Chris Weedon argues that “Each person’s subjectivity is constructed and gendered within the social, economic and political discourses to which they are exposed” (Holmes 1997: 202, citing Weedon 1987:21). Language genders individuals and labels them as feminine or masculine depending on the words that are used to describe the individual as well as how the language is employed (Tannen 1990, 1993; Wodak 1997). Language is the basis for the social world humans create. This is as true for individuals’ everyday interactions as it is for states negotiating international agreements. Therefore a framework that uncovers the central role of language is required to understand how agreements are framed and identities are constructed. Nicholas Onuf’s work on rules and rule (1989, 1998) and the method of discourse analysis provide such a framework.¹²

Discourse analysis recognizes that our social reality is constructed through discourse. Uncovering this social reality requires a method that acknowledges how this reality is constructed. “Without discourse, there is no social reality, and without understanding discourse, we cannot understand our reality, our experiences, ourselves” (Phillips and Hardy 2002: 2). Discourse analysis does not simply describe social reality, it attempts to understand how that reality is produced.

Discourse analysis asks an alternative set of questions, ones not easily answered by traditional predictive why-questions. This project asks “why have anti-trafficking policies largely been unsuccessful?” But to answer this question it must first ask “how is

¹² The method of discourse analysis has its foundation in the work of several scholars including Foucault 1971, 1977; Derrida 1976, 1978; Lakoff and Johnson 1980; Lakoff 1987.

the category of 'trafficking victim' constructed?" To answer a why-question a how-question must be asked, which leads to the use of discourse analysis. Discourse analysis asks a why-question but also inquires "into the practices that enable social actors to act, to frame policy as they do, and to wield the capabilities they do" (Doty 1993: 299). Discourse analysis asks "how are meanings produced and attached to various social subjects/objects" (Doty 1993: 298). This is done in order to know "how the subjects, objects and interpretive dispositions were socially constructed such that certain practices were made possible" (Doty 1993: 298, emphasis in text). The practices in question are the strategies advanced by anti-trafficking policies and law, strategies such as an emphasis on law enforcement and border controls rather than strategies that focus on the individual. For these strategies to arise, a preconceived understanding of the particular subject must be in place (Doty 1993: 298). It is this preconceived understanding that is discovered through an analysis of the discourse surrounding human trafficking.

Discourse analysis is useful for uncovering these preconceived understandings because it is capable of taking power into account. As Roxanne Doty explains

This is not the kind of power that works *through* social agents, a power that social actors possess and use. Rather it is a kind of power that is productive of meanings, subject identities, their interrelationships, and a range of imaginable conduct. *Power as productive* is central to the kind of how-questions raised in this study (1993: 299, emphasis in text).

This is a type of power that is under explored in International Relations. While many research projects focus on how power is used, less focus on how power is constructed through discourse and the effect of this power on the construction of international law and policy. Focusing on this form of power demonstrates how power relations are constructed through the application of particular words to particular subjects. This is an

important form of power to understand in the creation of international law because it constructs states as powerful actors in relation to the constituted “trafficking victims.” This occurs not only through words but through the application of gendered rules.

Discourse analysis takes as its starting point that reality is linguistically constructed. “It is only through the construction in language that ‘things’—objects, subjects, states, living beings, and material structures—are given meaning and endowed with a particular identity” (Hansen 2006: 18). Language is a system of signs which together are referred to as a discourse. Discourses are productive of power because they “create various kinds of subject and simultaneously position these subjects vis-à-vis one another” (Doty 1993: 303). This positioning in discourse is largely hierarchical which is productive of particular forms of power relations. Discourse is not only inherited with power it also constructs subjects as more or less powerful. Doty explains that discourse is

A system of statements in which each individual statement makes sense, produces interpretive possibilities by making it virtually impossible to think outside of it. A discourse provides *discursive spaces*, i.e., concepts categories, metaphors, models and analogies by which meanings are created (1993: 302, emphasis in text).

Discourse is important to the construction of law and policy because discourses create and give meaning to an issue. It constructs a particular reality, leading to specific practices as a way to address the issue (Doty 1993: 303). As Jennifer Milliken explains

Discourses also define *knowledgable practices* by these subjects toward the objects which the discourse defines, rendering logical and proper interventions of different kinds, disciplining techniques and practices. . . .i.e. *places and groups are produced as those objects* (1999: 229, emphasis in text).

As Milliken points out, discursive power produces subjects and objects. It does not simply reflect reality but instead is constitutive of it (Walters and Haahr 2005: 6).

This understanding of discourse as productive of power leads to a method which focuses on examining the textual mechanisms which construct particular subjects and places them vis-a-vis one another. Doing so allows for the examination of the identities that are created and the effect this has upon strategies implemented to address these constructions (Doty 1993: 304). It is the study of systems and structures of signification, an analysis of “language practices (or their equivalents) in order to draw out a more general structure of relations distinctions and hierarchies that order persons’ knowledge” (Milliken 1999: 231). Specifically it means looking at texts and identifying things such as presupposition, predication and subject positioning.

Presupposition is background knowledge. The use of language implies knowledge about particular things. To make a statement the speaker assumes that the listener shares a common background knowledge which allows the listener to interpret the particular statement as the speaker meant it (Tannen 1993: 149). For example, when the speaker says “My cat is meowing” she assumes that the listener knows what a cat is and that the listener knows that cats make sounds in the form of a meow.

Presupposition “creates background knowledge and in doing so constructs a particular kind of world in which certain things are recognized as true” (Doty 1993: 306). In the case of human trafficking and the Palermo Protocol, the narratives of human trafficking provide the background knowledge. The construction of the Palermo Protocol presupposed knowledge about what constitutes human trafficking. This presupposition leads to the implementation of particular kinds of frameworks and the construction of particular negotiating positions on the part of states as well as intergovernmental

organizations (IGOs) and nongovernmental organizations (NGOs) that attempted to influence the drafting of the Palermo Protocol.

Predication refers to the words that are associated with particular subjects. “Predicate analysis focuses on the language practices of predication—the verbs, adverbs and adjectives that attach to nouns” (Milliken 1999: 232). The use of such labels “affirms a quality or attribute or property of a person or thing” and in doing so constructs a particular identity (Doty 1993: 306). In the Palermo Protocol the use of predication leads to linking “trafficking victim” with women and children and linking women and children with victimization. This linkage constructs a particular idea of a trafficked person, one that is a woman or child and who is a victim.

Subject positioning, as it implies, means looking at the way a subject is positioned in discourse. This positioning creates a type of relationship between subjects and between subjects and objects (Doty 1993: 206). Subject positioning can also tell us something of the relative importance of a thing. For example in the Palermo Protocol articles dealing with victims often focus first on law enforcement measures and secondarily on human rights provisions. This subject positioning tells us something about the importance of human rights protections in comparison to law enforcement measures. It also says something about the relative importance of the individual. The individual always comes second to states and state security.

It is also important to note the relationship between gender and discourse. Gender can be constructed in a variety of ways. Gender is largely performed through actions, through clothing and through practices. This performance is also largely constructed through language. Gender influences speaking styles, patterns and word choice

(Tannen 1990, 1994). Gender is also constructed through word association. Language constructs individuals and institutions but it also constructs them with gendered identities (Scott 1999: 38). Joan Scott argues that “there is a connection between the study of language and the study of gender” (1987: 2). She argues that language, and particularly theories of language, provide scholars “with a way to “see” how gender figures in the construction of social and political meaning” (Scott 1987: 2). This observation is particularly relevant in the context of this project. Language constructs meaning, gender and gendered meanings. Language genders actors by describing them in certain words and using certain metaphors. As Evelyn Fox Keller explains, words such as hard or soft “implicitly invoke a sexual metaphor, in which “hard” is masculine and “soft” feminine” (1995: 77). The application of such words constructs individuals and groups with gendered identities while simultaneously giving these gendered identities particular meaning. Identities represent individuals and groups in particular ways and “representations are never only matters of description. . .they are also the stuff of politics” (Keller 1988: 78). As this project demonstrates anti-trafficking law genders trafficked individuals as feminine. Gendered rules were incorporated into the Palermo Protocol through language which constructs “trafficking victims” as a feminized representation of trafficked persons. These gendered rules will become more apparent through the analysis of the negotiations that produced the Protocol.

Empirical Context: The Palermo Protocol Negotiations

The empirical puzzle in this project encompasses historical anti-trafficking agreements and the negotiations that produced the Palermo Protocol. It is popularly referred to as the Palermo Protocol because it was signed into law, along with its parent agreement the Convention Against Transnational Organized Crime, at a high level

conference in Palermo, Italy in December 2000. The analyses of historical anti-trafficking agreements as well as the negotiations provide insight into how gendered rules and narratives influence the way states address human trafficking. It also provides evidence that the category of “trafficking victim” has always been a gendered construction in international law. The Palermo Protocol negotiations and the documents they produced provide insight into how the current international agreement on human trafficking was produced. Through an analysis of the various drafts of the Protocol, evidence demonstrates how the narratives surrounding human trafficking shaped different stakeholders positions as well as the final draft.

The final text of the Protocol created a state of rule regarding “trafficking victims.” The gendered constructions produced by the Protocol govern how anti-trafficking policies are shaped. It also governs who is identified as a “trafficking victim” and the expected behaviors of individuals with this label. This directly impacts the success of anti-trafficking law. The rest of this section provides a brief overview of the negotiations as well as a background to the activities leading up to the negotiations.

The Palermo Protocol is part of a larger agreement on transnational organized crime. After the convention was agreed, delegations undertook to determine what issues would be suitable to address under this convention. It was determined that protocols on trafficking, smuggling and firearms would be appropriate protocols to the convention. The negotiations which produced these agreements occurred over a series of eleven sessions that spanned 1998-2000. The agreement was negotiated relatively quickly, something that was agreed upon from the outset and to which all delegations worked to keep. The final versions of the Trafficking Protocol, the Smuggling Protocol

and the Convention were accepted at the eleventh session and opened for signatures in December 2000. The Trafficking Protocol required forty signatures for ratification which was achieved by 2003. It currently has one hundred and seventeen signatories. However, while it became law in 2003, the discussion about creating such an agreement began ten years earlier.

Activities Leading Up to the Palermo Negotiations

Discussion regarding the creation of a convention against organized crime began in the mid-1990s. In November 1994, in Naples, Italy, at the World Ministerial Conference on Organized Transnational Crime organized under the auspices of the U.N., several issues were raised. These included the issue of creating a new international agreement, the application of existing agreements to organized crime, international cooperation in criminal matters and the exchange of information and victim compensation (Osmańczyk and Mango 2004: 2355). The Declaration that resulted from this meeting recognized the growing need to address organized crime not only by states but also by international and regional organizations, non-governmental organizations, businesses and media. The Declaration also recognized the need to respect human rights in the process of combating organized crime. While the Declaration did not set out specific instructions for creating an international agreement, it did recognize that there was a need to elaborate one (Osmańczyk and Mango 2004: 2355). In December 1994, the General Assembly adopted resolution 49/159 which approved the Naples Declaration and Global Action Plan against Organized Transnational Crime (GA 1994).¹³ This resolution advised states to implement the provisions in the Global Plan of

¹³ The full text of this Resolution is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N95/769/51/PDF/N9576951.pdf?OpenElement>.

Action and charged the Commission on Crime Prevention and Criminal Justice Fund to undertake the implementation and monitoring of the Declaration and Action Plan.

Also in 1994, unrelated to the Naples Declaration but which set the stage for the creation of an international agreement on trafficking, the *Inter-American Convention on International Traffic in Minors* was adopted under the auspices of the Organization of American States (OAS). This agreement focused on the protection of minors and the need to prevent and punish the trafficking of minors, particularly for purposes of prostitution, sexual exploitation and servitude (Inter-American Convention 1994).¹⁴ The Convention also included several articles relating to the penal and civil aspects of trafficking in minors.

The following year, in November 1995 and under the auspices of the U.N., countries from Latin America and the Caribbean came together in Buenos Aires and signed a similar declaration. This declaration was a follow up to the Naples Declaration (ECOSOC 1995).¹⁵ Latin American and Caribbean countries stated their support for the Naples Declaration and acknowledged the need to implement measures to combat transnational organized crime. These states also urged countries to “incorporate in their legislation rules which reflect the principles contained in the *Interamerican Convention on International Trafficking in Minors* of 18 March 1994” (ECOSOC 1995). Attention was drawn to the relationship between organized crime and trafficking in persons, especially minors. This marks the first time the trafficking of persons was raised in relation to organized crime. The Buenos Aires Declaration also supported the elaboration of an

¹⁴ The full text of this Convention is available at http://www.oas.org/dil/treaties_B-57_Inter-American_Convention_on_International_Traffic_in_Minors.htm.

¹⁵ The full text of this Declaration is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V96/820/61/PDF/V9682061.pdf?OpenElement>.

international convention on organized crime and included several elements which they believed such an agreement should cover. These measures included measures to prevent the trafficking in arms, encourage international cooperation, and improve state capacity in order to undertake and fully implement such measures.

In 1996, further action was taken when Poland took the initiative to propose a draft of such a convention at the 51st session of the United Nations General Assembly (Poland 1996).¹⁶ This proposal included a definition of organized crime and identified several activities of organized criminal groups such as trafficking in drugs, persons and arms. The proposal was adopted by the General Assembly in resolution 51/120. This resolution also invited states to submit proposals regarding the elaboration of a new international agreement on organized crime (GA 1996).¹⁷

In 1997, under the auspices of the U.N., African states reiterated the progress that had been made at previous conferences and signed a declaration in support of the drafting of a convention against organized crime. The Dakar Declaration included several additional elements for inclusion into the international agreement, including trafficking in minors, sexual exploitation of children and trafficking in organs (ECOSOC 1997).¹⁸ Many of these elements were reiterated in paragraph sixteen which discussed the “principal manifestation of organized crime in the region.” For African states, “a cause for particular concern was the engagement of criminal groups in the smuggling of

¹⁶ The full text of this draft Convention is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N96/259/69/PDF/N9625969.pdf?OpenElement>.

¹⁷ The full text of this Resolution is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N97/771/79/PDF/N9777179.pdf?OpenElement>.

¹⁸ The full text of this Declaration is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V97/261/09/PDF/V9726109.pdf?OpenElement>.

precious raw materials, arms trafficking, trafficking in women and children and exports of toxic wastes.” Several suggestions were also made regarding the original draft submitted by Poland.

In the same year the General Assembly, in resolution 52/85, created an intergovernmental group (known as the Ad-hoc Committee) for the purpose of elaborating upon the draft of the Convention submitted by Poland (GA 1998).¹⁹ Together, these declarations and General Assembly resolutions created the context and momentum needed to draft a convention on organized crime. It was through the declarations that the specific activities of organized criminal groups were acknowledged in order that they would be addressed by the Convention. These included the activities of trafficking in minors and women and trafficking in arms, both of which would eventually become protocols to the Convention Against Transnational Organized Crime. The Ad-hoc Committee was charged with constructing an International Convention Against Transnational Organized Crime in General Assembly Resolution 53/111 (GA 1999).²⁰

In 1998 states in Asia met to discuss transnational organized crime and a working group was formed to assist in the drafting of the Convention. The Association of Southeast Asian Nations (ASEAN) convened in the Philippines and signed the Manila Declaration supporting the actions of the General Assembly and the international community on the drafting of a convention. They acknowledged the increasing activities of organized criminal groups, including trafficking in human beings and reiterated the

¹⁹ The full text of this Resolution is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V98/523/83/PDF/V9852383.pdf?OpenElement>.

²⁰ The full text of this Resolution is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/763/27/PDF/N9976327.pdf?OpenElement>.

need for a comprehensive approach to combat such organizations and their illicit activities (ECOSOC 1998).²¹ With this declaration, states in all regions had pledged their support for the creation of the convention as well as the protocols to address specific aspects of organized crime.

Friends of the Chair

In July of 1998 an informal working group convened in Rome. Known as “Friends of the Chair” this group was formed in order to assist the chair of the Ad-Hoc Committee with the drafting of the Convention. Because the desire was to draft the convention as quickly as possible, it was felt that the Ad-Hoc Committee would require help preparing for the formal negotiating sessions. The first informal meeting largely addressed procedural issues. This meeting was held in order to review the provisional agenda and time table for the negotiations. There was also discussion as to the appropriate way to structure the negotiations. In August and September, the “Friends of the Chair” met in Buenos Aires, in order to informally prepare for the formal session of the Ad-Hoc Committee.²² The substance of the Convention was discussed and several options were read. Several issues were also discussed such as legal assistance, investigation of offences and recognition of foreign judicial decisions. At this meeting, the issues of human trafficking and migrant smuggling were also raised. Austria and Italy submitted a working paper addressing the illegal trafficking and transport of migrants (Ad Hoc 1998). This document led to a debate over whether trafficking and smuggling should be

²¹ The full text of this Declaration is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V98/523/83/PDF/V9852383.pdf?OpenElement>.

²² The report of this meeting is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V98/580/58/PDF/V9858058.pdf?OpenElement>.

considered as separate issues or as the same issue. Argentina was a strong supporter of drafting two separate protocols, with one specifically addressing human trafficking.

The Minister [of Argentina] recalled the keen interest of his country in action against illicit trafficking in women and children and called for an instrument or protocol that would adequately deal with that form of criminal activity by filling the normative gap that currently existed (Ad Hoc 1998).

The United States also submitted its own draft of the Trafficking Protocol. This draft was different from the Argentinean draft in that its objective was largely focused on state cooperation as a way to prevent human trafficking and thus had more law enforcement provisions as a way to achieve this. An issue was also raised at this meeting about the overlap of such protocols with other international agreements already in force, particularly the Convention on the Rights of the Child. It was decided, however, that there was not an overlap because of the perspective being taken by the Convention. Where the Convention on the Rights of the Child focused on the human rights of children, this convention was approaching such matters from a criminal perspective rather than a human rights one. Because of this, it was determined that there was not a need to worry about overlapping with previous international agreements already in effect.

The same group met again in November in order to prepare and endorse the provisional agenda of the first session of the Ad-Hoc Committee which was to take place in January of 1999. At this meeting Argentina and the United States announced their joint intent to draft a protocol that would address the trafficking of women and children. This draft would be presented at the first Ad-Hoc Committee meeting, which would be held in Vienna in January 1999. The stage was now set to begin drafting the Convention Against Transnational Organized Crime and its protocols. State delegations

from all regions, through regional meetings and the General Assembly of the United Nations, had given their support to the creation of such an instrument and had detailed the specific issues the convention and its protocols should address. Though most state delegations supported such an instrument, this did not mean that they were in agreement over everything it should provide. Many debates arose in the negotiations that drafted the Protocol, as will be addressed in Chapter 6.

Conclusion

This chapter has provided a background on human trafficking. The causes of human trafficking were addressed as well as the factors that make individuals vulnerable to human trafficking. Trafficking can occur to anyone, though certain factors, such as socioeconomic status and gender inequality, make some individuals more vulnerable. The definition of human trafficking was provided to distinguish it from smuggling and to point out that confusion remains regarding what truly constitutes human trafficking. This led to a discussion over the research on human trafficking as well as the major themes that have arisen out of this research. This research has also created dominant discourses around trafficking. These discourses, while providing a framework with which to understand trafficking, largely ignore how gender constitutes trafficking and the category of “trafficking victim.” This project aims to fill this gap by analyzing the gendered narratives that influenced the drafting of the Palermo Protocol. Using a feminist constructivist approach and the method of discourse analysis the gendered narratives are deconstructed to identify the gendered rules they perpetuate. This theoretical approach will be elaborated in the following chapter.

CHAPTER 3 GENDERED RULES AND GENDERED RULE: TOWARDS A FEMINIST CONSTRUCTIVIST APPROACH

This project is concerned with the gendered narratives that influenced the drafting of the 2000 Palermo Protocol. These narratives manifested gendered rules which constructed “trafficking victims” as feminized passive objects who do not act but are only acted upon. To uncover these gendered rules and understand how these rules construct gendered identities, an approach is needed that focuses on the social construction of reality but which also foregrounds gender. A feminist constructivist framework provides such an approach. When used to analyze anti-trafficking law, a feminist constructivist theoretical framework sees such law as a product of gendered narratives of trafficking. The gendered narratives generate gendered rules and perpetuate a gendered state of rule, both in trafficking law and in global social and political life more broadly.

This chapter begins with an overview of constructivism before moving on to specifically focus on the idea of rules and state of rule advanced by Nicholas Onuf (1989, 1998). Constructivism provides several tools that are employed in this project. In order to incorporate “gender lenses,” this project draws on feminist theory. Combining the tools provided by these two theoretical traditions creates an approach that can be termed feminist constructivism. Drawing on the work of Elizabeth Prugl (1998, 1999) and Brigit Locher (2007), the feminist constructivist approach is elaborated upon. Consideration is given to the contributions of each scholar as well as the gaps which this project attempts to fill.

Constructivism

Some theories of International Relations take the identities of agents as given, ignoring how such identities are constituted. Constructivism, unlike the realist or liberal traditions of International Relations, focuses on how international politics are socially constructed. Rather than taking the interests and identities of actors as a priori, constructivism focuses on how these identities are constructed through interaction and how interests are dependent on both the identity that is constructed as well as social norms (Checkel 1999a: 325). The approaches and subject matter of constructivism varies but several common themes can be identified.

Common to constructivist approaches is an ontology of becoming (Locher and Prugl 2001a: 114). It is the idea that the social world is not fixed or static. Because it is socially constructed it is continually in the process of becoming. The social world is continually being constructed through actions and speech acts. As agents, individuals continually shape the structures that compose the world, just as these structures shape the individual or agent.

Also common to constructivist approaches is an interest in norms.¹ Norms are defined as “intersubjective beliefs about the social and natural world that define actors, their situations, and the possibilities of actions” (Farrell 2002: 49). Central to this interest in norms is a focus on how beliefs of and about actors and events shape action and reaction in the international system. Shared beliefs enable and constrain the actions of agents.

¹ See e.g. Klotz 1995; Finnemore 1996; Checkel 1999b.

Norms are of interest to constructivism because norms constitute the identities of individuals and states. “Norms constitute actors and meaningful action by situating both in social roles...and social environments” (Farrell 2002: 49-50). As Ted Hopf points out: "In telling you who you are, identities strongly imply a particular set of interests or preferences with respect to choices of action in particular domains, and with respect to particular actors" (cited in Farrell 2002: 50). Norms arise out of discourse and influence identities and identities make actors who they are. Constructivism focuses on how identities influence and constitute interests and how interests are a reflection of a constructed identity. Though norms constitute actors' identities, it is a reciprocal process. Norms influence identities, but agents influence norms. Agents are conditioned by structures but they shape them as well. Just as norms constitute actors' identities, norms about gender constitute identities of “women” and “men.” But individuals also influence these norms, leading to constructions of femininity and masculinity to change over time.

This relationship between agents and structures constitutes a central debate that shapes constructivist approaches—the agent-structure debate. The agent-structure debate poses questions regarding the most fruitful object of study—is it agents who act freely in the world² or structures who constrain and influence the action of all agents?³ Though this debate is not confined to constructivism,⁴ it is constructivism which

² I will come back to agency again in Chapter 4. At this point though it is important to note that agents never act in a completely free manner but are instead constrained by the context in which they operate. As feminist's point out, autonomy and agency are never complete but always relational.

³ Wendt 1987; Dunne 1995; Gould 1998; Kowert 1998; Checkel 1999; Wendt 1999; Klotz 2006.

⁴See e.g. Dessler 1989; Hollis and Smith 1994; Doty 1997; Suganami 1999; Bieler and Morton 2001; O'Neill 2004; Shilliam 2008.

proposes that agents and structures co-constitute each other. Agents are not fully autonomous but instead are shaped by the structures in which they operate. At the same time, structures are not static but rather change and evolve based upon agents' actions within them. Constructivism argues that agents produce and reproduce structures through their actions, yet these structures also limit and constrain the actions agents take. This insight is important, because as this project demonstrates, trafficked individuals and states are constrained by the gendered narratives surrounding human trafficking. Yet these actors created the very narratives that constrain them, just as states created the Palermo Protocol which now constrains their actions in combating human trafficking. Every time a state addresses trafficking or takes action against or on behalf of a trafficked individual they are reifying the narratives as well as the gendered state of rule created by the Palermo Protocol.

The recognition that actors and structures are mutually constituted leads constructivism to focus attention on the social factors that link agents and structures. These social facts include language, norms and rules (Prugl 1999: 5). When norms and rules combine they create structures which both enable and constrain actors. "Structures reproduce through the practices of knowledgeable of agents while at the same time enabling these practices" (Prugl 1999: 5). Actors create structures when they follow rules. These structures then shape actors that shape structures. One does not exist without the other and both are influenced by each other. This is particularly true of gender. Actors draw on gendered rules which create a state of gendered rule. This will be evidenced in this project through a discussion of the gendered rules of anti-trafficking law and the gendered state of rule it creates regarding anti-trafficking policy.

While constructivism focuses on the social factors which create social reality, the way constructivist approaches think about this reality differs. Constructivism can be divided into thin versus thick approaches (Wendt 1999). These approaches differ in their epistemologies and to the extent that they believe an empirical reality can be known and studied (Barkin 2003). Thin constructivism asserts the social construction of reality but it also believes that this reality can be identified through empirical research. While agents construct the meaning of their world they construct it upon a tangible material reality. Thick constructivism on the other hand argues that there is no reality to be found through research. All meaning and understanding is subjective and produced through discourse, therefore no tangible material reality exists, or at least none that can be identified. As J. Samuel Barkin states “we can never know for sure if what we observe really exists independently of our observation of it and, therefore, no true reality exists for empirical research to find” (2003:326). This project follows a thick constructivist approach by applying Onuf’s framework of rules and rule to understand how meaning is constructed through international anti-trafficking law.

Rules and Rule: Onuf’s Constructivism

Nicholas Onuf argues that social rules connect agents and structures. “Social rules make the process by which people and society constitute each other continuous and reciprocal” (Onuf 1998: 59). Therefore it is rules that should be studied when trying to understand, agents, structures, societies and the international system. “In the way rules are stated they assist their users—those whose actions are described—in drawing inferences as to how they should act” (Onuf 1989: 79). This is because rules tell people what they should do and how they should act.

An example can be found in the classroom, which is an arena that is composed of social rules. In the Western context (for example in the United States) it is a rule that students speak only when called on. This rule tells students when they should talk (when the teacher specifically acknowledges them and calls upon them) and when they should not (if they have not been acknowledged and have not been called upon). These rules are then supported by other rules. Rules regarding the raising of hands to indicate that an individual wants to speak supports the rule of only speaking when called upon. Also a rule that talking out of turn will lead to removal from the classroom informs students of the consequences of breaking the rule of when to speak. Together these rules give the teacher authority and create a state of rule which legitimates that authority by governing the actions of students and teachers. This small example demonstrates how rules and rule operate in society, albeit a particular facet of society—the classroom.

Rules

Rules do not simply exist “out there.” Rules are formed through a multi-step process. This process begins with language. Language is at the heart of all communicative action—that is all action that arises out of communication. Language is how individuals (agents) express themselves and how they describe (and therefore shape) the world around them. Language that propels someone to do something is called a speech act. Onuf describes such speech as having illocutionary force. It is speech “constituting an action of social consequence” (Onuf 1989: 81). Rules have an illocutionary component to them in that they carry consequences. Both following and breaking social rules results in consequences, whether they be positive or negative.

Speech acts can assume several forms⁵ but only three forms of speech acts result in rules. Rules, formed of speech acts, can assert, direct or commit (Onuf 1989: 89). In the example above the teacher asserts that a student can speak by calling on her. A teacher directs students to raise their hands if they want to speak. Finally, by entering a classroom, students commit themselves to certain standards of behavior, such as raising hands, not talking out of turn and if doing so, leaving the classroom. Hence all three forms of rules provide a structure that governs behavior.

But a rule is also more than a speech act. While it begins as a speech act, a speech act itself does not commit an individual to any future behavior. A speech act refers only to a particular moment. Rules however not only guide action in the moment they also guide action in the future. Rules do not simply tell individuals what to do, as speech acts do. Rules tell individuals what they should do.

When speech acts are repeated, with both the speaker and listener accepting each repetition, a convention results.⁶ When this occurs the speech act no longer needs to be accepted in each instance because it has taken on a force of its own. As Onuf explains

Conventions once established in this fashion begin to substitute for new sets of agreements. Rather than saying, I hereby state that X counts as Y, I am inclined to say, it is the convention that X counts as Y, don't you agree? Eventually I feel no obligation to seek your agreement; I merely invoke the convention. We may say that conventions have become institutionalized (1989: 85).

⁵ For example, J.R. Searle (1979) identified five categories of speech acts. For a more detailed discussion of these categories see Onuf 1989: 86-88.

⁶ This is not to be confused with the conventions created under the auspices of the United Nations, such as the Convention Against Transnational Organized Crime. Convention, in Onuf's sense, is a set of agreed upon standards. While these agreed upon standards may have moral force they do not necessarily have any legal force supporting them.

Conventions are close to rules but they are not actually rules. It is only when individuals come to accept conventions as something that *should* be done because it has always been done that a rule results. The *should* implies normativity, thus when conventions come to have normativity attached to them they are truly rules (Onuf 1989:86). This normativity means that rules are more consequential than conventions. Rules are institutionalized and thus carry more consequences.

Rules tell individuals how to act by advising them of the consequences of such actions (Onuf 1989: 174). Rules provide individuals with knowledge of what will happen if they do not act. Rules also commit agents to acting in particular way. As Onuf elaborates

A rule is a statement that tells people *what we should* do. The “what” in question is a standard for people’s conduct in situation that we can identify as being alike, and can expect to encounter. The “should” tells us to match our conduct to that standard. If we fail to do what the rule tells us to, then we can expect consequences that some other rule will bring into effect when other people follow the rule calling for such consequences (1998: 59).

These three functions of rules break down into a typology. Onuf identifies these types of rules as instruction-rules, directive-rules and commitment-rules. Instruction-rules provide information, they “state identities and beliefs about the way things are” (Prugl 1999: 21). Instruction rules inform agents of how the world or a particular thing is. Directive-rules instruct agents as to what they should do. They “imply commands, requests, demands, permissions, and warnings” (Prugl, 1999: 21). They direct agents and their actions and behaviors. Commitment rules commit agents to particular behaviors. They “imply promises and offers that oblige individuals to act accordingly” (Prugl 1999: 22). Commitment-rules compel agents to certain actions or behaviors.

It is also important to note that these three types of rules are both constitutive and regulative (Onuf 1989:86). Rules constitute subjects but they regulate them as well. Using the example of the classroom, the rules at work in such a setting constitute who is the instructor and who is the student. At the same time, while constituting individuals as particular subjects it also regulates them as well. To be a student is to be a particular kind of subject, one that is regulated by the rules of the classroom, the very rules that constitute the subject. The same is true of the instructor. The rules within the classroom regulate the subject while simultaneously constituting it. As will become evident in Chapter 4, gendered rules also constitute and regulate. Gendered rules constitute who is feminine and who is masculine. At the same time they regulate who is feminine and who is masculine and govern the appropriate behaviors for femininity and masculinity. This regulation leads to a state of rule.

Rules Create Rule

Individuals (as well as organizations, states and institutions) tend to follow rules.⁷ Rules do not exist alone but work together with other rules. Rules combine to form particular arrangements. These arrangements then form a state of rule. Drawing on German social thought, Onuf argues that “the expectations that rules engender are always differential, and arrangements of rules must always be one of super- and subordination (Onuf 1989: 205). These differential expectations or benefits can take various forms, such as control of natural resources or control over other agents. But, over time, some agents will always benefit to a greater degree than others. This creates

⁷ There is debate as to why this is true. Onuf would argue that agents follow rules because they have knowledge of the consequences that will result from breaking the rules. However other scholars argue that agents follow rules simply because they provide a shortcut. There is so much information and knowledge to take into account that it is simply easier to follow known rules. For a discussion of this, specifically focused on the use of analogies in foreign policy decisions, see Khong 1992.

the super- and subordinate relationship Onuf discusses. These benefits, when combined, lead some agents have a greater control over the rules as well as the consequences of breaking rules. In essence, some agents become rulers over other agents, thus rules produce a state of rule. As Onuf reiterates,

The general consequence of agents responding to rules with the resources available to them is that some agents exercise greater control over the content of those rules, and over their success in being followed, than other agents do. In other words, rules yield rule (1998: 75).

However the form this state of rule takes may differ depending on the rules that comprise it.

Different types of rules produce a different form of rule. Instruction-rules produce a state of rule that can be characterized as hegemony. Hegemony, according to Onuf “refers to the promulgation and manipulation of principles and instructions by which superordinate actors monopolize meaning which is then passively absorbed by subordinate actors” (1989: 209). Though it may appear that it is ideas and beliefs that are ruling, in actuality it is agents that rule because others agree to the content of the rules. This project demonstrate how narratives of human trafficking function as instruction-rules, creating hegemonic ideas regarding the appropriate way to address and combat human trafficking.

Directive-rules form a hierarchical rule (Onuf 1989: 211). This hierarchy necessarily entails relationship of super- and subordination where each agent is superordinate over the agent below it while subordinate to the agent above it. Onuf illustrates this with the example of a bureaucracy. Offices in a bureaucracy have “formal responsibility for all the activities undertaken in the ranks below, because such activities are guided by directive-rules descending from higher ranks” (Onuf 1989: 211). This

project demonstrates that gendered rules create gendered hierarchies regarding femininity and masculinity. Femininity is placed in a subordinate position and masculinity in a superordinate position creating gendered hierarchies that devalue the feminine, often to the detriment of trafficked individuals. However, rarely are formal hierarchies only formed through directive-rules. There are often informal instruction-rules which support the formal directive-rules.

When commitment-rules dominate a state of rule characterized as heteronomy exists. In this state of rule “agents hold a variety of roles that are defined by reference to the roles that other agents hold” (Onuf 1998: 76). However, just as instruction-rules support the hierarchy that forms from directive-rules, formal commitment-rules, such as those enshrined in laws and treaties, can also support formal hierarchy, such as the state.

The Palermo Protocol institutionalizes all three forms of rules into the state of rule it creates. As a binding treaty, it commits the states that sign onto it to follow its rules and abide by the state of rule (regarding “trafficking victims” and anti-trafficking policy) it creates. The Palermo Protocol formalizes commitment-rules but it is also composed of instruction-and directive-rules. The Palermo Protocol instructs states how to combat trafficking, it directs them to create laws and other measures to aid trafficked individuals and prosecute traffickers and it commits states to upholding its provisions.

Onuf’s framework of rules and rule presents two tools relevant to this project. The first tool is a focus on language. Language is the basis for the social world. This is as true for individual interactions as it is for state interactions. A framework that incorporates language and acknowledges its central role is required to understand how

agreements construct identities. Onuf's constructivism provides such a framework. The focus on language also points to the reason for the particular method employed in this project. A focus on language necessarily leads to the method of discourse analysis. Onuf identifies that the basis or foundation of rules is speech acts. Rules are a result of speech and speech is made possible through language. To uncover these rules language must be analyzed, therefore discourse analysis is the most appropriate method for identifying and analyzing rules.

The second tool Onuf's constructivism provides is the idea of rules creating rule. Beginning with rules, "A rule makes. . .choice relatively easy by telling agents to whom it refers what they should do in some sort of situation that they might find themselves in" (1998: 65). Rules are a useful tool for understanding the gendered constructions of the Palermo Protocol because the Protocol is a treaty which is made up of rules. Each article in the Protocol tells states what they should do in relation to the subject of the article being discussed. Gender is also best understood as a series of rules. Understanding gender as a series of rules helps us to break down exactly what behaviors are believed to be appropriate for masculinity and femininity. At the same time it provides information of the consequences that will occur for breaking the rule. These rules while guiding individual action also combine to create a state of rule of masculinity which subordinates and devalues femininity.

This leads to a discussion of rule. According to Onuf, "Rule is something that agents do to, and for, other agents, and they do it by following rules. Rule is something that happens to agents when they follow rules or when they suffer the consequences of not following rules" (1998: 75). Another way of conceptualize a state of rule is that it

governs actions and behaviors. “Where there are rules...there is rule—a condition in which some agents use rules to exercise control and obtain advantages over other agents. Rule is a stable pattern of relations, but not a symmetrical one” (Onuf 1998: 63). These standards privilege some while marginalizing others. Gender constitutes a state of rule that is made out of multiple rules. Femininity is defined by many things, it is a rule composed of multiple rules. Masculinity is defined by many things, again it is a rule composed of multiple rules. It forms a state of rule that constitutes other rules and the state of rule those rules create. Rules combine to form a rule of masculinity that privileges men and disempowers women through the dictation of appropriate behaviors.

This concept can also be applied to international agreements.⁸ International agreements are composed of rules that create a state of rule. The rules in the articles create a state of rule which governs actor behavior in regards to how they address a specific issue. A treaty is a legally binding instrument (and in the case of the Palermo Protocol the only legally binding instrument on human trafficking), therefore it becomes *the* framework used to address an issue. It creates a state of rule by doing so, a rule that regulates all actions states and non state actors take in order to address the issue of trafficking.

Constructivism provides several tools that are relevant to my analysis of gendered narratives in the Palermo Protocol and the manifestation of gendered rules in the construction of “trafficking victim.” But it does not provide all the tools. Trafficked persons are constructed as feminine through the narratives around human trafficking, a

⁸ This concept can also be applied to any multilateral or bilateral agreement. In each case, articles (rules) combine to form a treaty (state of rule). It is outside the scope of this project to address these other forms of agreements, thus my attention stays focused on international agreements such as the Protocol.

construction that was institutionalized by the Protocol. This means that attention must be paid to how trafficking is constituted by gender. Constructivism does not provide the tools for such an analysis. In order to understand the role of gender in human trafficking and anti-trafficking agreements attention now turns to feminist theory.

Feminism: The Role of Gender

As with constructivism, there is not one unified theory of feminism. Common to feminist approaches is a focus on gender. But more than simply looking at gender, feminist inquiry examines gender hierarchy in all aspects of social life. This project interrogates the gendered constructions in anti-trafficking law, the hierarchy this creates between states and “trafficking victims,” and the material effects this subordination has on trafficked individuals.

While gender involves the socially constructed differences between men and women it also symbolizes relations of power. Elisabeth Prugl explains

As a constitutive element of social relations, gender involves symbols, norms, organizations, institutions, and subjective identities. As a way of signifying relationships of power, gender divides the world in a binary fashion which provides the means for articulation and legitimation of power (1998: 125).

Joan Scott echoes this by defining gender as “a constitutive element of social relationships based on perceived differences between the sexes and gender is a primary way of signifying relationships of power” (Scott 1999: 42). These definitions point to the fact that gender is more than characteristics that describe “men” and “women” or masculinity and femininity. Gender is a way of signifying relationships of power. It is a hierarchical relationship in which femininity is always subordinated to masculinity.

Two things are central to the conceptualization of gender. First gender is relational. Masculinity only exists in relation with and opposition to femininity. Femininity is defined by what masculinity is not and vice versa. This means masculinity and femininity co-constitute each other. Second, gender is a relationship which is based on power differentials and hierarchies. Masculinity is privileged in this hierarchical relationship while femininity is devalued and subordinated. As J. Ann Tickner points out “Gender difference has played an important and essential role in the structuring of social inequalities in much of human history” (1992: 6). She elaborates these binary distinctions as including public versus private, objective versus subjective, self versus other, reason versus emotion, autonomy versus relatedness, hard versus soft, strong versus weak, and culture versus nature (Tickner 1992). Through the construction of these binary relationships, power relations are not only represented but created. These dichotomies are important to the gendered rules discussed in the following chapter. Each rule is based upon a dichotomy between masculinity and femininity.

Masculinity can be collectively thought of as those traits which are associated with “men.” These include traits such as rational, resolute, competitive, assertive, domination oriented, calculating, restrained, physical and aggressive. Alternatively femininity encapsulates all those traits in opposition to those associated with men. Traits such as emotional, fickle, cooperative, compliant, relationship oriented, expressive, passive, caring are associated with “women” (D’Amico 1994: 4). It is important to note that in reality men and women often represent a mixture of traits, not every woman is expressive and emotional, just as every man is not necessarily competitive or detached. However, just because gender traits do not automatically correspond to actual

individuals does not mean that ideas of masculinity and femininity are not represented in these traits. Through these traits, particular meanings are constructed, meanings which identify men as dominant agents and women as passive and subservient. These are held up as the ideal types of masculinity and femininity. Karen Beckwith states that “Masculine and feminine are indicators of the outer boundaries of constellations of meanings that are politically contextualized and constructed” (2005: 130). These politically constructed and contextualized meanings are based upon the power differentials that are associated with masculinity and femininity. These power differentials then become institutionalized through the application of traits which represent “masculine” and “feminine.” As Birgit Locher and Elisabeth Prugl explain

People are socialized into their genders while social expectations and ideologies reproduce notions of masculinity and femininity. She [V. Spike Peterson] refers to gender as a “systematic social construction that dichotomizes identities, behaviors, and expectations as masculine and feminine.” It is, according to her, not “simply a trait of individuals but an institutionalized feature of social life” (Locher and Prugl 2001a:115, quoting Peterson 1992: 194).

It is also important to note, that though the relationship represented by masculinity and femininity is universal, how gender plays out in different contexts is not static. Depending on the time, the situation and the environment, ideas about masculinity and femininity change. Thus what is considered feminine may change according to context. An example of this can be seen in the category of farmer. In the European context, farming is a masculine job. In other contexts, such as Sahel region of Africa, farming is a feminine job (Creevey 1986). This shows that ideas of femininity and masculinity change depending on the context. Gender is not experienced in the same way. Gender is lived throughout the world by individuals in different ways. Individuals live their gender

in different cultures, bodies, languages and identities (Sjoberg 2010: 3). Yet even with this variation, femininity is always devalued when compared to masculinity.

Feminist theory provides several tools important to understanding of the gendered narratives that influenced the Palermo Protocol. These tools include gender lenses, the social construction of gender through language and feminization—the construction of super- and subordinate power relationships through masculinity and femininity.

Gender Lenses

Theories use lenses to “foreground some things and background others” (Peterson and Runyan 1999: 21). Feminism employs “gender lenses” to analyze the role of gender in politics, whether this is personal politics, household politics, state politics or international politics. “To look at the world through gendered lenses is to focus on gender as a particular kind of power relation, or to trace out the ways in which gender is central to understanding international processes” (Sjoberg 2010: 2, citing Steans 1998: 5). Gender lenses not only make gender visible, they illuminate the ways in which gender constitutes and (re)produces identities, individuals, states and institutions. Gender lenses allow feminist scholars to tease out the way in which ideas of gender rule the world by asking “what assumptions are necessary to make particular statements policies and actions meaningful” (Sjoberg 2010: 4, citing Wilcox 2010). Feminism provides a perspective to understand gender subordination in all spheres, from the household to the state, the local to the global.

Gender and Language

Masculinity and femininity are represented and performed through actions and language. Language constructs agents and structures and in doing so it genders them as well. As Joan Scott points out “Through language, gender identity is constructed”

(1999: 38). This observation is particularly relevant in the context of this project. States constructed particular gendered identities through the language of the narratives and in the Protocol and imposed these gendered identities upon certain groups. This can especially be seen in the construction of the category of “trafficking victim.”

Language constructs gender and gendered identities. (Weedon 1987; Tannen 1990,1993; Wodak 1997). Birgit Locher and Elisabeth Prugl point out that

Feminists specifically probe the way in which gender, race, class, and other status distinctions serve as codes of super- and subordination that powerfully suggest preferred forms of identification. . . .identity is not simply an explanatory variable but a complex outcome of discursive strategies that encode power by evoking privileged understandings of masculinity at the expense of femininity (2001a:126).

Language genders people by describing them in certain words and using certain metaphors. Language also constructs group identities in the same way. It genders entire groups of people. As this project demonstrates, the Palermo Protocol genders all trafficked individuals as feminine and it does this through language and through the incorporation of specific gendered rules.

Gender as Power (or Feminization)

The final tool feminist theory provides is an understanding that power relationships are represented through the application of gendered traits. “Messages of gender always. . .express messages of super- and subordination” (Locher and Prugl 2001a:116). Understanding feminization provides the tool to critically analyze the subordinate position of particular individuals and groups. Feminization not only signifies a subordinate position in relationships of power, it constitutes that subordination as well. To feminize an individual, group or institution is to disempower said individual, group or institution. Association with feminine traits, traits such as passive or weak, serves to

disempower by constraining and regulating behavior and actions. In the same way an individual, group or organization can be empowered through association with masculine traits. Joan Scott elaborates

Gender is a primary field within which or by means of which power is articulated. Gender is not the only field but it seems to have been a persistent and recurrent way of enabling the signification of power in the West. . . .Established as an objective set of references, concepts of gender structure perception and the concrete and symbolic organization of all social life. To the extent that these references establish distributions of power (differential control over or access to material and symbolic resources), gender becomes implicated in the conception and construction of power itself (1999:45).

When applied to international agreements, gendered constructions empower particular actors as masculine while disempowering other actors through feminization. Francine D'Amico supports these statements:

Conception of gender as power suggests that our whole way of thinking and talking about humans is based on power. The very term men and women are a reflection of power. To label individuals as women or men is to exercise power, for the label create for human being a set of expectations about who they are, who they are not, and what range of choices is available to them (1994: 7).

This points to the problems found in the Palermo Protocol. The Protocol constructs a power relationship between states and “trafficking victims.” It also institutionalizes femininity as disempowered which is detrimental to trafficked persons specifically and women generally.

Feminism is the theoretical approach employed to understand gender subordination but constructivism can contribute to a framework for understanding gender as socially constructed. Feminism and constructivism share a meta-theoretical understanding of the social construction of reality and society (Locher 2007). However, constructivism has paid little attention to gender. This is a glaring gap in the literature,

yet one that feminism can bridge. In the same way, though feminism recognizes the social construction of gender, feminist international relations “typically does not connect the term *social construction* to a body of theory” (Prugl 1998: 125). It is also argued that feminist work is problematic because it often lacks “a theory of agency that illustrates that institutionalization of narratives [of womanhood or manhood]” (Prugl 1999: 128). A constructivist approach can help to fill these identified gaps.

Towards a Feminist Constructivist Approach

Combining the tools of these two theoretical traditions provides an approach termed feminist constructivism. Much of the understanding of such a framework comes from the work of Elizabeth Prugl and Birgit Locher, scholars who pioneered this approach. Prugl and Locher argue that feminism and constructivism are compatible because both are based on an ontology of becoming (Locher and Prugl 2001a: 114). Constructivism provides a framework for understanding change. Feminism provides a perspective on gender (Locher 2007: 26). Combining the insights gained from both theoretical approaches provides a framework for understanding the social construction of gender and how this social construction influences the construction of other norms and spheres.

Elisabeth Prugl: Home-Based Work

Elisabeth Prugl was the first scholar to take Onuf’s idea of rules and rule and apply it to a feminist project. In her research on home-based work, Prugl (1998, 1999) focused on three spheres (the household, the labor market and the state) and analyzed how the rules that compose each of these spheres are gendered.

Prugl’s research focuses on homeworkers, the steps that were taken to produce the 1996 International Labor Organization’s (ILO) convention on homework and the

ways in which home-based work is constructed. She argues that the ways in which homework have been debated in international arenas “have entailed debates about gender rules and therefore provide an ideal point of entry to probing gender in global space” (Prugl 1999: 19). Women’s work has historically, and remains today, undervalued compared to men’s work. This undervaluing has led to the construction of home-based work as not legitimate “work,” but rather as a hobby or something that is part of the normal social reproduction⁹ that takes place within the home and for which women are never compensated.

She identifies home-based work as constructed upon rules regarding the home, the labor market and the state. She argues that these rules are gendered because they are based upon ideas of what a women’s proper role is (in the home), what women’s work consists of (the labor market) and what sphere—public or private—women belong in (the state). However, the home-based workers movement has sought to change these rules and has been somewhat successful, as evidenced by the 1996 ILO convention on home-based work.

Prugl’s work is largely focused on social movements and the change social movements can advance. She argues that the global women’s movement and the labor movement have changed the rules that previously constructed women’s work as not work. She focuses on the three types of rules presented by Onuf and uses her research

⁹ Barbara Laslett and Johanna Brenner define social reproduction as “the activities and attitudes, behaviors and emotions, responsibilities and relationships directly involved in the maintenance of life on a daily basis, and intergenerationally. Among other things, social reproduction includes how food, clothing, and shelter are made available for immediate consumption, the ways in which the care and socialization of children are provided, the care of the infirm and elderly, and the social organization of sexuality. Social reproduction can thus be seen to include various kinds of work—mental, manual, and emotional—aimed at providing the historically and socially, as well as biologically, defined care necessary to maintain existing life and to reproduce the next generation” (1989: 382-383).

to show how the home-based workers movement has changed rules in each of these categories and the corollary sphere they represent. Her work is indicative of the pervasiveness of gendered rules. For example, she argues that the household is largely composed of commitment-rules which “commit women to take on duties of motherhood and housework, duties that come with marriage” (Prugl 1998: 131). The state is composed of formal directive-rules, many of which are directed at labor that occurs outside the home and in the public sphere. It does not include home-based work which is constructed as part of the private sphere, as part of the home, and therefore out of reach of the state. When these formal directive-rules combine with instruction-rules they define what is public and what is private as well as what is considered work and what is part of the home. The labor market is composed of instruction-rules which privilege men in hiring decisions over women and which define what types of skills are considered masculine and what skills are considered feminine. Thus sewing, even when it is done inside a factory, is seen as natural for women to do rather than a labor skill for which they should be compensated.

Through her research Prugl demonstrates how the home-based workers movement is changing these rules. Instruction-rules which depict home-based workers as housewives have been changed through research that documents the long hours and contribution to household income home-based workers make. Directive-rules are changing because protections for home-based workers are being written into domestic and international law. Commitment-rules regarding employment and subcontracting are also changing as a result of the ILO convention. Through her research Prugl demonstrates the interactions between these different rules (instructive, directive and

commitment) and the different spheres they define (house, labor market and state) drawing attention to how they influence ideas about women, men and the roles they occupy.

Prugl uses a feminist constructivist framework “to trace definitions of gender through the mutually supportive rules of households, states, and labor markets, and it shows how feminist activism unfolds as a challenge to instruction-, directive- and commitment-rules” (1998: 143). She uses a constructivist framework to demonstrate how ideas of “womanhood” and “manhood” are constructed in different spheres as well as how the gendered rules in each sphere support and reinforce each other. This is important because she identifies how gendered rules operate in all spheres and how the rules identified in one sphere influence other spheres. Prugl makes the following argument for using a feminist constructivist approach to understand gender. “From the feminist constructivist perspective. . .it is then possible to conceptualize gender as an institution that codifies power, a constellation of rules and related practices that distribute privilege in a patterned way” (Prugl 1999: 13). Conceptualizing gender as a constellation of rules provides a perspective to unpack and deconstruct everything that composes gender. Gender is a social construction, a way of signifying power relationships because it is an institution composed of multiple rules, rules that differ for men versus women. These rules together form a gendered state of rule that governs everything from individual interactions to international agreements. Looking at gender as a series of constructed rules provides a tool to see how rules in other spheres are constructed. Prugl demonstrates that everything is influenced by gender. Feminist constructivism provides a framework that can explore the construction of international

agreements from a gendered perspective. But more importantly it can explore how gender itself is a series of constructed rules, which then influence the construction of rules that make up the home, labor market, state and international agreements.

Prugl's work is groundbreaking in demonstrating how the rules that compose society form a state of rule that is inherently based upon gendered constructions. However Prugl's work does not go far enough. While she identifies how rules are gendered she does not expand her analysis in order to understand how gender itself is a rule composed of rules. This project fills that gap by analyzing gender as a series of rules that creates a state of masculine rule.

Birgit Locher: Trafficking in the European Union

Brigit Locher also employs a feminist constructivist framework in her work on anti-trafficking norms and the rise of anti-trafficking policy in the European Union (EU). In her 2007 book, *Trafficking in Women in the European Union*, Locher uses this framework to identify when norms are implemented and why. The foundations of the anti-trafficking norm can be traced back to the late 19th century with public discussions on "white slavery" and the creation of international agreements addressing the white slave trade in the early 20th century. However, though this norm was created in the early 20th century it wasn't until the late 20th century that this norm took hold as reflected in EU policy (Locher 2007: 71).

Locher argues that the increased attention to trafficking in women in the EU since 1995 is a "the expression of, and can be explained by, the implementation of the anti-trafficking norm on the regional level (2007: 23). The larger research question which guides her project focuses on "How, when and under what conditions do norms matter," particularly in the European Union (2007: 23). Locher uses a constructivist ontology for

understanding European integration and the role and function of norms. She incorporates feminist theory in order to take a gender-sensitive approach,

i.e. a theoretical account of gender as a category of analysis that directs attention to the construction, malleability and functionality of gender in social, political and international life and to the norms, ideas, discourses, and practices that sustain and perpetuate it (2007: 25-26).

She begins by tracing the creation and institutionalization of the anti-trafficking norms in the early part of the 20th century. She then looks at two time periods. The first time period, the 1970s-1990s, reflect a time when the anti-trafficking norm was dormant and no action was taken. The second time period, 1995-2005, was a time when international events combined to encourage the implementation of policy devoted to combating trafficking in women. Attention to the “Natasha Trade” created awareness about trafficking while other events helped to revitalize the norm against human trafficking. Locher argues that “the lack of policy action can be theoretically explained by a disjuncture between norm adoption and norm implementation” (2007: 31). She finds that it was larger international developments such as the World Conference on Human Rights in 1993 and the Fourth World Conference on Women in 1995 which provided new frames that allowed for the revitalization of the anti-trafficking norm (2007: 31).

After providing the historical context for norm adoption, dormancy and revitalization Locher looks closely at the start, extension and consolidation of EU anti-trafficking actions. Paying particular attention to the role of frames, political opportunity structures and advocacy networks, she looks at how each of these intervening variables impacts the adoption and implementation of the anti-trafficking norm in the European context. It was the combination of these three variables that led to the revitalization of

the anti-trafficking norm and the creation of several policy programs such as *Stop*¹⁰ and *Daphne*.¹¹

Locher argues that a feminist constructivist framework is beneficial because constructivism and feminism share similar epistemologies and ontologies (2007: 26). She points out that feminism's main subject, gender, is a social construction and therefore feminism and constructivism share the same meta-theoretical realm, primarily that reality is social constructed. Because they share the same meta-theory combining them gives each a unique benefit, or "added value" (Locher 2007: 26). Feminism provides a perspective on gender that can be added to constructivism. This encourages understandings of gender as socially constructed and how this construction influences and shapes the construction of a wider social reality. She argues that "the gendered character of discourses around trafficking and the ambivalent construction of victims of trafficking become visible" (2007: 26). This project uses a feminist constructivist approach in much the same way. It makes visible the gendered narratives that construct "trafficking victims" and which became incorporated into the Palermo Protocol.

While Locher's work points to the value of a feminist constructivist approach for studying anti-trafficking norms and policy her work also does not go far enough. She focuses on the influence of gendered frames on anti-trafficking norms, but she does not

¹⁰ The STOP program was a program designed to combat human trafficking through training and research. It was directed at public persons such as judges, law enforcement agents or social service representatives and encouraged cooperation and training for individuals and organizations that deal with trafficked individuals. It also undertook research and policy evaluation in order to better address human trafficking.

¹¹ The DAPHNE program was designed to end violence against women and children. This program addresses all violence against women and children and is thus broader than the STOP program which was designed to specifically address human trafficking. While DAPHNE addresses all forms of violence, it does recognize sexual violence that occurs as a result of trafficking as a major issue. The DAPHNE program focuses on providing information campaigns about public health and gender inequality as part of its work to end violence.

explore how the creation and implementation of these norms are influenced by wider societal views and gendered rules that govern the roles of men and women. This project seeks to take her work one step farther in order to understand how gendered rules influence the construction of anti-trafficking law and policy and its implementation.

Elisabeth Prugl's research on home-based work and Birgit Locher's work on anti-trafficking norms show that a feminist constructivist approach draws on Onuf's idea that

all rules and institutions always entail rule, that is, they systematically distribute privilege to create patterns of subordination. In this understanding institutions exercise power in providing guides to practice, but these guides are always tainted, promoting the formations of rule such as hierarchy, hegemony, or heteronomy (Locher and Prugl 2001a: 117).

Acknowledging the contributions as well as critiques of constructivism and feminism, Locher and Prugl address how each theoretical approach can help to fill the gaps of the other. Feminism lacks a theory of agency and constructivism can help to fill this gap (Locher and Prüg1 2001b). They have also demonstrated that feminism fills the gap created by constructivism's lack of

understanding of power as an integral element of processes of construction. Because they leave the social construction of power undertheorized, constructivists lack the tools to explain how gender and power reproduce, how and why certain constructs emerge as more influential than others (2001a: 113).

Feminism provides the tools to understand the construction of power and thus helps to fill this gap in constructivism. Constructivism understands that institutions produce and constrain power, but it does not interrogate what this power is or who holds it. Feminism does interrogate power "showing systematic forces of subordination aligned along the axes of gender, race, and other statuses" (Locher and Prugl 2001a: 117).

Feminism provides a more nuanced understanding of the ways in which power works. A feminist constructivist approach provides a framework that "enables an

investigation both of gendered power in institutions and of the way in which agents participate in reproducing or challenging it” (Locher and Prugl 2001a:118). Combining the insights found in each theoretical approach, Prugl and Locher

develop our own feminist constructivist position. This position insists that agents make world politics but also understands masculinities and femininities as an effect of such politics (2001a: 116).

This project takes the feminist constructivist approach advanced by Prugl and Locher and applies it to international anti-trafficking law to expose the construction of masculinity and femininity, and thus power, in the construction of international agreements.

Elisabeth Prugl argues that “Rule guided practices always entail a reproduction of power” (1999: 13). Gender is a rule guided practice that reproduces power through the construction of masculinity and femininity. Elisabeth Prugl supports this arguing that “because gender is a code for power social agents by definition participate in negotiations of power and gender” (Prugl 1999: 13). This is not power defined as material capability but rather it is power defined in the Foucauldian sense. It is power that cannot be possessed, but rather is a way of constituting the subject. Rules and the practices they govern entail a reproduction of power when applied to the construction of international agreements. This illuminates how certain actors are constituted as powerful while other actors are constituted as disempowered and subordinate. This project explores the construction of gendered power by looking at who is privileged in the Palermo Protocol and the kinds of gendered identities it constructs. Specifically gendered identities are created which constitute certain actors as masculine and thus powerful in comparison to other actors that are constructed as disempowered through feminization. This power is (re)produced not only in the creation of the Palermo Protocol

but also in its various iterations in national anti-trafficking legislation and responses. The reproduction of this power and the gendered state of rule it creates means that with each iteration actors are constituted as powerful subjects and other actors are constituted as disempowered objects reinforcing dominant rules that equate masculinity with power and femininity with passivity.

Conclusion

By employing a feminist constructivist approach this project draws on Nicholas Onuf's work on rules and rule and feminism's conceptualization of gender. Following the tradition pioneered by Elisabeth Prugl and Birgit Locher, this project uses such a framework to understand how gender is composed of a series of rules regarding masculinity and femininity. It is these gendered rules which then influence rules in other spheres such as anti-trafficking law and which combine to create a gendered state of rule. This approach is most appropriate because it creates a framework that deconstructs gender as a series of rules that tell men and women how to act and which creates a gendered state of rule which privileges masculinity and femininity. These rules do not only reproduce gender, they also reproduce the power relationships represented by masculinity and femininity. Constructivism provides the idea of rules and state of rule while pointing to the importance of language in constructing agents and identities. Feminism provides gender lenses which foreground gender and understand that gender signifies particular hierarchical relationships of power. The following chapter applies the idea of rules and rule to gender, focusing on the gendered rules that are central to anti-trafficking law.

CHAPTER 4 FEMINIST CONSTRUCTIVISM IN ACTION: CONCEPTUALIZING GENDER AS RULES AND RULE

A feminist constructivist approach uncovers the ways in which social rules construct and are constructed. It also uncovers how these rules are gendered. A feminist constructivist approach is useful for deconstructing how gender is composed of a series of rules that define masculinity and femininity. This chapter examines how gender is constructed through rules. It then elaborates upon the gendered rules of protection, agency and sexuality, gendered rules which are central to the construction of “trafficking victim.”

Gender

Gender is a social construction that governs patterns of behavior which define what it is to be a “man” and what it is to be a “woman.” Gendered rules create a state of gendered rule. A state of gendered rule is one where masculinity (or what defines “men”) dominates a subordinated femininity (or what defines “women”). A state of rule is a collection of rules which privilege particular agents over others. Gender and gender relations privilege masculinity over femininity and by doing so empowers masculinity and disempowers femininity. Masculinity is constructed as assertive, in control and powerful. This constructs a social reality where women only gain positions of power when they act like “men.” This also has the effect of constructing men who do not display these characteristics as feminine. They are labeled as gay, homosexual or effeminate.¹ This is a label that disempowers men through feminization. Many examples

¹ This is because of the dominant stereotype that gay men lack masculinity hence they are feminine. As R. W. Connell points out, “If someone is attracted to the masculine, than that person must be feminine” (2005: 143). This also works in the reverse—if a man is feminine than he must be attracted to the masculine, he must be gay.

of gender provide evidence that gendered rules privilege masculinity over femininity, leading to a masculine state of rule.

Onuf points out that rules not only create rule, they also create rulers. “Starting with rules. . .leads quickly enough to patterns of relations that we can only describe as a condition of rule. Usually this condition is sufficiently institutionalized that we can recognize specific agents as rulers” (Onuf 1998: 62). Men are rulers in society, and when men are not ruling (for example when women attain a positions of power) masculinity still rules. This is evidenced by the words used to describe British Prime Minister Margaret Thatcher or the United States’ Secretary of State Hilary Clinton.² Gender, as a state of rule, effectively disempowers women, constructing them as objects where men are constructed as agents. Feminists label this patriarchy. In patriarchal societies, men are the rulers of the house, community and state. Patriarchy exists in any society that privileges the status of men or masculine traits over the status of women or feminine traits. Patriarchy is a state of masculine rule that is constructed from multiple gendered rules. Gendered rules of protection, agency and sexuality privilege masculine traits over feminine traits and punish women for exhibiting traits that are not feminine. This is a state of rule that establishes men as rulers of society by reinforcing masculinity. In doing so patriarchy is perpetuated throughout society.

Gender, though socially constructed, is often viewed as natural. The privileging of masculinity over femininity³ forms a stable pattern of gendered relations. This stable

² For example a 1996 article in the *New Republic* stated that Clinton had “difficulty with being a woman,” a direct reference to her masculine role and her portrayal in the media (Templin 1999: 27). Margaret Thatcher was also often referred to in masculine terms or as a pseudo-man (Ross 2002).

³ This privileging may change form in different contexts, but even when its form changes the domination of masculinity when compared to femininity is still maintained.

pattern naturalizes itself over time so that individuals stop questioning these rules and instead take them as given. They are viewed as natural, as the way things are supposed to be. Onuf argues that this stability is produced through hierarchy. “Rule is a stable pattern of relations, but not a symmetrical one” (Onuf 1998: 63). This specifically occurs with gender and gendered rules. It is a stable pattern of relationships, one that has dominated society and the organization of individuals and states, but it is based upon inequality and the privileging of masculinity over femininity.

Onuf goes on to point out that the rules and the state of rule they form provide space for particular agents to act while limiting other agents’ ability to act. “Rules that give any agent the opportunity to act create limits for other agents. Rules in general limit the range of acts other agents are free to take” (Onuf 1998: 65). This is true of gender. Gendered rules allow men to act in certain ways while prohibiting women from acting in the same ways. It is also true in the reverse. Actions appropriate for women are inappropriate for men. This is demonstrated through the gendered rules of sexuality. If a man has sexual relations with many partners he is seen as a conqueror. His sexuality enables him to prove his masculinity (Connell 1995). Alternatively if a woman has multiple sexual partners she is considered loose or a slut (Crawford and Popp 2003). If a man does not have many sexual partners he may be seen as weak or a “pansy.” If woman has few sexual partners she is considered chaste and proper. Gendered rules, as with other rules, limit the actions individuals can take because they spell out very specific consequences for breaking the rules.

While evidence shows that masculinity is privileged over femininity, when examining society it is not always obvious that men are actively ruling. Women attain

positions of power and may appear to be rulers. Rules come from speech acts and rulers are speakers, yet most men do not actively state that women are of a lesser value or of lower status. Many men agree that women are equal and they deserve to be treated as such. However, Onuf provides an explanation for this. Speech acts become conventions which become rules when “everyone comes to believe that the words themselves, and not the speakers mouthing them, are responsible for what happens” (Onuf 1998: 66). This points to why gender is so pervasive yet under analyzed. Individuals first organized and formalized gender relations in a household setting. The privileging of masculinity was instituted through men stating that they were heads of household. Over time, as this speech act was repeated, it took on a life of its own. Individuals no longer needed to hear it. They heard it so often that it became the way things are and then eventually it became the way things should be. When that happened the rule was formed. It was no longer associated with a particular speech act but had become “business as usual.” These forms of gendered relations became naturalized as individuals came to view it as the way things are and in doing so masculinity became privileged over femininity. It is now seen as natural, as a state of rule, and thus it is often left unquestioned.

Individuals follow gendered rules for no other reason except it is the rule. Onuf elaborates on this process, explaining

As agents begin to realize that they should act as they always have, and not just keep the form of a speech act by generalizing the relation between speaker and hearer. Within the general form of a speech act, given rules make hearers into agents to whom those rules apply. Finally, agents recognize that they should follow the rules in question because they are rules and for no other reason (1998: 67).

Again this points to why gender is pervasive and often underexamined in the world today. Individuals follow gendered rules, they privilege masculinity over femininity, not because of some inherent truth but simply because it is a rule. It has gained strength and thus individuals believe that this is the way the world is and the way the world should be.

Gender can be thought of as a series of rules and a state of rule because it is a set of relationships which govern particular actions and behaviors. It provides consequences for individuals that follow (or do not follow) these prescribed and proscribed forms of behavior and actions. Rules govern individual's actions. Ideas about masculinity and femininity govern individual actions. Therefore gender can be conceptualized as a set of rules that tell "men" and "women" how to act. Taken together these rules form a state of masculine rule. It is a state of rule that governs what it is to be a "man" or "woman" and who is thought to be a "man" or a "woman." This gendered state of rule then influences other forms of rule such as those found in international agreements and public policy. It is a state of rule that influences other states of rule.

Onuf breaks the rules that form a state of rule into three categories. Instruction- and directive-rules rules compose gender and are found in the gendered narratives that surround human trafficking. Instruction-rules tell an individual how to act. They instruct an individual as to the correct behavior that is expected in a particular situation. Directive-rules direct these behaviors. "These rules leave no doubt as to what [agents] should do. Directive-rules often provide information about the consequences for disregarding them" (Onuf 1998: 67). Masculinity instructs men how to act by informing them of the types of behaviors that are expected if they are to be considered masculine.

Rules of femininity instruct women how to act if they are to be considered feminine. Gendered rules also assert what will happen to men and women if they do not follow the rules. These rules support each other because they reinforce instructions with consequences. “A rule supporting another rule strengthens the latter by increasing the chances that agents will choose to follow the latter rule” (Onuf: 1998: 69). Gendered rules reinforce each other and the gendered state of rule they create. This is also true of how gendered rules interact with other forms of rules, such as those found in international agreements. Gendered rules construct a gendered state of rule which is also supported by the state of rule that is constructed by international agreements such as the Palermo Protocol.

Gendered Rules

Gender largely consists of instructive- and directive-rules, while treaties or international agreements are largely composed of commitment-rules “Treaties are themselves simple institutions consisting of formal commitment-rules that apply only to the states adopting such treaties” (Onuf 1998: 70-71). When gendered rules combine with the rules of international agreements both rules support and reinforce each other. The Palermo Protocol reinforces gendered rules while gendered rules reinforce the state of rule created by the Protocol. In the Palermo Protocol this creates a gendered state of rule regarding anti-trafficking policy and the construction of the category of “trafficking victim.” This construction and the state of rule created are gendered through the rules of protection, agency, and sexuality. The rest of the chapter will be devoted to elaborating upon these rules.

Protection

Protection is defined as “a person or thing that prevents someone or something from suffering harm or injury.”⁴ Protection is something any agent can desire. However, who is to be the provider of protection and who is the main beneficiary is influenced by gendered logics and gendered rules. Protection is closely associated with security. A protector provides security for individuals by protecting them or keeping them safe from harm. In contemporary thought, the state is seen as protector of its citizens because it provides security for those individuals within its borders (Locke [1690] 1980; Rousseau [1762] 2008). The state protects individuals from threats outside its borders, whether this is other individuals, other states or even global forces (such as diseases or economic flows). While the state is the provider of security in the public sphere, the man is the protector in the private sphere. He protects his family by keeping them safe at home and protects them economically by providing income (Young 2003).⁵ It is the man who represents masculinity that provides safety and security for their family, including women and children who represent femininity.

This applies not only to the household but also to the state. Drawing on analyses of the state provided by consent theorists, Judith Stiehm (1982) explains how women paradigmatically become “the protected.” This occurs because governments are largely composed of men who prevent women from legitimately using force. She elaborates,

For the most part, then, men have forbidden women to act either as defenders or as protectors. At the same time a government’s very existence affirms the need for defenders or protectors. In this situation all women

⁴ Available at http://oxforddictionaries.com/view/entry/m_en_us1281290#m_en_us1281290 (accessed 1/8/2011).

⁵ See also Stiehm 1982; Moallem 2004; Rygiel 2006; and Coleman 2008.

become 'the protected'. Some men become actual protectors; the rest remain potential protectors (1982: 367).

Masculinity constitutes the role of protector, but it functions on the constitution of femininity as the protected. To be a protector there must be something to protect. Thus femininity is not only the object of protection, it is what constitutes the protector as masculine. This functions on an individual level, where women are in need of protection by men, as well as on a state level, where (feminine) citizens need the protection of the (masculine) state.

Feminist complications of protection

Feminists have illuminated the tensions and problems that exist within the gendered logic of protection. Feminists have expounded upon the construction of masculinity as protector and provider of security and which is supported by the construction of femininity as inherently in need of protection (Young 2003). Feminists point out that conceptualizing protection in this way actually places women in a position of greater vulnerability. It creates insecurity rather than security. Susan Rae Peterson (1977) refers to this dilemma as the protection racket. Following Peterson's ideas and combining them with traditional or mainstream ideas about security, Iris Marion Young terms the construction of masculinity as protection as the logic of masculinist protection. Young's ideas on masculinist logic has been applied to various aspects of international and domestic politics but these generally fall under security studies or analyses of international political economy.⁶ This project expands the application of the logic of masculinist protection by employing it in the examination of international agreements.

⁶ See e.g. Penttinen 2006 (conflict); Coleman 2008 (political economy); Hume 2008; Robinson 2010 (political economy); Dodds 2011 (security); Kahlili 2010 (security).

Feminist critiques of the protection racket

Feminists critique the concepts of protector and protected, focusing on the gendered aspects of the protection racket. Feminist scholars have noted that the protection racket legitimates the state and the violence perpetrated by it, often at the very expense of the citizens it is supposed to be protecting (Elshtain 1987; Peach 1994; Sjoberg 2006a; Sjoberg 2006b; Sjoberg and Peet 2011; Wilcox 2011). Ideas about protection have not only functioned to make women insecure but they have also legitimated the confinement of women to the private sphere and their exclusion from the public sphere (Brown 1992). This confinement to the private sphere entails submission and obedience in exchange for protection (Pateman 1988). Such feminist critiques of the protection racket illuminate how the state functions on and legitimates itself through gendered logics.

The protection racket functions on one specific type of gendered logic, the logic of masculinist protection. This logic is based on the idea of the valiant and chivalrous male protector who guards women and children who are weaker and more vulnerable (Young 2003). The logic of masculine protection is based on a patriarchal logic. The protector, and the role he plays, is valorized, placing him in a dominant position. This “puts those protected paradigmatically women and children in subordinate position of dependence and obedience” (Young 2003: 2). This relationship between protector and protected characterizes the relationship between masculinity and femininity, even when these masculinities and femininities take different forms.

Multiple masculinities and femininities

Young draws attention to the multiple masculinities and femininities that exist in the logic of masculinist protection. Young elaborates this logic by drawing on ideas of

Judith Stiehm (1982) and a rereading of Hobbes' state of nature (Hobbes [1668] 1994). She identifies two types of masculinity that exist. There is the dominant and aggressive masculinity, as posited by Hobbes and Carole Pateman (1988). But there also exists a kind and chivalrous masculinity. "The gallantly masculine man is loving and self sacrificing, especially in relation to women. . . .The role of this courageous, responsible, and virtuous man is that of protector" (2003: 4). This particular masculinity is constructed as the "good" masculinity which is created in opposition to the dominant, aggressive or "bad" masculinity. The good man must protect his women and children from the bad man. "The dominative masculinity in this way constructs the protective masculinity of the other" (Young 2003: 4). As discussed in the next chapter, these multiple masculinities are found in the gendered narratives of human trafficking. The security narrative casts states as the "good" masculinity which rescues the feminined "trafficking victim" and protects her from organized crime rings which represent the "bad" masculinity.

In addition to constructing multiple masculinities, the logic of masculine protection also functions by constructing multiple femininities. Femininity is constructed as that which is in danger from "bad" men and which is in need of protection by "good" men. Femininity (and women) are placed in a subordinate position through this "protected" status. The logic of masculine protection places women in a subordinate position by constructing femininity as lacking agency and thus lacking the ability to protect or defend. Women give up any claim to agency in return for the protection. "In return for male protection, the woman concedes critical distance from decision-making autonomy" (Young 2003: 4). The "good" femininity/woman gives up agency willingly and gratefully

in return for protection and the “bad” femininity/woman refuses to give up her agency or autonomy and does not willingly submit to a subordinate position. A “bad” woman demonstrates agency by making her own decisions and following her own will.

Simply put, a ‘good’ woman stands under the male protection of a father or husband, submits to his judgment about what is necessary for her protection, and remains loyal to him. A ‘bad’ woman is one who is unlucky enough not to have a man willing to protect her, or who refuses such protection by claiming the right to run her own life (Young 2003: 14).

Demonstrating agency is not a good femininity, it is bad and a “bad” woman deserves to be punished because she is ungrateful. This logic can be extended to the treatment of “trafficking victims.” As long as the “trafficking victim” did not demonstrate agency in the process of being trafficked she is a “good” woman and the state will protect her against traffickers. However, if the individual demonstrated agency then she is no longer a “trafficking victim” but an illegal migrant. She is the “bad” women and does not deserve protection and thus should be deported by the state.

The gendered rules of protection create masculinities that are divided along lines of agency and aggression. “Bad” men demonstrate agency but do so in an aggressive and threatening way. “Good” men demonstrate agency but do so in a beneficial way—in order to protect “their” women and children. But in certain ways this beneficial agency is no less threatening than the aggressive agency. The beneficial agency is only provided if a woman maintains her subordinate position. As soon as she demonstrates agency or her own will, the kind and generous masculinity quickly turns aggressive. The rules differ for men and women but the rules of protection map onto and define what is proper masculinity and femininity. These gendered rules of protection are reinforced through the rules of agency, which is the next set of gendered rules to be examined.

Agency

Agency can be defined in many ways. Some definitions focus on agency as autonomy while others define agency within a relational context. However, central to any idea of agency is that is focused on the “capacity to act” (Ahearn 2001:112). This capacity to act may only be within a particular situation or it may entail the exercise of free will in any and every act, but central to the definition of agency is that it is founded upon an idea of action.

Alternatively, the denial of agency revolves around inaction. If agency involves action then a lack of action equates to a lack of agency. To not have agency is to be passive, to be acted upon. The existence of one is based upon the negation of the other. These ideas of action and inaction map onto conceptions of what it is to be masculine and what it is to be feminine. Where masculinity is associated with agency, femininity is associated with passivity. Masculine ideas of agency are founded in liberal thought.

Liberal ideas of agency

The liberal idea of agency focuses on agency as autonomy and rationality. As Nancy Hirschmann argues, in the Western context and particularly in Western political thought, “the free agency of the natural individual is seen as a core defining value” (1998: 346). Autonomous rational individuals have agency in their freedom and choice to act. Elizabeth Schneider supports this by pointing out that ideas of agency have long been “shaped by liberal visions of autonomy, individual action, and individual control and mobility” (1993: 389). She elaborates

traditional views of agency are based on notions of individual choice and responsibility, individual will and action, perceptions of a world composed of atomized individuals, acting alone, unconstrained by social forces,

unmediated by social structures and systemic hardship (Schneider 1993: 396).

However this is a problematic way to think of agency as feminist scholars point out.

Feminists complicate liberal ideas of agency

Liberal ideas of agency are problematic because no individual ever acts in a completely individual and atomized manner outside of the social structures in which they exist. Feminists are not the only ones to note the tensions and problems that arise out of liberal conceptions of agency. But feminists have entered into a sustained criticism regarding these ideas about agency. They point out that a “focus on one form of agency necessarily entails the ignorance of other forms of agency women engage in” (Schneider 1993: 390). It also ignores the external and internal limitations on agency. External limitations, such as rape and sexual harassment, restrict a woman’s ability to act freely. Internal limitations, such as cultural productions around particular ideas of femininity, are also extremely influential upon the actions of women (Hirschmann 1998: 347). Feminist analysis also argues that ideas of autonomy are based upon masculine conceptions of agency (Mackenzie and Stoljar 2000). In criticizing liberal (masculine) ideas of agency feminism seeks to complicate dominant liberal ideas of agency in several ways.

First, feminism points out that agency is contextual. No individual acts in a vacuum, rather she acts within social and structural constraints. Though an individual does not have perfect freedom or agency, they may have a degree of agency within which to act in a particular situation. Agency is not something someone possesses all the time, rather it arises out of a particular situation. The existence of agency or the ability to

act is in relation to the context the individual is in. An individual cannot have agency if she is not put into a situation which allows her to act or to not act.

Second, feminism has also drawn attention to the fact that agency is not only contextual but also relational.

The term relational autonomy as we understand it, does not refer to a single unified conception of autonomy but rather an umbrella term, designating a range of related perspectives. These perspectives are premised on a shared conviction, the conviction that persons are socially embedded and that agent's identities are formed within the context of social relationships and shaped by a complex of intersecting social determinants, such as race, class, gender, and ethnicity. Thus the focus of relational approaches is to analyze the implications for intersubjective and social dimensions of selfhood and identity for conceptions of individual autonomy and moral and political agency (Mackenzie and Stoljar 2000: 4).

This is not to say that autonomy does not exist. It is only to recognize that autonomy is incomplete for both men and women. As Laura Sjoberg notes, relational autonomy is incomplete independence. "All decisions are contextual and contingent, not only women's, and decisions are made, not only men's" (Sjoberg 2011: 32). This form of autonomy is ignored in anti-trafficking law. "Trafficking victims" are not autonomous agents but are defined as women who are the victims of men. While trafficked persons are victimized, this construction does not tell the whole story. A man is never completely autonomous just as a woman is never completely dependent. Though all individuals exhibit relational autonomy and in doing so are never completely independent, agency is still treated as independence and seen as a masculine trait rather than a feminine one.

Finally, feminists also point out that agency is often conceptualized in dichotomous terms. Agency is something someone has or does not have. Feminists have termed this

the agency-victimization dichotomy.⁷ Individuals are either agents or, if they are not agents, they are passive victims. These gendered dimensions of agency are translated into gendered rules where masculinity is equated with agency and femininity is equated with passive victimization.

Rules of agency

While feminists critique the either/or aspects of agency, these dichotomies constitute gendered rules of agency which govern the behaviors of men and women. These rules equate femininity with passivity. “North American second wave feminists noted that postwar academic theories mimicked popular Western stereotypes in holding that male is to female as active is to passive” (Gardiner 1995: 2). Gardiner elaborates on how this is subordinating to women and relegates them to the role of a child who cannot make decisions for herself.

Whereas men were considered autonomous agents both of their own interests and of the social order as a whole, women were to be responsive to men, waiting to consent to marriage, and responsive to nature, spontaneously caring for children. They were patronized for being unable to act at all and condemned as selfish if they acted independently (1995: 2).

If femininity is passive, masculinity is necessarily active, because one is defined by the other:

For men, agency was assumed to be a unified attribute, combining sexual potency, self-confidence, labor power, personal capabilities, and political and psychological autonomy. For women, however, agency was disabled and dispersed (Gardiner 1995: 2-3).⁸

⁷ As Elizabeth Schneider explains “Victimization and agency are each understood to exist as the absence of the other—as if one must either be pure victim or pure agent—when in fact they are profoundly interrelated” (2003: 396). See also Pollack 2000; Agustin 2003.

⁸ It must be noted that there are multiple forms of agency. It is never as simple as having agency or not having agency. Gardiner (1995) identifies three forms of agency for women, as well as how such agency is viewed. “The desiring female sexual subject was reviled, the maternal agency celebrated and circumscribed, and the woman laborer all too often exploited and ignored” (3). Women, while largely regarded as passive, can demonstrate a maternal agency (though it is circumscribed), a sexual agency

This demonstrates how gendered rules of agency map onto femininity and masculinity. The rule for femininity is that it has no autonomy. It is passive and victimized. If a woman transgresses this rule by demonstrating autonomy then she is no longer feminine. The opposite is true of masculinity. To be a man is to be autonomous. If a man transgresses this rule then he is no longer “manly” but has become feminized.

Relationship of rule of agency to rule of protection

Rules of agency are supported and reified by rules of protection. Rules of protection center on who can legitimately demonstrate agency (masculinity/men) and who cannot legitimately demonstrate agency (femininity/women). “The protected” is an agency-defining and agency-limiting role which contributes to a state of gendered rule—where “the protector” is autonomous and masculine and “the protected” is feminine and dependent. Women who demonstrate agency are “bad” and do not deserve protection, indeed they may actually deserve punishment for transgressing the gendered rules of feminine agency. Women who do not demonstrate agency are “good” and deserve protection. Ironically however, this lack of agency is what makes woman vulnerable.

Sexuality

Sexuality refers to human sexual behavior (Laumann et al. 1994). Sexuality is broader than the term sex and refers to all erotically significant aspects of social life and social being, aspects such as desires, practices, relationships and identities (Jackson 2006a: 106). Sexuality involves sexual relations between individuals (for example homosexual, bisexual, heterosexual, parosexual or asexual) as well as politics. Issues of sexual harassment, sexual assault and abortion all involve politics about sexuality.

(though it is reviled) and a labor agency (though it is often ignored). Agency is complex and incomplete. However, in this project, I focus on agency as passivity for parsimony.

Sexuality can be a tool of empowerment through the embracement of sexual desire and expression (Shugart et al. 2010). Sexuality can also be a tool of disempowerment, as when individuals are treated as sex objects only used to fulfill other's desires (Rowland-Serdar and Schwartz-Shea 1991) or when it is viewed as a reflection of men's power and domination over women (Mackinnon 2002). The politics of sexuality also involve conflicts over sexual values, erotic conduct and sexual behavior (Rubin 1999).

Sexuality was traditionally thought of as residing within the individual, as a natural biological force based upon "the assumption that a given pattern of sexuality is native to the human constitution" (Connell and Dowsett 1999: 179). Scholarship within sexuality studies has challenged this notion (much as feminists have challenged the notion that there was something biologically given about gender). Michel Foucault (1978) argues that desire is constituted through social practice within specific historical contexts. Scholars that follow in his tradition challenge biological understandings of sexuality and do so by focusing on how sexuality is socio-historically contingent. Gayle Rubin explains that such challenges do not mean that human biology is not a requisite for sexuality. "The body, the brain, the genitalia and the capacity for language are necessary for human sexuality. But they do not determine its content, its experiences or its institutional forms" (Rubin 1999: 149). Sexuality studies draw attention to how ideas about sexuality and sexual behavior are time and context specific, acknowledging that even with this contingency they are powerful dictators of social and sexual practices.

The relationship between gender and sexuality is an intimate one. Ideas about sexuality are often gendered. Gender defines the proper practices and activities of men and women and this includes ideas about proper sexual partners and practices.

Heterosexuality is defined in society as the “normal” form of sexual relationship and thus is “a key site of intersection between gender and sexuality” (Jackson 2006a: 107).

Homosexual relationships (relationships between individuals of the same gender) are considered against the norm as are bisexual relationships (when an individual has relationships with individuals of either gender).⁹ This can be further complicated when an individual is neither male nor female or is both male and female.¹⁰ These individuals fall out of gender and sexual norms advanced by society and complicate the gendered rules of sexuality.

Rules of sexuality

Gendered rules of sexuality govern ideas about proper sexual partners and proper sexual behavior. Gendered rules regarding the proper sexuality and sexual behavior for women are different and contrasted in opposition to the gendered rules regarding the proper role of sexuality and sexual behavior in men’s lives. These gendered rules result in formalized rules or stereotypes. “Stereotypes serve as the agents of social messages about the appropriate roles and behaviors of women and men” (Unger and Crawford 1992: 150). These formalized rules police and constrain women’s sexual behavior while simultaneously valorizing men’s sexual conquests. Evidence of this can be found in madonna/whore dichotomy (Forbes 1996). “It has often been suggested that male portrayals of women have frequently pivoted around a dichotomy where at one pole

⁹ This is not to say there is anything deviant with homosexual or bisexual relationships, nor is it to say that society does not except these relationships. In some societies these relationships are acknowledged or even celebrated, however that does not mean the norm towards heterosexuality does not exist.

¹⁰ Anne Fausto-Sterling (2002) identifies five sexes and allows for the possibility that more may exist. These include male, female, hermaphrodites (an individual who possesses one testis and one ovary), male pseudohermaphrodites (individuals who have testes and some aspects of female genitalia but no ovaries) and female pseudohermaphrodites (individuals who have ovaries and some aspects of male genitalia but no testes).

woman is worshipped as pure, virginal (when unmarried) and chaste (when married), while at the other pole she is seen as a dangerous seductress” (Unger and Crawford 1992: 154). These gendered rules instruct individuals as to the correct feminine behavior while providing consequences if the rules are transgressed.

Gendered rules of sexuality revolve around the madonna which valorizes women’s purity and chastity. A madonna is a passive woman (i.e. one without agency), one who is not sexual and represents purity and goodness (Meyer 1994). The madonna is cast as all that a man should want and when he finds her he should protect her goodness and purity. This demonstrates that rules of agency and protection are intertwined with the rules of sexuality. A good woman is passive and not sexual.¹¹ This is constructed in opposition to the whore.¹² The whore is not virginal or chaste. She is a temptress with designs to lead all men astray (Meyer 1994). She demonstrates agency in her temptation and her desire to engage in sex. The good femininity is represented in the madonna which deserves protection. The bad femininity is reflected in the whore who deserves to be punished for demonstrating sexuality.

The masculine rules of sexuality are constructed in opposition to feminine rules of sexuality. Men are expected to engage in a lot of sexual activity, to continually increase their number of sexual partners (Loe 2001). High levels of sexual activity are representative of a man’s virility, thus to be labeled a “whore” or “conqueror” is to be

¹¹ The good woman may exhibit agency in a maternal sense (relating to home and children) but it is a circumscribed agency and only applies to the private sphere. Thus she is largely constructed as passive and demurring to the male head of house.

¹² Patricia Hill Collins (2000) offers a similar symbolism in her analysis of the jezebel. Focusing on the intersections of race and sexuality, she refers to the jezebel, whose counterpart would be the whore. She states, “Her insatiable sexual desire helps define the boundaries of normal sexual desire” (2000: 83). The jezebel, like the whore, is representative of what women/femininity should not be.

labeled as masculine. Alternatively to be labeled as a “madonna” would classify a man as not sexually active, as feminine. In terms of sexuality masculinity is defined in relation to sexual activity and the number of sexual partners. The gendered rules of sexuality encourage men to engage in behavior opposite to that of women. Multiple sexual partners demonstrate masculinity and few sexual partners demonstrate femininity. Thus while gendered rules of sexuality are different for men and women they reinforce what is considered appropriate masculine and feminine behavior.

Gendered rules work to guide and constrain individual behavior. The gendered rules about the madonna and the whore stereotypes govern women’s sexuality and women’s sexual behavior. They warn women of the consequences of being sexually promiscuous and the benefits of being sexually chaste. Evidence of these gendered rules can be found everywhere, as well as their material consequences. One example where these gendered rules of sexuality play out is in rape trials.¹³ A woman accuses a man of rape and it is her sexual behavior that is brought into the courtroom. If it is found that she was sexually promiscuous or had casual flings, then the very idea that she can be raped is called into question. She is promiscuous and therefore has no right to protection, no right to agency, no right to say yes or no. She is a “bad woman” and deserves the consequences. This demonstrates that the rules do not simply encourage particular behaviors, they regulate them because they provide very real consequences for not following them.

¹³ For example Hubert S. Field states that “no single variable is thought to produce more discriminatory effects in rape trials than the introduction of the victim’s sexual history as evidence” (1979, 264). See also Findlay 1974; Harris 1976.

How rules of sexuality reinforce the rules of protection and agency

As discussed, rules of sexuality reinforce the rules of agency and the rules of protection. One of the key defining characteristics of a “madonna” is her passivity. A madonna is not an agent but a passive virginal being, ready to be used by a “good man” and protected from the “bad man.” A whore is an agent who embraces her sexuality. This agency defines her as a “bad woman” who should be punished. It defines her as not a chaste woman, but a whore. The rules of agency and the rules of sexuality are based upon similar notions about femininity as passive. The rules of protection also function to support the same notions about feminine passivity and sexuality.

Conclusion

A feminist constructivist approach illuminates how gendered rules create a state of masculine rule which disempowers femininity by governing actions and behaviors. This chapter has elaborated upon the gendered rules relevant to human trafficking and anti-trafficking law. As will be shown in the next chapter, these gendered rules can be found in the narratives about human trafficking. As these narratives were incorporated into the Palermo Protocol, the category of “trafficking victim” was constructed in specific gendered ways.

CHAPTER 5 SHE WAS A VICTIM: NARRATIVES OF HUMAN TRAFFICKING

Understanding human trafficking is not a simple task. Chapter 2 focused on the conceptual issues surrounding the definition of trafficking. Because of the multiple ways to approach human trafficking and the multiple factors that influence it, actors use narratives as a way to understand human trafficking. These narratives are based in and arise out of the three discourses of human trafficking. Each narrative focuses on different facets of human trafficking leading to different solutions and the implementation of different strategies to combat it. Though the experience is unique to the trafficked individual, three narratives dominate the way trafficking in persons is understood and addressed at the international level.¹

The narratives that dominate the discussion of human trafficking are the security narrative, the human rights narrative, and the migration narrative. Each narrative represents events in the trafficking process in particular ways. Each narrative draws attention to different actors and organizes events into a story that constructs these actors with specific gendered identities. This chapter begins with a brief discussion of narratives, drawing attention to the importance of narratives to understanding individual and collective experiences. The link between narratives and identity is explored with attention to how narratives construct gendered identities. The three narratives of human trafficking are then presented, focusing on the framework each narrative creates, the actors in each narrative, the gendered rules each narrative incorporates and the strategies that result to combat human trafficking. This discussion of narratives leads

¹ I identify three different narratives however the classification is not so neat. In reality these narratives tend to overlap and intersect with one another. However, for conceptual clarity, I will identify three distinct narratives in order to demonstrate the different rules of gender that each incorporates and why different strategies are created to address the same problem.

into Chapters 6 and 7 which explore the negotiations that produced the Palermo Protocol and the influence of these narratives upon the negotiations.

Narratives

Poverty, social dislocation, gender discrimination, conflict, irregular migration routes and increased international migration, increased transnational criminal networks, and the profitability of trading in humans all factor into human trafficking (Payne 2006: 51; Cameron and Newman 2008). Contestation over what defines human trafficking continues to occur, stemming from disagreements over what trafficking and exploitation constitute. Compounding this is the fact that statistics associated with trafficking in persons are often vague and unclear (Laczko and Gramegna 2003; Weitzer 2007). All these factors create contested definitions of human trafficking and contested definitions create contested meanings. Contested meanings lead to the rise of alternative narratives as a way to organize and understand events and to create individual and group identities. Narratives express a causal logic that creates characters with particular identities and places them in a series of connected events which lead to a specific logical outcome (Griffin 1993: 1097-1098). In this way narratives not only tell the story about human trafficking, they also prescribe strategies to combat human trafficking.

Because narratives provide a way to filter information into a coherent and logical story they can be found everywhere. Books, film, political speeches and courtroom testimony all employ narratives. Individuals use them to tell and understand their experiences and provide coherency to life (Ochs and Capps 1996: 20). Because of the proliferation of narratives, narrative analysis has been employed in various disciplines

including literature, history, sociology, anthropology, linguistics, and political science.² The importance of narratives to individuals and institutions is supported by empirical research in the fields of psychology, history, and sociology.³ As Shaul Shenhav states, “People think, understand, imagine and make moral decisions according to narrative-based structures” (2005: 76). He makes this claim drawing on Patterson and Monroe who state that “we create and use narratives to interpret and understand the political realities around us. We do this as individuals and we do it as collective units, as nations or groups” (Patterson & Monroe 1998: 316, cited in Shenhav 2009). Narratives are important because they provide individuals and collectives with a way to categorize events into a coherent story. This story is framed by previous experiences which project onto future events providing a road map for how to act in particular situations or respond to current and (potential) future events. David Herman sums this up when he states “Narratives, in other words, is a basic human strategy that contrasts with, but is no way inferior to, “scientific” modes of explanation that characterize phenomena” (Herman 2007: 3).

Research has demonstrated the centrality of narratives to the construction of individual and social reality. Narratives construct by representing sequences of events (Ryan 2007: 23). They are representation of fact, of reality. Because narratives are representative, they only account for certain aspects of events. A narrative combines these events in a specific time ordered way which then presents a particular version of the facts being assembled. A narrative takes the subjective reality that is experienced in

² See e.g. Griffin 1993; Couto 1993; Ochs and Capps 1996; Schiffrin 1996; Giles 1997; Franzosi 1998; Topolsik 1999; Quinn 2001; Heilke 2004; Hoffman 2005; England 2009; Temmermen 2010; Zacharias 2011.

³ See e.g. Cronon 1992; Church 1995; Angus and Mcleod 2004; Shenhav 2005.

different ways by different people and presents it as the accepted version of an objective reality. Narratives provide a method for organizing and understanding events because they take a wide range of information, filter out certain aspects and combine these abridged experiences into a specific time ordered causal chain that leads to specific outcomes (Altman 2008).

Narratives have several core elements. Shaul Shenhav identifies three elements central to political narratives:

It is useful to break down the concept of narrative into three main elements. The first is "events, characters, and back ground." This element includes all of the events covered by the narrative, the main players in it, and the geographical, social, and institutional space within which they are set. The second is "events in sequence." This element refers to the events along a temporal continuum. The third is "causality." This element includes the attribution of cause and effect, which exist in most political narratives (2006: 251).

First and foremost, narratives construct actors and events. Actors are created through the narrative and by the reader who acts as a "creative accomplice," building mental pictures by using descriptors in the narrative and comparing them with previously held categories. "These mental pictures are influenced by the reader's "real-world" knowledge" (Page 2007: 193). The image of the actor is based upon two things: the descriptive words used to identify the actor and the actors' actions. "Through character's actions, readers get a sense of what they are like by interpreting those actions according to the reader's own moral codes and value systems" (Berger 1997: 52). This points to the two-fold process involved in constructing an actor. The actor is constructed by the text which defines it and also by the receiver who filters that actor's actions through his or her own personal lenses.

Narratives also depict events. A narrative does not consist of one event. It is a series of events that are connected through time (Altman 2008: 2). So for example events in the trafficking narrative may include a kidnapping, the transfer of an individual over a border and physical and sexual abuse at the hands of traffickers or other individuals. This series of events points to the importance of the second element of a narrative, which is time. Narratives also take place within temporal sequence. Events occur one after another. A narrative does not simply consist of one event at a specific moment in time. The events are spread over a timeline or sequence that consists of multiple events, each one leading to the next. Trafficking is a process that occurs along a timeline and thus easily lends itself to the narrative structure. Individuals do not just find themselves in a situation where they are trafficked. They proceed through a series of steps that occur over time and which include exploitation. For example it may begin with an employment search which leads the individual to migrate out of his/her home country. This migration then leads to movement which then leads to an exploitative situation. These events are connected over a period of time so that one event necessarily leads to the next.

This series of events, one leading to the next, points to the third element of a narrative, causality. Causality provides the coherent structure to a narrative. Events occur in a timeline and each one leads to another. It is through cause and effect that unity within the narrative is created. Event A (the cause) occurs which leads to event B (the effect). Event B then leads to event C and so on (Berger 1997: 5). It is through causality that events in a narrative lead to a logical conclusion or end point. This is evidenced in trafficking narratives. For example, an individual wants to gain employment

(the cause), so they answer an ad in a newspaper, seek out an employment agency or contact an individual or organization that can aid them in their desire (the effect).

Answering this ad or contacting an agency (the cause) then leads to movement, either within the country of origin or to another country (the effect). Each cause leads to a logical effect which then becomes the cause for another effect. Trafficking can be viewed as a chain of causal events leading to the outcome of an exploitative situation.

By combining these three elements, narratives link single events together in a timeline that connects the past with the future. This allows individuals to take events they hear about and experience and understand them in terms of previous experiences and knowledge. Narratives are central to an individual's ability to make sense of the world because they provide a framework for understanding. The narrative orders events into a causal structure that allows individuals (or collectives) to understand outcomes as the result of certain events. Through this process narratives create frameworks, solutions and identities.

Frameworks and solutions are deeply intertwined. Solutions presented in a narrative logically arise from the framework employed by the narrative. A narrative creates a story that leads to a specific outcome. The way that outcome is achieved provides evidence on how to combat or prevent said outcome from occurring. It provides a strategy to address the event or issue created in the narrative. Because the narrative creates causality by linking specific actions to specific outcomes it also provides strategies to change these outcomes. Intervene in any of these actions and the outcome changes. After analyzing the narratives around trafficking one can see why specific strategies arise and why these strategies make the most sense according to the

narrative. By understanding the narrative we can better understand why certain strategies against human trafficking have come to dominate international and national responses to this issue.

Identity Creation Through Narratives

Narratives also create identities—they tell individuals who they are and what they should do (or not do). As Margaret Somers explains

stories guide action; that people construct identities (however multiple and changing) by locating them-selves or being located within a repertoire of emplotted stories; that "experience" is constituted through narratives; that people make sense of what has happened and is happening to them by attempting to assemble or in some way to integrate these happenings within one or more narratives; and that people are guided to act in certain ways, and not others, on the basis of the projections, expectations, and memories derived from a multiplicity but ultimately limited repertoire of available social, public, and cultural narratives (1994: 614).

Identities are created in a narrative. They are created through the positioning of the individual within the events and causality of the narrative. However the nature of the identity is contingent. It is not fixed but rather arises out of the specific components of the narrative. As Michel-Andre Horelt and Judith Renner explain,

The exact shapes of the various identity constructions depend on the aspects of the historical narrative which are included or left out, on the one hand, and on the other hand, they depend on the way these aspects are put together and interpreted to frame the actor (2008: 10).

Through these aspects narratives actively constitute subjects. As David Herman states, “more than just reflecting or encapsulating pre-existing emotions, the text *constructs*” (Herman 2007: 7, author emphasis). Narratives construct actor identities through the application of words, phrases and metaphors which signal emotion, desire, motivation and other forms of action. “Identity is not viewed in essentialist terms as something that people ‘are.’ Rather identities are progressively and dynamically achieved through the

discursive practices that individuals engage in” (Weatherall 2002: 138, cited in Sunderland 2004: 18). These discourses were discussed in Chapter 2. The discursive practices they create are the narratives about human trafficking.

Narratives are important to the creation of individual identity as well as the creation of group identities (see e.g. Prozorov 2006; Herelt and Renner 2008; Auerbach 2009). “Trafficking victim” is one such group that gains its identity from the narratives told about the trafficking process. Because of the gendered rules that are incorporated into the narratives, “trafficking victims” are constructed with gendered identities. In the process of constructing “trafficking victims” with gendered identities, gendered identities are also constructed for states and traffickers.

Gendered Narratives, Gendered Identities

Narratives not only construct identities, they construct gendered identities. As Janet Holmes explains “Telling a story is one means of presenting oneself (and others) as appropriately feminine or masculine” (1997: 204). Narratives construct gendered identities through the incorporation of gendered rules explained in the previous chapter. Gender is a social construct. It is a social construct that represents and is represented through language and social relations. “The study of gender and discourse. . .reveals how language functions as a symbolic resource to create and manage personal, social and cultural meanings and identities” (Kendall and Tannen 2001: 548). Narratives construct gendered identities because all human activities “entail gendered assumptions and practices” (Page 2007:189).

Identities are gendered through expression. “Gender. . .is produced *in large part* by language and discourse.” (Sunderland 2004: 17, author’s emphasis). The relationship between discourse and gender and the ways in which discursive practices

produce, reify, reproduce, contest and change gender is a rich field of study. Feminist narratology is one subfield of this discipline. Feminist narratologists identify how cultural constructions of gender are important to narratives. This form of narrative analysis examines how narratives reflect, constitute, produce and reproduce gender and gendered relationships of power (Page 2007: 191). Such relationships are created in narratives and signified by gender. "Social relations such as dominance and subordination are constructed in interaction" (Kendall and Tannen 2001: 554). While specific power relations may appear to only be described through language, these relations are actually constituted through language. "Discursive practice is constitutive of knowledge. . . .discourse [and narrative] does not just reflect and represent social entities and relations, they construct or constitute them" (Wodak 1997: 199). Narratives do not only represent identities and relationships, they create and gender them. Narratives on human trafficking do not simply describe "trafficking victims," they constitute them in particular gendered ways.

Narratives figure prominently in the way states, organizations and individuals think about and address the issue of human trafficking. Narratives are important to political issues because narratives help clarify and solidify positions (Altman 2008). By invoking narratives, states, organizations and individuals can cement their position by drawing on specific sequences of events which, through causation, lead to specific outcomes. These logical outcomes then form the basis for particular policy positions. The narratives about human trafficking are important to actors that negotiated the Palermo Protocol. Each narrative provided evidence and support for the framework advanced by particular actors.

Three Narratives of Human Trafficking

Three narratives dominate discussions of human trafficking at the international level. Each narrative draws attention to different actors and organizes events into a story that constructs them with specific gendered identities. The rest of the chapter introduces these narratives, focusing on the stories they tell, the characters they construct, and the strategies to combat human trafficking that they produce. In doing so, the gendered rules, which are perpetuated through the narratives, are revealed.

Security

Anna's trafficker kept her in submission through physical abuse – beating her, raping her, and slicing her with knives. He abducted her from Albania and took her to a Western European country, where she was forced into prostitution for about five months. . . . During more than four years of subsequent forced prostitution in the second destination, Anna was made to undergo four abortions (Taken from State Department 2010).

The first narrative is the security narrative. This narrative looks at human trafficking as a security issue perpetrated by organized crime. This narrative is the dominant narrative for addressing and understanding human trafficking at the international level. The historical context within which this narrative arose can be traced to the end of the Cold War and its aftermath. Changes in the international system led to increased securitization of alternative issues as national governments and international organizations attempted “to redefine themselves in relation to the new environment” (Jackson 2006: 306). Human trafficking is part of a trend of taking issues traditionally deemed as non-security issues and casting them within a security lens (Jahic and Finckenauer 2005). A 2003 United States Congressional Report identified human trafficking as “one of the fastest growing areas of international criminal activity and one that is of increasing concern to the United States and the international community”

(Miko 2002: 1). The security narrative is an appealing framework to address human trafficking because it enables states to address multiple problems at once. They can claim to 1) fight trafficking 2) combat organized crime and 3) recoup some of the control over their borders that is being lost as a result of increased globalization (Everts 2003; Freisendorf 2007). The security narrative also leads to an increase in strategies such as securing borders and limiting entry visas, providing evidence of states' desire to recoup sovereignty by asserting control over their territories and borders in addition to combating human trafficking (Chuang 1998; Jackson 2006).

The security narrative tells the following story about human trafficking:

A young woman is kidnapped by a person or persons that are part of a transnational criminal organization. This criminal organization then proceeds to traffic the woman to the destination country where she is enslaved and sexually exploited, usually by being forced to prostitute in a brothel by pimps. The state rescues the woman from traffickers and pimps by tracking organized crime syndicates and increasing law enforcement measures. The state then prosecutes the traffickers and/or pimps using the woman as the star witness in the criminal case. If the woman refuses or is unable to testify, or if she broke laws in the process of being trafficked, she is deported back to her home country.

In this narrative human trafficking is cast first and foremost as a criminal problem. Because human trafficking is associated with organized crime syndicates, it is best addressed as a criminal problem. The overarching goal becomes stopping criminal organizations—to dismantle criminal organizations means an end their activities, including human trafficking. Because the causal chain in the narrative identifies

organized crime as the root cause of human trafficking, the strategies that result from this narrative focus on prosecution and prevention of crime rather than the rights of the victim.

Actors

Three actors are central to this narrative. The state is the major actor. The state has the responsibility to keep traffickers out of its borders and rescue those trafficked individuals already within the state. The state is gendered masculine through gendered rules of protection. It fulfills the role of protector, protecting its borders as well as “trafficking victims.” The actions of the state in this narrative construct it with a masculine identity. The state emerges as the ultimate protector and defender of both trafficked individuals and its citizens. It rescues “victims” and uses the law to punish traffickers. This narrative is most often employed by state governments and has heavily influenced international and domestic anti-trafficking law.

The “trafficking victim” is also central, though this is more as a character than an actor. In this narrative the “trafficking victim” does not act (exhibit agency) but is only acted upon. The individual is gendered feminine through gendered rules of agency which construct women as passive. The character lacks agency. She is kidnapped, trafficked, exploited and must be rescued by the state. In this narrative the trafficked individual has no agency in the events that are occurring. She demonstrates an inability in decision making and acting. She was overtly coerced and forcibly taken. It is therefore the state, as protector, that must come to the rescue, since the victim is unable to act or engage in any form of resistance against her traffickers. After being rescued, her role becomes aiding the state in its prosecution of the traffickers. Again she has no choice in this because the decision is made by the state as acting agent.

Services can and will be given to the victim, providing she helps law enforcement and providing she did not commit any crimes herself (such as possessing fake documents, entering the country illegally, or overstaying a visa). If the individual demonstrates agency at any time in the process, for example in the desire to migrate or the willingness to seek avenues of illegal migration, then the individual is no longer considered a “trafficking victim” but rather an illegal migrant (Chapkis 2003). If this occurs then the individual does not require any state services but simply needs to be deported.

The final actor in this narrative is the transnational criminal organization. Organized crime is identified as the root cause of human trafficking. Organized crime rings emerge as the apparent target of increased security measures. They present the threat from which states must protect their citizens and the women who become their victims (Chapkis 2003). In this narrative, through the gendered rules of protection, organized crime rings are the “bad” men that the “good” state must defend and protect against. Through these gendered rules, organized crime groups and traffickers are cast as masculine, though it is a bad masculinity, which is a foil to the good masculinity of the state.

Strategies

With a causal chain that links trafficking to organized crime, this narrative produces a particular set of strategies to combat human trafficking. A report by the Coalition Against Trafficking in Women (CATW) reported that

“Law enforcement officials stated that more coordination and cooperation is needed between local police officers on the job, who often make trafficking arrests in conjunction with federal law enforcement agencies and prosecutors – e.g., INS and FBI along with the DA’s or U.S. Attorney’s office” (Raymond and Hughes 2001: 97).

The strategies include improving border controls and border security, strengthening law and law enforcement agencies, encouraging cooperation among states and improving communications between various national and international law agencies.

Unfortunately this also means that the human rights of the trafficked individual are often sacrificed for the priority of fighting crime. Francine Miko acknowledged this in her report to the United States Congress. She stated that

The priority placed on stemming illegal immigration in many countries, including the United States, has resulted in treatment of trafficking cases as a problem of illegal immigration, thus treating victims as criminals. When police raid brothels, women are often detained and punished, subjected to human rights abuses in jail, and swiftly deported. Few steps have been taken to provide support, health care, and access to justice. Few victims dare testify against the traffickers or those who hold them, fearing retribution for themselves and their families since most governments do not offer stays of deportation or adequate protection for witnesses (2002: 3).

As this report points out, the overarching goal of strategies arising out of the security narrative center on achieving consistency and conformity in national laws and state action. The result of such strategies is that the identification of trafficked persons and their vulnerabilities is ignored.

Human Rights

Another case receiving wide media attention involved the Cadena family from Veracruz, Mexico, who trafficked at least 20 Mexican women—one as young as 14--into the United States for purposes of prostitution. The women, lured with promises of economic opportunities, were transported through Texas and then kept in trailers transformed into mobile brothels located near migrant workers' camps in Florida and South Carolina. The women lived in brutal conditions. Prosecutors said that many were compelled to have sex with 130 men per week, beaten, raped, and forced to undergo abortions (Taken from Raymond and Hughes 2001).

The earliest narrative to arise in the human trafficking debate is the human rights narrative.⁴ The human rights narrative can be traced to fears about the “white slave” trade at the end of the 19th century (Doezema 2002: 22; Jahic and Fickenauer 2005).⁵ This narrative is most often disseminated by non-governmental organizations (NGOs). Through the advocacy of various human rights and women’s NGOs this narrative dominated early national legislation and international agreements created to address and prevent trafficking in persons (Desyllas 2007).⁶

The human rights narrative can be distilled into the following story about human trafficking:

A woman is deceived by another individual (most often a man) who promises the woman the opportunity to make lots of money at an exotic or glamorous job in a foreign country. This job will allow her to not only provide for herself but also for any family she may leave behind. The woman believes all that is promised and decides to take the opportunity and leave her home country. However, when the woman reaches the

⁴ The human rights narrative may be slightly different depending on the country it is being employed in, For example, the human rights narrative exists in states that outlaw prostitution (i.e. the United States) as well as in states that regulate prostitution (i.e. the Netherlands). However, at the international level it is the strand of the human rights narrative that focuses on abolishing prostitution that has been most influential. Therefore, in this project I focus on largely on this facet of the human rights narrative.

⁵ “‘White slavery’ referred to the abduction and transport of white women for prostitution” (Doezema 2002:22).

⁶ NGOs put forth the two alternative discourses on prostitution which was discussed in chapter two. This internal debate continues to exist between NGOs as to whether prostitution can be voluntary or whether all prostitution is involuntary due to the unequal power relations that exist between men and women (Outshoorn 2005; Mcsherry and Kneebone 2008). These two views were represented at the Palermo negotiations by two camps, the Human Rights Caucus headed by the Global Alliance Against Trafficking in Women (which viewed prostitution as a form of work) and the International Human Rights Network headed by the Coalition Against Trafficking in Women (which viewed prostitution as an inherent human rights violation against all women). Both camps were active in their lobbying of state representatives and both had small victories in terms of the final text. However, in public discourse and earlier international agreements the view that most often dominated is that of CATW, that all prostitution is involuntary and therefore prostitution itself must be abolished.

destination she is raped, beaten, humiliated, held captive and forced into sexual slavery and prostitution. The woman must be rescued by NGOs, who remove her from her captors and provide her with social services so that she can begin the rehabilitation process.

In this narrative human trafficking is synonymous with sex trafficking. Though trafficking occurs for purposes other than sexual exploitation, the human rights narrative tends to ignore these aspects of human trafficking and focus exclusively on trafficking for the purposes of prostitution (Jahic and Finckenauer 2005). According to this narrative, the root cause that sets the trafficking process in motion and the final outcome of this process are the same: prostitution. CATW, a United States based NGO, makes this position clear when they report that “Trafficking cannot be separated from prostitution. Anti-trafficking policies and programs must address organized prostitution” (Raymond and Hughes 2001: 13). Because prostitution results from structural inequalities that exist between men and women, prostitution is first and foremost a violation of human rights (Doezema 2002: 22). This narrative focuses on strengthening and restoring human rights to trafficked persons. Rehabilitation emerges as the most important goal in this particular narrative because through rehabilitation trafficked individuals will regain their human rights. This narrative focuses on rescuing women from exploitative situations and providing them with social services that will aid in their recovery. In comparison to the security narrative which focuses on organized crime, the focus of this narrative is on those individuals that have already been victimized.

Actors

Central to this narrative are the trafficked persons, NGOs and traffickers. In this narrative the trafficked person is constructed as feminine. The gendered rules of

sexuality are highly evident as this narrative encompasses both the whore and the madonna stereotypes. Women are trafficked for the purposes of prostitution, linking “trafficking victim” to the whore but also to the madonna since the individual was forced into prostitution against her will.⁷ Constructing “trafficking victim” through feminine rules of sexuality reinforces the idea that only women are “trafficking victims.” Men are not recognized as legitimate “victims” (Buckland 2008). This narrative also genders “trafficking victims” as feminine through the gendered rules of agency and protection. This narrative constructs the trafficked person as a naïve victim because she was deceived by traffickers. It is also feminizes the trafficked person because she lacks agency, she has no ability to control her movements and therefore must be rescued and rehabilitated by NGOs. It also reinforces the construction of women as dependent and in need of protection because the victim cannot remove herself from the situation but needs the NGOs to come to the rescue. This narrative does afford trafficked individuals a certain degree of agency at the beginning of the story--the woman made the choice to leave her home, demonstrating agency in her desire to improve her position or socioeconomic opportunities. But by the end of the narrative the individual is constructed as lacking agency because after the initial decision all autonomy in decision-making and action is lost. The “trafficking victim” is the slave of the traffickers until she is saved by the NGOs. The narrative constructs women as only able to express agency in making the wrong decision which leads them to be trafficked.

NGOs are the central actors in this narrative. They are constructed in opposition to the feminized “victim.” NGOs have agency because they provide trafficked individuals

⁷ I am not arguing that men or boys cannot be prostitutes. However I would argue that the connotations around the word prostitute generally lead to identification with the women and girls.

with rehabilitative services and advocate on their behalf. They also provide protection to trafficked individuals by rescuing them from their exploitative situations. The gendered rules of agency are reinforced through the gendered rules of protection. NGOs are protectors because they demonstrate agency while “trafficking victims” are in need of protection because they are constructed without agency.⁸ NGOs become valorized and their activities justified through this narrative which puts NGOs in important position of saving trafficked individuals.

The trafficker is also an actor in this narrative. It is the actor that sets the trafficking process in motion. In this narrative the traffickers are constructed as masculine regardless of their sex. Traffickers are constructed as masculine because they show autonomy and rationality. They deceive the “trafficking victim” demonstrating autonomy in decision-making. They demonstrate rationality in desire to turn a profit. Through gendered rules of agency autonomy and rationality are masculine traits, therefore the traffickers are constructed as masculine.

Strategies

This narrative casts human trafficking as a violation of basic human rights. Because this narrative links the causal chain back to prostitution and the unequal gender relations that make sexual exploitation possible, the strategies that arise to combat trafficking focus on 1) combating sexual exploitation by abolishing or regulating prostitution and 2) focusing on rehabilitating women by providing them with social

⁸ NGOs are placed in the masculine role of protector regardless of whether NGOs are gendered masculine or feminine. In many cases NGOs are largely staffed and run by women, which can gender NGOs feminine. However, in this narrative the NGO is gendered through its actions not its composition, thus the NGO, in this narrative, is gendered masculine and juxtaposed against the feminine “trafficking victim.”

services, such as employment training, housing, and legal services. Focusing on the United States, CATW reports that

Overwhelmingly, social service providers, U.S. women in the sex industry and some law enforcement officials emphasized that victims of trafficking need a range of services such as legal advocacy, shelter, transitional housing, medical and dental care, counseling services, linguistic and job training. Battered women's and rape crisis services need to expand their mission to include victims of the sex industry. Adequate resources from local, state and Federal government need to be allocated for these additional programs and services (Raymond and Hughes 2001: 96).

Strategies focus on the creation and implementation of human rights legislation and a human rights approach to rehabilitation and rescue. The overarching focus of this narrative is on addressing the rights of the individual.

Migration

Shenaz, from Bangladesh, was a married woman and mother of three when she decided to pay an agent to go to Bahrain to work. . . . Shenaz wanted her children to get an education. She approached an agency, borrowed money from loan sharks, neighbours and friends and put her house down as collateral to pay the agent for the \$1000 ticket to Bahrain. She would work as a domestic worker for a family in Bahrain. After one month there, the employer told Shenaz she had to go to work in America. Shenaz was frightened and refused, but eventually agreed to go. Shenaz moved to New York to work as a live-in domestic worker for a high level diplomat of the United Nations and his wife. Upon arrival, her employers took her passport away from her. She worked seven days a week and was virtually imprisoned. They paid her husband in Bangladesh US\$100 per month, but Shenaz was given no money for herself. They left Shenaz alone in New York for days at a time without any food. She was forbidden from going out alone, and in nine months, she only left the apartment three times, and always with her employers (Taken from Pearson 2000).

The third narrative employed to understand and address human trafficking is the migration narrative. This is the least incorporated narrative at the international level though it is increasingly advocated by international organizations and policy makers. The context within which this narrative arose is that of a context of critique, such as the critique of existing anti-trafficking legislation and immigration law. Advocates of this

narrative point to particular factors such as the feminization of poverty as leading to the increase in trafficking. Gillian Caldwell, co-director of the Global Survival Network, states,

Trafficking must be seen as part of the worldwide feminization of poverty and of labor migration. Women are structurally denied access to the formal and regulated labor markets, and pushed into unprotected or criminalized labor markets, such as sexual and exploitative domestic work (1997).

Radhika Coomaraswamy, the United Nations Special Rapporteur on Violence Against Women echoes this sentiment stating,

“The failure of existing economic, political and social structures to provide equal and just opportunities for women to work has contributed to the feminization of poverty, which in turn has led to the feminisation of migration, as women leave their homes in search of viable economic options. Further, political instability, militarism, civil unrest, internal armed conflict and natural disasters also exacerbate women’s vulnerabilities and may result in an increase in trafficking’ (quoted in O. 2009: 75).

Though research supports these statements, the migration narrative is the least used narrative to understand human trafficking.

Stories that use migration lenses to understand human trafficking can be distilled into the following narrative:

An individual desires to migrate. This can be for a variety of reasons, perhaps the desire for employment, the need to leave a violent situation (whether this be actual physical violence or structural violence), or the desire to improve one or one’s family’s socioeconomic status. Lacking available legal routes, the individual looks into alternative means of migration. This search for alternative or illegal avenues of migration leads them into the hands of traffickers who willingly “smuggle” them across international borders. However, when the individual reaches the destination instead of being allowed freedom of movement and choice in employment s/he is forced into

slavery-like conditions, working for little or no wages as s/he attempts to pay back the huge “debt” owed for being “smuggled”.

The main focus of this narrative is on the root factors that create the conditions for human trafficking to occur. Using the economic language of demand-pull and supply-push, this narrative focuses on those factors that lead individuals to seek alternative avenues of migration. It also focuses on the things that encourage the trade in humans, such as the desire for cheap labor and cheap sexual servitude. It is these push and pull factors which encourage international migration. However, the restriction of state migration policies (such as those advocated by the security narrative) mean individuals cannot migrate on their own but instead need the help of a third party. This greatly increases their vulnerability to being trafficked.⁹ This framework seeks solutions in improving labor laws to give workers rights in order to fight against exploitative situations and improving migration laws to prevent the need for traffickers and/or smugglers.

Actors

Central to this story is the individual. This narrative recasts the individual from a “trafficking victim” (who does not act but only acted upon) to an individual expressing agency that becomes victimized (one that is acted upon, yet can still act). Though the victim is gendered, it is the least feminized construction created by the three narratives. In this narrative individuals express agency throughout the process, albeit a limited form of agency. Though the individual is forced to work and may not have complete decision-making autonomy in employment and movements, agency is demonstrated with verbs

⁹ See e.g. Kyle and Koslowski 2001; Andrijasevic 2003.

such as “working” to pay off the debt. The trafficked person is acting even while being acted upon. Rather than simply casting trafficked individuals as “victims,” this narrative recognizes trafficked persons as individuals who have agency and desires.

The traffickers are another central actor in this narrative. The traffickers function much the same in this narrative as they do in the previous narratives. The traffickers demonstrate autonomy and rationality, gendering the traffickers as masculine through gendered rules of agency. They have autonomy in their ability to move the trafficked individuals around at will and in their ability to force these individuals to work where they choose. The traffickers also demonstrate rationality in their desire to make a profit and their ability to continually increase the debt owed by the trafficked person.

The state is a secondary actor in this narrative. The state is important because it is state action, particularly the tightening of borders, lack of socioeconomic provisions and reduction in traditional avenues of legal migration, which increases the vulnerability of migrants and the conditions for exploitation. The state also implements the anti-trafficking strategies put forth by this framework. Strategies such as measures to improve economic development, end gender discrimination and relax migration laws. The state does not necessarily figure prominently as protector or rescuer but as an institution which is complicit in human trafficking. Gillian Caldwell, in her opening remarks at the International Conference “The Trafficking of NIS Women Abroad” stated,

consider the complicity of sending countries, such as the Phillipines, whose national economy relies on labor export and the hard currency sent home by migrant women, without assuming any responsibility for the conditions under which they work. And receiving countries in the West which too often respond to trafficking in terms of the primary state interests in limiting migration, and cracking down on organized crime. We found that stricter immigration regulations simply increase a migrant woman’s reliance

on organized criminal groups, which offer to handle her visa and travel arrangements (1997).¹⁰

The state is cast as masculine but not in opposition to feminized victim. Instead states demonstrate their masculinity through the protection of borders, their complicity in maintaining and encouraging gender subordination and their agency in limiting legal migration.

Strategies

The casting of events in this particular causal chain leads to an alternative set of strategies for addressing and combating human trafficking. The overarching goal of this approach focuses on preventing trafficking before it occurs and recognizing why individuals become vulnerable to trafficking. Strategies focus on increasing economic development and improving the economic security of citizens in source countries. In destination countries more avenues for legal migration need to be created. The solutions created by this narrative provide the most comprehensive and holistic approach to addressing and combating human trafficking because they focus on the causes and outcomes. This narrative asserts that trafficking is part of a wider reality that includes influences of globalization and increased international migratory patterns (Desyllas 2007). Vincenzo Musacchio states,

A migration policy towards victims would be a valuable weapon in combating the traffic. If destination countries were to start issuing them with residence permits on humanitarian grounds it might encourage victims to give evidence and help dismantle the migration routes (2004: 1028).

Though the use of the word “victim” can be problematic due to gendered rules of agency and the passivity which it encompasses, Musacchio points to the the importance

¹⁰ Available at <http://www.ilhr.org/ilhr/reports/traffic/remarks.html> (accessed 4/28/2011).

of constructing anti-trafficking strategies which address both the causes and outcomes of trafficking.

Conclusion

Understandings of human trafficking largely come from the narratives about it. Each narrative provides a slightly different version of events, constructs actors with specific gendered identities and provides alternative strategies to address human trafficking. The security narrative provides a security framework which focuses on strategies such as securing borders, fighting transnational organized crime rings and prosecuting crime. The human rights narrative provides a human rights framework which addresses trafficking by abolishing prostitution, rehabilitating victims and strengthening human rights legislation in order to better protect individuals and trafficked persons. The migration narrative provides a labor framework which focuses on improving migration and labor laws and addressing socioeconomic development as a way to prevent human trafficking from occurring.

Each of these narratives provides presupposition or background knowledge on what trafficking is and how to combat it. This background knowledge was necessary for actors negotiating the Palermo Protocol because they provided information about the issue as well as solutions to address it. The next two chapters will concentrate on the negotiations that produced the Palermo Protocol, exploring how the narratives influenced the drafting and final text of the Protocol. Through identification of wording and the strategies the Protocol creates, the influence of the different narratives can be found in specific articles as well as in the overarching framework that was produced to address trafficking.

CHAPTER 6

CONSTRUCTING GENDERED TRAFFICKING VICTIMS: HISTORICAL ANTI-TRAFFICKING AGREEMENTS AND THE NEGOTIATIONS FOR THE PALERMO PROTOCOL

This chapter begins with an analysis of historical international anti-trafficking law, looking at the five international anti-trafficking agreements concluded prior to the Palermo Protocol. Two of these were negotiated by states, two under the auspices of the League of Nations and one under the auspices of the United Nations. Starting with a discussion of the general climate that gave rise to anti-trafficking legislation, attention is then turned to each individual agreement. The language of the agreement is analyzed focusing on the way it constructs “trafficking victim.” Attention is also drawn to whose security is advanced by these agreements, states or trafficked persons. Evidence shows that these agreements were drafted in the context of the security framework much like the one used in the Palermo Protocol. The chapter ends with a critical history of the negotiations that produced the Protocol.

Historical Approaches to Combating Human Trafficking

The movement to create international legislation to combat human trafficking gained popularity at the end of the 19th century (Doezema 2002: 22; Jahic and Finckenauer 2005: 24). Several factors contributed to the attention and “great public outcry” against trafficking, including the Purity Movement and concern and fear over “white slavery” (Doezema 2002: 22). Both the Purity Movement and fears of “white slavery” reflected the climate of social upheaval that was occurring in the late 1800s. Increased migration, rapid urbanization, and greater independence and mobility of women along with the liberalization of sexuality and sexual practices created tensions in society. These tensions became centered around prostitution. “The ‘problem’ of

prostitution became a flash point for all three of these social tensions, immigration, urbanization, and the sexuality of women” (Langum 1994: 17). These tensions led to the creation of a social movement which had both domestic and international counterparts and was known as the Purity Movement.

The Purity Movement had several goals. The main goal was the “repression of prostitution, as opposed to regulation” (Langum 1994: 23). Josephine Butler headed the International Purity Movement which “waged a crusade in England against an alleged international traffic in women among brothels throughout the world” (Langum 1994: 23). In 1885, William Stead, also a prominent figure in the International Purity Movement, published an article in the *Pall Mall Gazette* “alleging a trade in very young girls. The reformers also charged that women were being transported against their will and held in bondage” (Langum 1994: 23, see also Walkowitz 1980: 126). This article, and the attention to “white slavery” that followed, created a climate of concern centered on prostitution and human trafficking. This culminated in an international conference being held in the early 20th century and a proposal for an agreement that would address the trafficking of young girls and women (Langum 1994: 23). This proposal led to the drafting of the first international agreement against human trafficking in 1904.

The 1904 Agreement

The first international agreement to address the trafficking of women was the *International Agreement for the Suppression of the “White Slave Traffic.”*¹ It was drafted in Paris and signed by 16 states in 1904 (Doezema 2002: 23). This agreement focused specifically on women and children recruited outside of national borders for the

¹ The full text of this Agreement is available at http://www.oas.org/juridico/MLA/en/traites/en_traites-inter-wst.pdf.

purposes of engaging in prostitution. It required states to coordinate “all information relative to the procuring of women or girls for the immoral purposes abroad” (International Agreement 1904). This agreement specifically refers to the “white slave traffic” and linked trafficking with prostitution (or immoral purposes). The focus of the agreement was specifically on white European women.

Gendered rules of agency are evident in articles two and three of this agreement. Women are constructed as lacking agency with such statements as “persons *in charge of women and girls destined for an immoral life*” (International Agreement 1904, emphasis added). If someone is in charge of a woman then she is not in charge of herself. She is not her own agent but rather is acting under the direction of someone else. Article three states “Governments also undertake. . .to send back to their country of origin those women or girls who desire it or who may be claimed by persons exercising authority over them.” In this passage trafficked women are constructed without agency because they can be “claimed.” Being claimed constructs a woman as an object not a subject, therefore she does not have agency. Also constructing an individual as under someone else’s authority constructs them without agency. The individual is unable to exercise authority over herself if someone else is exercising it over her.

Gendered rules of sexuality are also evident in this document. Article two states “For persons in charge of women or girls destined for an immoral life (International Agreement 1904). The “immoral life” is a direct reference to prostitution and draws on the gendered rules of sexuality which define the proper sexual behavior of women. The selling of sex is not proper behavior for women, thus women and men must be

protected against it. Trafficking in this agreement specifically means trafficking for the purposes of prostitution and therefore the agreement only covers sex trafficking.

Evidence of the rules of protection are also found in the text. The language used in the preamble as well as article four draws on gendered rules. The preamble states, “being desirous of securing. . .women and girls under age, effective protection against the criminal traffic known as the ‘White Slave Traffic’ (International Agreement 1904). The word protection is used and it is focused on women and girls. Article two states “Governments undertake. . .to entrust temporarily and with the view to their eventual repatriation the victims of criminal traffic when destitute to public or private charitable institutions or to private individuals offering necessary security” (International Agreement 1904). The protection of women is again evident because this passage places women or girls under someone else’s charge. They are unable to protect themselves or take care of themselves so another individual or organization must protect them.

Not only are the rules of protection, sexuality and agency evident in this first international agreement against trafficking, so is the focus on state security. The first international agreement to address human trafficking largely focuses on coordinating information, with attention focused on border controls and repatriation of immigrants back to their home countries. Overall, this agreement focuses more on ensuring that women are in their proper place and that states have control over their territory than it is with ensuring the rights of trafficked persons. Only in article two are rights tangentially addressed. Article two discusses the role of charitable organizations which includes social service organizations. But it does not specify what rights these women and girls

have, if any, and by placing them in charge of these organizations it ignores their subjectivity and autonomy.

The 1910 Agreement

In 1910, states came together to negotiate a second international agreement. It was entitled the *International Convention for the Suppression of the White Slave Traffic*.² This agreement criminalized trafficking in white women and recognized that acts of trafficking often crossed international borders. It also acknowledged the multiple ways in which trafficking could occur, for example “by fraud, or means of violence, threats, abuse of authority, or any other means of compulsion, procured, enticed or led away (International Convention 1910).”

The rules of agency can be identified in this convention because this convention states that women do not have agency even when they consent. Article one states that traffickers should be punished when “to gratify the passions of others, has procured, enticed or led away, *even with her consent*, a woman or girl underage (International Convention 1910, emphasis added). Even when individuals consent they are constructed without agency. Rules of sexuality are also evident in the agreement because it states that when women consent to immoral purposes (prostitution) they cannot consent (International Convention 1910). This convention focuses on trafficking for prostitution and attempts to limit prostitution across borders by defining it as trafficking.

The major thing to stand out in this agreement is that it specifically states women cannot consent—even when they consent. A woman’s consent is considered irrelevant.

² The full text of this Convention is available at <http://www1.umn.edu/humanrts/instree/whiteslavetraffic1910.html>.

This constructs women without the ability to consent. This demonstrates that historically trafficked persons have been constructed without agency, even when they are agents in their own decisions and actions. The state actively and effectively nullifies this agency by creating an agreement which disregards consent. This reflects rules of agency by defining “victim” in such a narrow sense that when individuals do demonstrate agency they cannot be victims.

The 1921 Agreement

In 1921 a new instrument was drafted under the auspices of the League of Nations. It was entitled *International Convention for the Suppression of the Traffic in Women and Children*.³ This agreement includes women and children recruited across international borders as well as within national borders. While the title of the agreement does not include the term ‘white slave traffic’ this wording is still used in the preamble of the convention. The convention was intended to consolidate earlier agreements and expand the number of State Parties. The 1921 Agreement recognized that children of both sexes are trafficked and requires states to prosecute persons who commit the offence of trafficking. However, while this agreement recognizes that children are trafficked, it places trafficked women and children in the same category. This reinforces women’s lack of agency with children’s lack of agency and conflates women and children.

Rules of sexuality are again evident as the link between trafficking and prostitution continues to dominate this agreement. While the agreement drops the term “white slave

³ The full text of this Agreement is available at http://ec.europa.eu/anti-trafficking/download.action;jsessionid=MJ94NydQB19ymN4Sc8LNYPNc6R932JnTHpfwpj9JHCLdWqvGnwcl855818409?nodeId=fa0674a6-1b22-4f09-8fb9-35f84524a0c5&fileName=1921+international+convention_en.pdf&fileType=pdf.

traffic” in the title, the term is still used in the preamble making the link obvious and overt. It states “to secure more completely the suppression of the Traffic in Women and Children described in the preambles to the Agreements of 18 May 1904 and to the convention of 4 May 1910, under the name of “White Slave Traffic” (ICSTWC 1921: preamble). While the agreement was constructed to address human trafficking, it focuses specifically on sex trafficking and attempts to prohibit the “wrong” type of sexual behavior in women.

Rules of agency and protection are also evident. For example the phrase “protection of women and children” appears twice in the document, in article six and again in article seven. Article six states “Ensure *the protection of women and children* seeking employment in another country,” while article seven states “regulations as are required for *the protection of women and children* traveling on emigrant ships” (ICSTWC 1921, emphasis added). Protection is a masculine trait while being protected or in need of protection is a feminine trait. This constructs women and children without agency, reinforcing the feminization of trafficked persons as well as the idea that women and children are in need of protection because they lack the agency to protect themselves.

This document also largely focuses on state security. Its few provisions focus on prosecution and punishment. For example, article two is about prosecution, article three is about punishment and articles six and seven are about legislative measures. The rights of trafficked persons are never addressed, only the rights and obligations of states. This makes the agreement less about ensuring the rights of trafficked persons and preventing trafficking than about protecting the state from illegal immigrants.

The 1933 Agreement

In 1933 the *International Convention for the Suppression of the Traffic in Women of Full Age* was drafted under the auspices of the League of Nations.⁴ This convention resulted from recommendations given by the Traffic in Women and Children Committee to the Council of the League of Nations (ICSTWFA 1933). The 1933 agreement was different than previous agreements because it outlawed anyone who recruited women for prostitution *even if* that woman gave consent. Article one states “Whoever. . .has procured, enticed or led away, even with her consent, a woman or girl of full age for immoral purposes to be carried out in another country, shall be punished” (ICSTWFA 1933).

In this passage the rules of agency construct women in such a way that they cannot consent or be their own agents even when they are consenting. This agreement makes women’s consent, and therefore their autonomy, irrelevant in matters of sexuality. This constructs all trafficked persons, and women, as victims and denies them any agency. The rules of sexuality also play into this passage as it revolves around prostitution and acceptable behavior for women. Women cannot consent to prostitution even when they do, thus they are not agents nor can they be sexual beings.

The 1933 agreement, like the previous ones, also largely focuses on state security. Articles two, three and four all focus on aspects of state security, such as law, communication among law enforcement agencies and how to resolve disputes among states. There are no provisions specifically relating to the individuals who are trafficked. The provisions in this agreement only apply to traffickers and their prosecution.

⁴ The full text of this Convention is available at <http://www1.umn.edu/humanrts/instree/women-traffic.html>.

1949 United Nations Convention

The 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*⁵ was drafted to consolidate the four previous international agreements. The 1949 Convention while professing to address trafficking was largely focused on outlawing prostitution and keeping immigrants who may potentially work as prostitutes out of a states' territory.

The rules of sexuality are again evident as the major focus of the 1949 convention continues to be trafficking for prostitution. The first sentence of the preamble makes this very clear by focusing on trafficking as prostitution and prostitution as a violation of women's human rights. It states "Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community" (UN Convention 1949). The use of the word prostitution and its placement before the word traffic demonstrates that the impetus behind this agreement is not only trafficking but also outlawing prostitution. It is about controlling the sexual behavior of women.

Rules of agency are also overt. The 1949 Convention again effectively nullifies women's agency and ability to consent. Article one states

The Parties to the present Convention agree to punish any person who, to gratify the passions of another: (1) Procures, entices, or leads away, for the purposes of prostitution, another person, *even with the consent of that person*; (2) Exploits the prostitution of another person, *even with the consent of that person* (UN Convention 1949).

⁵ The full text of the Convention is available at <http://www2.ohchr.org/english/law/trafficpersons.htm>.

Women do not have agency even when they specifically demonstrate it. It feminizes all trafficked persons and denies agency to women. Article nineteen also constructs trafficked persons as lacking agency when it states “to make suitable provisions for their temporary care and maintenance” (UN Convention 1949). This constructs individuals as lacking agency because they must be put in someone else’s care. It also draws on rules of protection because the security of trafficked persons is placed in the care another person or organization.

The rules of protection are also evident in articles seventeen and nineteen. In article nineteen states “Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance” (UN Convention 1949). Placing trafficked persons in someone else’s care means that they are in need of protection. Protection they cannot provide themselves since they do not have the agency to do so. Article seventeen, which deals with border controls, focuses on the protection of trafficked persons at both arrival and departure. It states “To make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while en route” (UN Convention 1949). Again the professed focus is on protecting women. However, given that this protection focuses more on border controls than on the rights of trafficked persons, it is debatable as to whether the protection of the individual is more important than the protection of borders.

The focus of the 1949 convention is also largely on state security. Only one article addresses the needs of victims. Article sixteen states “Parties agree to take or

encourage through their public or private educational, health, social, economic or other related services measures for the prevention of prostitution and for the rehabilitation and social adjustment of victims of prostitution” (UN Convention 1949). Though the focus of this article is on the individual, it is only in reference to the victims of prostitution. It does not address any other type of trafficking and links trafficking with prostitution and services with the rehabilitation of prostitutes. In contrast, articles two through four, six through fifteen and seventeen through nineteen all address various aspects of state security such as domestic law, punishment, extradition, criminal jurisdiction, investigation and border controls. Article five, which addresses the rights of victims, is only in relation to the criminal proceedings that are focused on the state and traffickers. State security becomes the most important objective. This demonstrates the influence of the security framework on this agreement.

The anti-trafficking agreements negotiated prior to the Palermo Protocol were limited in that they only covered women and children and only focused on human trafficking for the purposes of sexual exploitation. The Palermo Protocol enlarged the definition of trafficked to cover additional forms of exploitation such as labor. But even with the recognition of various forms of trafficking, the gendered narratives still construct “trafficking victim” in specific gendered ways much as previous anti-trafficking agreements had done.

Negotiating the Palermo Protocol

In January 1999 the negotiations for the Palermo Protocol began in Vienna, Austria under the auspices of the United Nations Office of Drugs and Crime (UNODC). On the agenda was the drafting of the Convention Against Transnational Organized Crime and three additional protocols. The Trafficking Protocol was negotiated over a

total of eleven sessions. This section provides a critical history of the negotiations. Going through each session, the major changes that occurred in the drafting of the Protocol are addressed as well as those issues that received the most attention.⁶

Pre-session Activities

Prior to the first negotiating session, in September 1998, the delegation from Argentina and the delegation from the United States drafted proposals for the Trafficking Protocol. The Argentinean draft entitled the Protocol “Draft elements for an agreement on the prevention suppression and punishment of international trafficking in women and children, supplementary to the Convention Against Transnational Organized Crime” and focused specifically on women and children.⁷ The Argentinean version had eight articles and a preamble. The preamble also addressed trafficking, focusing on the vulnerability of women and children, the previous international instruments which address exploitation and why a new international instrument was needed. Article one addressed objectives, but was much longer than the United States version and included provisions for law enforcement as well as measures for the return and protection of women and children. These protective measures included barring any penalty being imposed on victims and abolishing cultural practices which allowed the exchange of women as a form of payment. It also included a subparagraph on providing

⁶ I will not go into exhaustive detail over the negotiations, as many of the changes that occurred were slight changes in the order of wording or slight changes in language. I also will not address every article that was negotiated in the Palermo Protocol as some of the articles are irrelevant to the current discussion. For example, the final article 15 (settlement of disputes), article 16 (signature, ratification, acceptance, approval and accession), article 17 (entry into force) article 18 (amendment), article 19 (denunciation), and article 20 (depository and languages) are common to the Convention and its Protocols as well as other international agreements. Because of the coinciding nature of these articles and their commonality to international agreements my discussion will not focus on any of these articles.

⁷ The full text of this draft is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V99/802/43/PDF/V9980243.pdf?OpenElement>.

victims with psychological, medical and legal assistance. Article two addressed the scope while article three focused on definitions. These definitions included trafficking in persons, child, and illicit purpose of aim. Article four dealt with offences and article five dealt with the seizure of gains. Article six addressed cooperation among states in legal and judicial matters. Article seven addressed information and education, specifically public information campaigns, data collection on trafficking and creation of civil society associations. Article eight dealt with criminal proceedings and maintaining the confidentiality of victims during such proceedings (Ad Hoc 1999b).

The United States' version had nine articles and a preamble.⁸ The preamble addressed the issue of trafficking, linking it to organized crime and addressing why an international instrument was needed. Articles one through three dealt with the objectives (article 1), scope (article 2) and obligation of states to criminalize (article 3). Article four addressed the victims of trafficking. Article five dealt with law enforcement and six with prevention of trafficking. Articles seven through nine dealt with other provisions (article 7), signature and ratification (article 8) and entry into force (article 9) (Ad Hoc 1999a). The United States' version used the term trafficking in persons but paid special attention to women and children. The draft Trafficking Protocol was entitled "Draft Protocol to Combat International Trafficking in Women and Children supplementary to the United Nations Convention on Transnational Organized Crime."

The gendered rules of protection, agency and sexuality can be found in the preliminary drafts of the Protocol. The United States' version incorporates rules of protection and links it to women and children with such statements as "persons who are

⁸ The full text of this draft is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V98/575/05/PDF/V9857505.pdf?OpenElement>.

vulnerable to such trafficking will not be sufficiently protected” and “protection of women and children” (Ad Hoc 1999a). This is reinforced by the rules of agency and the use of the word victim throughout the text. For example the word victim appears ten times through out the text as well as in the title of article four. The word victim is also linked to women and children with statements such as “protection of women and children, who are so often the victims of organized crime” (Ad Hoc 1999a). This statement reinforces notions of masculine protection. It also reinforces the conflation of femininity with lack of agency by associating women with victim. This constructs the category of “trafficking victim” as a woman or child lacking agency and in need of protection.

The gendered rules are also evident in the Argentinean version. Protection is linked to women and children in article one which states “To ensure the protection of women and children, in accordance with their best interests” (Ad Hoc 1999b). This again reinforces the idea that femininity lacks agency and thus is in need of protection through the linking of the word protection to women and children. It also reinforces rules of agency with the state “in accordance with their best interests.” It is not the women and children who would be defining their own interests but the state. This constructs women and children as lacking the ability to define their interests and thus reifies their need for protection. This draft also links the word victim to women and children several times, again reinforcing the idea that women are victims and thus lack agency. While the Argentinean draft is separate from the United States draft the results are the same, a “trafficking victim” is female lacking agency and in need of protection.

First Session

The Palermo Protocol and various articles of the two drafts were discussed at the first negotiating session, held in January 1999. At the first session both drafts were read

and proposals from several state delegations were submitted. After the initial reading of both drafts, the delegation from the United States and the delegation from Argentina announced they would submit a revised and consolidated draft of the Palermo Protocol at the second session (Ad Hoc 1999c). The delegation from Australia submitted a proposal which focused on the relationship between the Palermo Protocol and the Convention. The proposal specified the delegation's view that the protocols were optional and that to sign onto a Palermo Protocol the state must be party to the Convention. It also specified that the protocols should deal with specific matters not contained in the Convention (Ad Hoc 1999d). This was incorporated into the Palermo Protocol and reflected in the final text which contains an article specifically addressing the relationship between the Palermo Protocol and the Convention.

The delegation from Australia also submitted a joint proposal with the delegation from Canada which focused on specific aspects of trafficking. This proposal argued that a distinction had to be made between smuggling and trafficking. The proposal also noted that trafficking included additional forms of criminal behavior such as fraud, coercion, and/or kidnapping in addition to exploitation. It also suggested the inclusion of provisions facilitating the return of the victim and providing rehabilitative measures. These suggestions were also incorporated into the drafts of the Palermo Protocol and are reflected in several articles of the final text, including article three which defines trafficking and provisions addressing the prevention of trafficking. The delegations were open to the United States' draft which focused on trafficking in persons rather than just women and children. However the proposal specified that the vulnerability and "special circumstances" of women and children must be recognized and maintained (Ad Hoc

1999d). This is also reflected in the final text where the phrase “especially women and children” appears after most instances of the phrase “trafficking in persons.” The discourse changed slightly to include male persons, but even with this change the focus remains on women and children. This provides evidence that over time the discourse surrounding human trafficking has changed, though the narratives largely remain the same.

Second Session

At the second session held in March of 1999, the delegation from the United States and the delegation from Argentina submitted a revised draft of the Palermo Protocol entitled “Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.”⁹ The revised draft contained eighteen articles and a preamble. This version largely drew on the proposal submitted by the delegation from the United States while incorporating certain aspects of the Argentinean draft as well as additional articles not included in the original proposals.

Revised draft of Palermo Protocol

The preamble, largely based on the United States’ draft, addressed the issue of human trafficking and linked it to organized crime. It contained provisions identifying the vulnerability of women and children and arguing for comprehensive action to address this crime. It incorporated the Argentinean version’s provision recognizing that international instruments existed to address exploitation but no universal instrument

⁹ The full text of this draft is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V99/812/66/PDF/V9981266.pdf?OpenElement>.

existed to address trafficking in persons and/or women and children. In this draft both persons and women and children appeared in the text in brackets.

Article one addressed the purpose of the Protocol. This article combined both the United States' draft and the Argentina's draft of article one, renaming it to include purpose in the title. The article began with the text contained in article one of the version submitted by the delegation from the United States but added to it the text from the Argentinean version with slight modifications. The modifications included deleting the subparagraph addressing the exchange of women as payment as well as the subparagraph on preventing penalties from being imposed on victims of trafficking. An additional subparagraph was also added which addressed education and informing the public about trafficking (Ad Hoc 1999e).

Article two included two separate options. The first option was entitled scope of application. It stated that the Protocol would apply to trafficking in persons which was defined as

The recruitment, transportation, transfer, harbouring or receipt of persons:
(a) by the threat or use of kidnapping, force, fraud, deception or coercion, or
(b) by the giving or receiving of unlawful payment or benefits to achieve the consent of a person having control over another person, for the purpose of sexual exploitation or forced labour (Ad Hoc 1999e).

It also included a subparagraph on trafficking in children, stating that children were trafficked when used for sexual exploitation regardless of whether the child had consented. It was largely taken from the United States draft but deleted the final subparagraph on obligations regarding national laws or other international agreements (Ad Hoc 1999e). Option two was entitled definitions and was taken from the Argentinean draft. This option included the definition of child (under eighteen), defined trafficking in children and trafficking in women as well as illicit purpose or aim. Under the

definition of illicit purpose or aim actions included slavery, forced labor, prostitution and sexual exploitation, pornography, nullifying marital status and the extraction of body tissue and organs (Ad Hoc 1999e).

Article three was entitled obligation to criminalize. It was taken from the draft submitted by the delegation from the United States with minimal revisions. It obligated states to take measures to ensure that domestic law would criminalize trafficking in persons. Included as a criminal offense was the act of attempting to commit, directing others to commit, participating as an accomplice or in any way contributing to the commission of the crime of trafficking in persons. The final subparagraph states that “the knowledge, intent or purpose required to commit an offence. . .may be inferred from objective or factual circumstances” (Ad Hoc 1999e).

Article four was entitled “Assistance of and protection of victims of trafficking.” This article was drawn from the proposal submitted by the delegation from the United States but with revisions. For example, the first subparagraph, while addressing domestic legislation, also incorporated provisions submitted by Argentinean delegation on confidentiality of legal proceedings. It also included provisions that would provide victims of trafficking with information about legal proceedings and give them assistance to provide their testimony. It contained provisions for children such as education and housing and directed states to provide for the physical safety of trafficked persons while they are within a state territory (Ad Hoc 1999e).

Article five was original to the revised draft and was entitled “Status of victim in receiving state.” This article encouraged states to change immigration laws to allow victims either temporary or permanent residence within their territory, telling them to

give “consideration to humanitarian and compassionate factors in the determination of a victim’s status” (Ad Hoc 1999e).

Article six was also a new provision and original to the revised draft. It was entitled “Return of victims of trafficking.” Its provisions included that states “facilitate and accept, without delay, the return of a victim of trafficking” (Ad Hoc 1999e). It also stated that parties to the Protocol must verify if a person is a national and, if the person does not have the proper documentation stating they are a national, the receiving state will reissue such documents to allow the person to enter their territory.

Article seven was also original to the revised draft of the Protocol and was entitled “Victim rehabilitation.” Though it was added to the revised draft it incorporated provisions that appeared in article four of the original draft submitted by the United States. This new article provided trafficked persons with the ability to seek restitution from offenders and compensation for damages. It also encouraged states to create measures to provide for the physical, psychological and social recovery of such persons (Ad Hoc 1999e).

Article eight, entitled “Law enforcement measures” draws on article five of the draft submitted by the United States’ delegation with minor changes. This article ensures that parties to the Protocol cooperate with one another in order to exchange information to determine whether individuals crossing borders without documents or with fraudulent documents were perpetrators or victims of trafficking. The exchange of information included the methods used for transporting trafficked persons, the methods used for recruiting individuals and the links among groups engaged in trafficking. It also had a paragraph regarding the training of law enforcement, specifying that this training should

focus on prevention of trafficking as well as protection of the rights of trafficked persons (Ad Hoc 1999e). These provisions were only meant to be in terms of those that went beyond the Convention (Travaux Préparatoires 2006: 397).

Articles nine through eleven were also original to the revised draft of the Palermo Protocol. Article nine was entitled “Border controls.” This article required states to adopt measures in order to prevent trafficking or strengthen border control measures such as checking documents or inspecting vehicles. It also required states to adopt specific training measure so when trafficked persons were detected they would receive the appropriate protection (Ad Hoc 1999e). Article ten was entitled “Security of Travel Documents.” This article required states to adopt measures to ensure that documents they issued were not easily altered or replicated (Ad Hoc 1999e). Article eleven was entitled “Verification of documents.” This article consisted of one paragraph requiring states to verify whether travel or identity documents were legitimate when asked by another state party (Ad Hoc 1999e).

Article twelve, entitled “Prevention of trafficking,” combined article six of the United States’ draft (prevention of trafficking in persons) and article seven of the Argentinean draft (information and education). It asked states to consider adopting programs to prevent trafficking and the revictimization of trafficked persons. It also had provisions regarding the creation of information campaigns, the establishment of methods for gathering data and research, the creation of civil society associations that address trafficking, and the creation of programs to combat trafficking. The final subparagraph asks that state parties provide the Secretary-General with a list of domestic organizations that address trafficking in order to compile a database (Ad Hoc 1999e).

Article fourteen was entitled “Other measures” and was original to the revised draft. This article allowed states to adopt stricter measures than those contained in the Protocol. These could include stricter legislative measures as well as measures that allowed for the revocation of visas to people known to be traffickers or implicated in trafficking (Ad Hoc 1999e).

Article fifteen was entitled “Savings clause” and stated that nothing in the Protocol would affect the “rights, obligations and responsibilities” contained in other international agreements. Articles sixteen, seventeen and eighteen draw directly on articles seven, eight and nine of the United States draft version. These articles deal with “other provisions,” “signature, accession and ratification,” and “entry into force” (Ad Hoc 1999e).

The gendered rules of protection, agency and sexuality can be found in this revised version as well. The rules of protection are evidenced by the use of the word protect which appears several times throughout the text. Often the word protect is linked to the word victim which reinforces the lack of agency that is represented through the use of the word victim. It is also linked to the phrase women and children which reinforces gendered ideas about femininity being in need of protection and masculinity being the provider of protection. The rules of agency are found in the continual use of the word victim and its link to women and children. The word victim appears thirty one times throughout the text. This reinforces the construction of “trafficking victims” as women who lack agency. Finally the rules of sexuality can be found in the focus on prostitution. Though the definition of trafficking includes forced labor, sexual exploitation

and prostitution are placed before forced labor. This keeps the attention focused on sex trafficking.

Issues debated

At the second session there was discussion as to whether to enlarge the Protocol to cover persons instead of women and children. Almost all delegations wanted the Protocol to address persons, however there was a request for clarification from the Secretariat as to whether creating a protocol on trafficking in persons was departing from the mandate given the Ad Hoc Committee. The answer, given at the third session was that the mandate was specifically for an instrument addressing trafficking in women and children. However, it was determined that if the Ad Hoc Committee decided that a protocol on trafficking in persons was better, it could request that the General Assembly modify its mandate to reflect this. In resolution 54/126 the General Assembly determined that the Protocol should address trafficking in persons instead of only women and children (GA 2000).¹⁰ This is an important change to the discourse surrounding human trafficking because it demonstrated that states and IGOs were willing to see trafficking as occurring to persons, not only women and children. However, this change was tempered by the fact that trafficking in persons was still linked to women and children because in the text the phrase “women and children” appears after the phrase “trafficking in persons.”

There was also debate around the definitions to be contained in the Protocol, specifically there was debate over whether the Protocol should define sexual exploitation and forced labor. The main concern of state delegations centered on the

¹⁰ The full text of this Resolution is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/246/56/PDF/N0024656.pdf?OpenElement>.

breadth of exploitation. There were questions as to whether it be defined broadly so that all forms of exploitation were included (which a number of delegations supported) or if it should be defined narrowly with specific parameters laid out in the text. There were also suggestions as to what the definition should encompass (Travaux Préparatoires 2006: 333). Some suggestions included that forced labor should include forced marriage and forced domestic work. Other suggestions included adding the phrase involuntary servitude, extraction of body organs and pornography. It was also suggested that the term trafficking should be defined in the text. With this suggestion there was debate as to whether this definition should specify across international border or include trafficking within borders as well (Travaux Préparatoires 2006: 352). In the final text the word international is not inserted every time the word trafficking is used, however article four does specify that the Protocol applies to crimes that are transnational in nature.

There was also debate around the issue of repatriation and how to return victims to their home country. In the text the word voluntary return was used and some delegation suggested deleting the word voluntary reflecting a concern over border control and immigration policy. However other delegations raised the issue that if victims were returned against their will then refugee law would apply (Travaux Préparatoires 2006: 352).

The issue of coercion and consent was also debated (Travaux Préparatoires 2006: 352-353). The main issue debated around the issue of coercion was that it would be difficult to prove in practice. The debate arising from the issue of consent revolved around whether the definition of consent contained within the Protocol was in line with concepts contained in other international agreements such as the Convention on the

Rights of the Child. The proposal was also made that certain articles contained in the Trafficking Protocol should reflect what was being negotiated in the parallel forum that was drafting the Smuggling Protocol. The delegations from Australia and Canada put forth this suggestion, thus articles eight, eleven, twelve, thirteen, and fourteen were adopted as such (Travaux Préparatoires 2006: 383-419).

Rolling Text

The next discussion on the Trafficking Protocol occurred at the fourth session. However between the second and fourth sessions certain articles were revised into rolling text. The rolling texts were common to articles one, two, four, eight, nine and eleven. Most of the changes in the rolling text were minimal and included taking words out of brackets and adding them into the text, the addition or deletion of minor phrases and in some cases reinserting text that appeared in the original drafts but which had been left out of the joint revised version. One of the major changes that occurred in the rolling text was that throughout the text the phrase “persons, especially women and children” replaced the words “persons” and “women and children” which had appeared in brackets after the first session.

Fourth Session

At the fourth session, held June and July 1999, revisions were made to several articles. Several inter-governmental organizations (IGOs) also submitted position papers on the text. The IGOs that made statements included the Special Rapporteur on violence against women (SRVW), the Special Rapporteur on the sale of children (SRSC), the International Labor Organization (ILO), the International Office of Migration (IOM), and the United Nations High Commissioner for Human Rights (UNHCHR).

Revisions to Palermo Protocol

The title of the Protocol was discussed at the fourth session. It revised to read “Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.” Several delegations had opinions regarding the title. It was suggested that the Protocol should focus on prevention, investigation and prosecution rather than focusing on punishment (Travaux Préparatoires 2006: 322). Other delegations also suggested that the title should use the word protection to reflect that this instrument was about protecting trafficked persons as well as preventing human trafficking (Travaux Préparatoires 2006: 322). This suggestion was ignored as the final title does not use the word protection.

At the fourth session article seven was revised into a rolling text. In this first draft of the rolling text the word provide (in relation to immigration law) was replaced with enact (Ad Hoc 1999f). In the next version of the rolling text there was debate as to whether the title should be “status of victim” or “situation of victim.” In addition there was debate, as evidenced by the bracketed text, as to whether the phrase “states shall enact” or the phrase “shall [consider] enacting” [immigration laws] should be used (Ad Hoc 1999g).

Article six was also revised into a rolling text at the fourth session. This rolling text was not changed in any significant way except to add the words trafficked persons to the text. Several debates arose around this article (Travaux Préparatoires 2006: 384). For example there was debate over whether the word return or repatriation should be used (Travaux Préparatoires 2006: 384). In this context there was also debate about who should bear the costs of repatriation and whether the individuals needed to consent

to be returned (Travaux Préparatoires 2006: 384). There was also debate over whether the word victim or trafficked persons should appear in text (Travaux Préparatoires 2006: 384). The delegations from Mexico and China also suggested different wording for the article, with the Mexican delegation's wording based upon what appeared in the 1949 UN Convention on Trafficking (Travaux Préparatoires 2006: 384).

Proposal submitted

At the fourth session the rolling text on the preamble was addressed. The Special Rapporteur on violence against women (SRVW), its causes and consequences¹¹ submitted a position paper in which she suggested that the preamble should include a paragraph regarding human rights provisions found in other international agreements such as the International Covenant on Civil and Political Rights, the Convention on the Elimination of all Forms of Discrimination against Women, the Supplementary Convention on the Abolition of Slavery and the Convention on the Rights of the Child (Ad Hoc 1999h).

The SRVW also made proposals on article one. She suggested that in the article the purpose of trafficking should include the phrase slavery-like conditions so that it would cover situations such as domestic work, forced marriage and motherhood. She also stated that the protection of human rights should be stated as an explicit purpose of the Protocol. It was also suggested within the SRVW's position paper that the phrase sexual exploitation be deleted. She was of the view that the term was too broad and open to interpretation which would allow states to interpret sexual exploitation as all activities

¹¹ The Special Rapporteur on violence against women, its causes and consequences is a role created by the United Nations. The Special Rapporteur gathers information on violence against women from states, intergovernmental organizations and nongovernmental organizations and provides suggestions for addressing violence and inequality. The Special Rapporteur also works to make sure that violence against women is acknowledged and addressed in treaties and international and national policy.

within the sex industry, thereby limiting individuals ability to freely choose to work in the sex industry (Ad Hoc 1999h). This was also suggested by the ILO for similar reasons (Ad Hoc 1999i).

The Special Rapporteur on the sale of children, child prostitution and child pornography (SRSC) suggested that the preamble should include a paragraph on the special vulnerability of children, vulnerabilities which are unique and separate from the vulnerabilities of women. The SRSC also suggested that reference to specific international agreement should be included such as the 1980 Hague Convention on the Civil Aspects of International Child Abduction (Ad Hoc 1999j). It is interesting to note that neither of the suggestions made by SRVW or SRSC were incorporated into the final version of the preamble. Provisions regarding the protection of human rights were incorporated into the final text, but there was no reference to other international agreements that protect human rights.

In relation to article two several statements were made by IGOs. The SRVW wanted a non-discrimination clause that would address women, formerly trafficked persons, sex workers and undocumented migrants who were trafficked. She also proposed several changes to be included in the definition of trafficking. For example, she suggested purchase and sale be included in the element of action and that abuse of authority and debt bondage be included in the element of means. Finally, she suggested that trafficking should be seen as a crime separate from each of its component parts and that movement should play an important role in the definition (Ad Hoc 1999h). The ILO wanted to expand the definition of labor exploitation to include serfdom and forced labor (Ad Hoc 1999i). The SRSC stated that the definition should

distinguish between cross border and domestic trafficking and that regardless of what a child is trafficked for it is always condemnable thus the phrase “for the purpose of sexual exploitation or forced labour” should be deleted (Ad Hoc 1999j). The UNHCHR suggested that trafficking in children should be a separate definition (and thus subparagraph) and that the special rights of children must be stated and recognized (Travaux Préparatoires 2006: 354).

The delegation from Belgium also proposed that after the word coercion the following phrase should be included “or through the abuse of the particular vulnerability of an alien due to that persons’ illegal or precarious administrative status, or through the exercise of other forms of pressure or abuse of authority such that the person has no real or acceptable choice but to submit to such pressures of abuse of authority” (Ad Hoc 1999k). This wording does not appear in the final draft. In the final text any reference to legal status was deleted and the definition of coercion was left broad.

In regards to article five both the SRVW and the ILO made suggestions. The SRVW suggested that criminalization should also refer to enforcement of legal measures to safeguard against non-enforcement of domestic anti-trafficking law. She also suggested that a reference should be made to the criminalization of actions that occur in the process of trafficking not just the act of trafficking itself (Ad Hoc 1999h). The ILO suggested a provision that traffickers could be prosecuted in whichever country their crimes were committed in rather than only in their home countries. This was drawn from the ILO Migrants Workers Convention of 1975 (Ad Hoc 1999i).

In regards to article six both state delegations and IGOs made statements. Delegations suggested adding additional provisions regarding protection of victims such

as a non-discrimination clause. Others emphasized that a balance must be struck between protection and assistance as well as law enforcement. The point was raised that confidentiality in legal proceedings might be hard to enforce in reality. Delegations from developing countries expressed concern that their economic situations could inhibit their ability to implement parts of the Protocol. There was also discussion about strengthening the protection of children within the Protocol (Travaux Préparatoires 2006: 367).

In regards to confidentiality of legal proceedings, the SRVW as well as the UNHCHR both had reservations about the wording. They argued that it would be easy for states to have discretion over whether privacy was maintained. Because of this they wanted the words “in appropriate cases” deleted. Both also wanted provisions ensuring that trafficked persons would not be detained, imprisoned or prosecuted. The ILO had similar concerns regarding criminal proceedings, suggesting that the article should contain provisions about the specific rights of trafficked persons as well as legal procedures available to them. In regards to law the ILO also raised the issue of how to protect individuals who exposed violations of the Protocol or national legislation to protect them from reprisals (Travaux Préparatoires 2006: 367).

In relation to article seven, the SRVW wanted to make sure that deportation was addressed, specifically that trafficked persons were not deported because threat of deportation often prevented victims from coming forward. It was suggested that states provide victims with residency in order to facilitate the prosecution of traffickers. The SRVW suggested an additional paragraph stating these provisions (Travaux Préparatoires 2006: 378).

The UNHCHR also submitted a note that suggested as soon as a person was identified as a trafficked person this should immediately prevent their being expelled from the territory. It was argued that trafficked persons should not have to go through any additional process to be granted temporary residence and that protection and assistance should become immediately available. It was the UNHCHR understanding that these provisions would also aid law enforcement in prosecuting traffickers by making victims more willing to help law enforcement and participate in criminal proceedings (Travaux Préparatoires 2006: 378).

In relation to article six both the SRVW and the UNHCHR submitted notes regarding the return of trafficking persons. The SRVW suggested that financial support should be given to organizations working with trafficked persons (Travaux Préparatoires 2006: 385). The UNHCHR stated that the safe and voluntary return of trafficked persons must be at the core of protection strategies (Travaux Préparatoires 2006: 385).

The SRVW and the UNHCHR submitted positions on article twelve regarding prevention of trafficking. The SRVW asked that the Protocol contain stronger language and that information campaigns be part of prevention strategies. The UNHCHR stated that any measures aimed at prevention must not infringe upon the rights of people to migrate within or across borders. This suggestion was also supported by the ILO (Travaux Préparatoires 2006: 393).

Finally in relation to article eight on law enforcement measures the SRVW stated that training needed to include cross cultural, gender and sensitivity training of law enforcement officials and that these measures should not inhibit the right of peoples to move freely. These positions were also supported and reinforced by statements made

by the ILO (Travaux Préparatoires 2006: 399). These suggestions were incorporated in to the final text.

Fifth Session

At the fifth session the Trafficking Protocol was discussed in informal consultations. The major thing to occur at the fifth session was that delegations from Belgium, Poland and the United States submitted a reformulated draft of the Trafficking Protocol (Ad Hoc 1999l).¹² This reformulated version largely changed the order of the articles, placing articles that addressed similar substantive issues together and under chapter headings. It was suggested in the consultations that this reformulated version become the basis for all future discussion regarding the Trafficking Protocol (Add Hoc 1999m). Some delegations also suggested that every time persons appeared in the text it should be followed by the phrase, “especially women and children” (Travaux Préparatoires 2006: 324).

Revisions to Palermo Protocol

At the fifth session, held in October 1999, the rolling text of article one was discussed. Most delegations agreed that a broad definition of exploitation was desirable, thus it was suggested that the word “particularly” be added before forced labor and sexual exploitation. The wording of paragraph one option one was revised to read “particularly for the purpose of forced labour or sexual exploitation” (Ad Hoc 1999n). The rolling text of option two remained the same.

At the fifth session it was decided to add a new article on definitions to the Protocol. It drew on the definitions provided in the Argentinean draft, however the terms

¹² The full text of the draft is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V99/881/61/PDF/V9988161.pdf?OpenElement>.

that were used drew on those found in United States' draft. Overall there was consensus that trafficking in persons should be defined rather than trafficking in women and trafficking in children, however many delegations suggested defining child in the text (Travaux Préparatoires 2006: 339). Sexual exploitation was defined as prostitution, sexual slavery and production of pornography. Forced labor was defined as services extracted without the free and informed consent of the person. A list of exceptions to forced labor was included in brackets, and included provisions for military conscription or work required as result of calamity (Ad Hoc 1999n).

There was also discussion over article two on the "Scope of the application." Article two consisted of two options. At the informal consultations that occurred at the fifth session most delegations expressed their preference for option one over option two (Travaux Préparatoires 2006: 355). At informal consultations the word "international" was inserted before trafficking. Many delegations favored this as it would bring the Protocol in line with the Convention. However other delegations did not favor this wording because they felt the Protocol should cover all persons, not just those trafficked over international borders (Travaux Préparatoires 2006: 355).

Issues debated

Several discussions occurred during the fifth session. One of the debates was around the definition of sexual exploitation. The delegation from the Netherlands suggested replacing exploitation with the word slavery (Travaux Préparatoires 2006: 339). There was also discussion over whether the word "forced" should be placed before the word prostitution. Several delegations argued that proving forced prostitution could be difficult. Other delegations argued that it was imperative to make the distinction

between an individual who prostitutes one's self freely and those who do not (Travaux Préparatoires 2006: 340).

Another debate centered on the phrase consent. Consensus was reached to replace the phrase "voluntary" with the phrase "free and informed" before the word consent (Travaux Préparatoires 2006: 340). There was continued debate surrounding the use of the word coercion versus force, particularly on what wording would be stronger (Travaux Préparatoires 2006: 340). There was also discussion as to whether the exceptions to forced labour should be retained. There was no agreement regarding this issue and it was decided that the delegations would come back to it at a later session (Travaux Préparatoires 2006: 340).

The issue of debt bondage was also discussed. However no resolution was reached as to where this should be placed, for example if it should be included in forced labor or if it should be covered under another term (Travaux Préparatoires 2006: 340). It was also agreed that the phrase "for the purposes of sexual exploitation or labor" be replaced with the phrase "with the aim of submitting them to any form of exploitation, as specified in article. . . ." This was placed in brackets in the text to denote the consensus regarding the addition (Travaux Préparatoires 2006: 340). In paragraph three "sexual exploitation" was put in brackets to denote that the Protocol would not be limited to sexual exploitation but the final wording would be determined at a later date (Travaux Préparatoires 2006: 355). Other issues discussed were the issue of consent with children. It was widely agreed that children could not consent to exploitation and that under the age of consent meant under eighteen years of age (Travaux Préparatoires 2006: 355).

Sixth Session

Several things occurred at the sixth session which was also held in October 1999. The major event included the adoption of the revised structure of the Protocol. While the restructured version of the Protocol had submitted at the 5th session and used as the basis for informal consultations, it was not adopted until the sixth session. The informal working groups also played a large role in the negotiations that occurred at this session. Several revisions were made on the basis of the informal working group's suggestions.

Revisions to the Palermo Protocol

Article twelve, which in the restructured version became article ten, was discussed at the sixth session. This article dealt with prevention of trafficking and was drafted into the rolling text by the informal working group that had convened by request of the chairperson. There was debate over the first paragraph. In the previous version the article was phrased as "Each state party shall consider establishing state policies and programmes to prevent"(Ad Hoc 1999f). In the revised version of the rolling text read "State Parties [shall endeavour to] establish comprehensive polices, programmes and other measures" (Ad Hoc 2000a).¹³ There was discussion over whether the words in brackets should be deleted or, as one delegation suggested, the words "to the extent possible" should be added (Travaux Preparatoires 2006: 394). Other minor changes to the wording of the subparagraphs were made but the substance of them remained the same. Similar changes were made to paragraph two. In the rolling text paragraph two was shortened to one paragraph on information campaigns, research and social and economic initiatives but the substance remained the same (Ad Hoc 2000a). The

¹³ The full text of this draft is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V99/912/58/PDF/V9991258.pdf?OpenElement>.

substance of paragraph three was changed. All references to the creation of an organizational database compiled by UN Secretary General were removed (Ad Hoc 2000a). There was also discussion as to whether the title of the article should be expanded to include the phrase “protection from revictimization” (Travaux Préparatoires 2006: 394).

Also discussed at the sixth session was article eight on law enforcement. In the restructured text this article was relabeled article seven. The rolling text of this article largely stayed the same. The minor change that occurred was in paragraph two where the phrase “including protection the victims from traffickers” was added after “protecting the rights of the victims” (Ad Hoc 2000a). Aside from this revision there was little discussion regarding this article.

Also at the sixth session article eight on border measures was discussed. At the sixth session two options were presented for this article and were incorporated as rolling text, both of which were drafted by the informal working group convened by request of the chairperson. There was debate over whether the title should address border controls or border measures but no consensus was reached at this negotiating session (Travaux Préparatoires 2006: 404). The first option consisted of one paragraph stating that State Parties would adopt measures necessary to detect and prevent trafficking by increasing or strengthening their border controls (Ad Hoc 2000a). This paragraph was based on text in the earlier versions as well as articles contained in the Smuggling Protocol (Travaux Préparatoires 2006: 404). The second option began with a statement regarding the movement of individuals. It stated that the article was without prejudice to the free movement of people but that states must increase border controls as necessary

to prevent trafficking (Ad Hoc 2000a). Paragraph two and three addressed commercial carriers and measures to prevent them from being used in trafficking. Paragraph four addressed sanctions to be applied to these carriers if they were used to commission trafficking and paragraph five addressed the revocation of visas of persons known or implicated in human trafficking (Ad Hoc 2000a).

During the sixth session the rolling text for the article on travel documents was also presented. It was decided at this session to restructure and amend the text of this article so that it more accurately reflected what was taking place in the negotiations on the Smuggling Protocol. This meant that the restructured text was revised into one paragraph with two subparagraphs. This first subparagraph addressed the alteration of travel documents while the second subparagraph addressed the creation of forged travel documents. It was decided that this article should be based on the parallel article of the text in the Smuggling Protocol.

Issues debated

There was discussion at the sixth session about commercial carriers. The issues raised included questions on the obligation of provisions addressing commercial carriers and if tourist vessels were included in these provisions (Travaux Préparatoires 2006: 405). There was discussion about how to address individuals traveling over land and what means of transportation this included. Again no consensus was reached and so various options were placed in brackets within the text (Travaux Préparatoires 2006: 405).

In regards to paragraph three, debate revolved around how individuals were to ascertain the validity of travel documents. It was agreed that this meant checking for obvious defects or expiration dates and did not require expertise in identifying falsified

or fake travel documents. There was also suggestion about whether to use the words passport and visa or the word travel documents (Travaux Préparatoires 2006: 405).

In regards to paragraph four there was debate over the use of the word “sanction” versus “penalty.” Consensus was reached on using the word sanctions. There was also the suggestion that this paragraph should address cooperation between state parties (Travaux Préparatoires 2006: 405). In regards to paragraph five there was again debate over wording and the use of the phrase “denial of visa” versus “denial of entry,” as it was recognized that some individuals did not require visas to enter particular territories (Travaux Préparatoires 2006: 405).

Seventh Session

At the seventh session the rolling text of article one addressing the purpose of the Protocol was discussed. At this session the two options were deleted in favor of working with the revised text. The revised text limited article one to a single paragraph which stated

The purpose of the protocol is to prevent, and combat [international] trafficking persons, paying particular attention to the protection of women and children, who are so often the victims of such trafficking and to promote and facilitate cooperation among States Parties to meet those objectives (Ad Hoc 2000b).¹⁴

There was debate over whether to keep the word international in the purpose, hence the word was bracketed and decision was deferred to a later session (Travaux Préparatoires 2006: 337). It was also suggested that the phrase “women and children who are so often the victims of such trafficking” be moved to preamble and taken out of article one. No specific decision was made on this (Travaux Préparatoires 2006: 337).

¹⁴ The full text of this draft is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V00/528/43/PDF/V0052843.pdf?OpenElement>.

There was also debate as to whether something should be inserted into the article to distinguish the Trafficking Protocol from the Smuggling Protocol (Travaux Préparatoires 2006: 337).

At the seventh session the article on definitions was also discussed. There were three options that were presented for this article. The first option defined trafficking in persons, sexual exploitation and forced labor. It kept the exceptions to forced labor that were presented in earlier versions of the Protocol. The second option defined trafficking in persons, slavery, forced labor, servitude and trafficking children. It deleted the exceptions to forced labor that were kept in option one. Option three contained only one paragraph which defined trafficking in persons. In the same paragraph it defined exploitation as “at a minimum sexual exploitation, forced labour or services and debt bondage” (Ad Hoc 2000b). Most of the discussion around these options centered on previous discussions about what should be included in the definition of exploitation, the correct wording for the article and whether or not children (and adults) could consent to certain activities (Travaux Préparatoires 2006: 343).

Changes were also made to the article which addressed the “scope of application.” This was based on text proposed by the United States. In previous drafts of this article the definitions had been subsumed under the scope. With the definitions being moved to a separate article this article now stated “This Protocol shall, except as otherwise provided herein, apply to the prevention and combating, as well as the protection of victims of, [international] trafficking in persons as defined in article 2 bis of this Protocol and [, when involving an organized criminal group,] as defined in article. . .of the

Convention (Ad Hoc 2000b). There was discussion over whether the word international should be kept, but as with previous articles this was deferred to a later session.

In the rolling text of article four, “assistance for and protection of victims of trafficking in persons” was modified. In the first paragraph the phrase “In appropriate cases and to the extent possible under domestic law” was taken out of brackets and placed within the text of the article. Paragraph two was divided into two paragraphs. The first dealt with court proceedings and the rights of victims to obtain information and present testimony. The second addressed social aspects of rehabilitation such as housing, counseling, employment and medical assistance. There were also paragraphs addressing the specific needs of children, the safety of victims and the right of victims to obtain compensation (Ad Hoc 2000b).

At the seventh session it was determined to use the word status instead of the word situation in the title of article five. It read “Status of the victim in the receiving State.” There was also debate over the wording of the victim’s right to remain in a state territory. It was agreed that the right of an individual to remain in a territory was always at the discretion of the state in question (Travaux Préparatoires 2006: 280). The wording of humanitarian and compassionate factors contained in paragraph two was also discussed. The delegations were of the view that compassionate factors referred to personal circumstances while humanitarian factors were those established in human rights instruments (Travaux Préparatoires 2006: 380). Compassionate factors would be those factors that were unique to each case and which focused on the individual’s personal circumstances, for example socioeconomic status. Humanitarian factors were

those factors that would apply to any individual in the same circumstances, for example conflict or wide spread gender discrimination and equality.

The rolling text of article eight, “Border controls” was also modified. At the sixth session two options for this article were presented and in the seventh session the second option was chosen as the basis for further discussions. The title replaced the phrase “control” with the phrase “measures.” It also added the phrase “to the extent possible” to paragraph one so it read “Without prejudice to international commitments for the free movement of peoples, State Parties shall strengthen, to the extent possible, border controls as may be necessary.” The phrase with due respect to human rights was also added to the end of the paragraph though this was placed in brackets. The brackets were retained because several delegations were of the view that these rights were protected in other articles and thus it was not necessary to address them in this article (Ad Hoc 2000b; Travaux Préparatoires 2006: 406).

In the third paragraph it was determined that the phrasing “all passengers traveling land air or sea” would cover rails and roads (Travaux Préparatoires 2006: 406). It was also agreed upon that the words “called passport and visa” be kept the text, hence the brackets which appeared in the previous draft were deleted (Ad Hoc 2000b). In regards to the fourth paragraph it was determined that the final phrase elaborating upon specific sanctions (for example fines and forfeitures of vehicles used) would be deleted. The fifth paragraph was also revised so that it read “State Parties shall consider adopting measures that permit, in conformity with their domestic law, the denial of entry or revocation of visa of persons implicated in crimes covered by this protocol” (Ad Hoc 2000b).

It is also interesting to note that there were suggestions at the seventh session that when the word victim appeared in the text it be replaced with the word trafficked persons. The reason for this was that victim could refer to the legal status of an individual while trafficked persons was more inclusive (Travaux Préparatoires 2006: 406). This suggestion was ultimately ignored and the word “victim” was kept in reference to trafficked persons. Finally, at this session UNHCHR, UNHCR, UNICEF and IOM submitted a joint note supporting the need to emphasize the rights and protection of children within the Protocol (Travaux Préparatoires 2006: 406).

Eighth Session

At the eighth session, held February and March 2000, little was discussed in terms of the Trafficking Protocol. The two issues raised included a discussion over article eight on border measures. The UNHCHR, the UNHCR, UNICEF and the IOM submitted a note in which they emphasized that measures should be in place to protect and identify trafficked persons and intercept traffickers. They also noted that these measures must not intrude upon individuals’ human rights, particularly those set out in previous international agreements such as the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights (Travaux Préparatoires 2006: 407).

Ninth Session

The ninth session, held June 2000, also resulted in revisions to the Trafficking Protocol. Several issues were discussed. For example, discussion continued on definitions and how broad the definitions should be. The informal working group also continued its work making several suggestions on different articles contained in the Protocol. This would be the final session that addressed the Protocol prior to the eleventh session where the final text was adopted.

Revisions to the Palermo Protocol

Article One covering “purposes” was discussed and the rolling text was revised. The paragraph that composed article one was split into two subparagraphs with one paragraph addressing the prevention of trafficking and the second addressing state cooperation in order to achieve this. The reason for the restructuring was so that both paragraphs were understood to be of equal importance (Travaux Préparatoires 2006: 337). Some delegation also suggested that there should be a subparagraph referring to the protection of trafficked persons, parallel to text that was found in the Smuggling Protocol (Ad Hoc 2000c). This suggestion was taken and an additional subparagraph was added to the finalized text. It was also decided at the ninth session that the phrase “who are so often the victims of such trafficking” should be deleted after the words “protection of women and children” (Travaux Préparatoires 2006: 337).

Definitions were again discussed at the ninth session. The rolling text of the article was revised and the three previous options were replaced with a single text. This text defined trafficking in persons. Placed in brackets was the phrase “irrespective of the consent of the person.” Also placed in brackets was the phrase “the exploitation of the prostitution of others” prior to the phrase sexual exploitation. The brackets were included as a result of the debate that centered around the distinction, which had been raised before, as to whether there was a difference between the “prostitution of one’s self” and the “prostitution of others.” The informal working group came to a compromise with the words “use in prostitution” (Travaux Préparatoires 2006: 344). At the negotiations many delegations wanted a list to be included that elaborated upon different forms of exploitation that could potentially occur, particularly the removal of

organs (Travaux Préparatoires 2006: 344). The reference to removal of organs was included in the final text of the Protocol.

Article three on the obligation to criminalize was discussed. The rolling text of this article was similar to the rolling text presented at the fourth session with some modifications. References to specific subparagraphs of article two were taken out. The major revisions focused on restructuring the paragraphs and changing their order. However the substance remained the same.

Article four on assistance and protection of victims was addressed and the rolling text modified. Paragraph one was revised. The changes were minor and involved taking the word “identity” out of brackets. Similar changes were made to paragraphs two and five. Debate on paragraph three centered on the text. The result was that the sentence “In appropriate cases and to the extent possible, States Parties shall consider implementing measures to provide for the physical and psychological recovery of victims covered by this protocol and, in particular” was placed in brackets (Ad Hoc 2000d). There was debate over whether the provisions of this paragraph were to be mandatory or if their implementation was at the discretion of the states. At the ninth session the Chairperson asked the delegations to carefully consider their positions in order to come to a compromise on the paragraph. Several delegations made suggestions to the wording in order to reach a compromise (Travaux Préparatoires 2006: 371). There was also debate as to whether the word “and witnesses” should be included after the word “victim” when discussing legal proceedings. The reason for this was that it was suggested that witnesses may also fear reprisals. It was determined that

provisions for witnesses were covered in the Convention and thus these provisions would also apply to the Protocol.

Article six on the repatriation of trafficked persons was also revised. Much of the wording was changed and an additional paragraph was added. Paragraph one switched around the wording regarding the return of trafficked persons to the state in which they had permanent residence. But the idea remained the same: states agreed to facilitate the return of trafficked persons without delay. The second paragraph dealt with the return of trafficked persons, ensuring safety of such persons and legal proceedings. Paragraph three addressed the provisions provided by domestic law and acknowledged that the provisions of the Protocol would not prejudice any provisions already afforded by domestic law.

A new revision to article eight was proposed by the European Community. The revisions were proposed in order that the article would be more in line with what was occurring in the negotiations over the Smuggling Protocol. The major revision was the addition of paragraph two which stated that state border control agencies should cooperate with one another. Other revisions included deleting the words found in brackets in paragraph one of the rolling text. There were minor revisions to the wording of paragraph three as well as paragraph four. While the wording was changed the substance remained the same (Ad Hoc 2000e; Add Hoc 2000f).

Debates

At the ninth session the Preamble was again briefly discussed. Belgium proposed that the preamble of the Protocol should contain a reference to the previous United Nations' agreement on trafficking, the 1949 Convention for the Suppression of the

Traffic in Persons and of the Exploitation of the Prostitution of Others (Ad Hoc 2000g). This proposal was not incorporated into the final text of the Protocol.

There was much debate surrounding the issue of consent at the ninth session. Debate centered on how to word the issue of consent given the fact that consent was often irrelevant when referring to human trafficking. It was argued that the consent of the victim should not be relevant to determining whether they were trafficked. There was also discussion around the word servitude. Many delegations wanted to include the word servitude in the definition of trafficking in persons however some delegations were of the viewpoint that the word lacked clarity (Travaux Préparatoires 2006: 344).

The debate over article five centered on whether the Protocol would become a way for migrants to enter a country illicitly, particularly if legislation allowing victims to remain was enacted. While this was a concern, it was also recognized that there was a need to protect individuals from being revictimized (Travaux Préparatoires 2006: 380). There was also debate on repatriation and residence. It centered on what permanent residence meant and to whom it applied. For example it would not apply to temporary residents such as students (Travaux Préparatoires 2006: 386). There was also debate as to whether to retain the phrase “as far as possible, voluntary” at the end of paragraph two. Most delegations favored deleting it (Travaux Préparatoires 2006: 387).

Eleventh Session

At the eleventh session, held in October 2000, the Trafficking Protocol approved. The approved draft became the final text of the Protocol “that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999” (Travaux Préparatoires 2006: 324). The final text contained 20 articles, with the last six articles being on technical issues such as entry into force (article 17), denunciation

(article 19), amendments (article 18), depository and languages (article 20), signature ratification and acceptance (article 16), settlement of disputes (article 15) and a savings clause. The final title which was approved at the eleventh session was “Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime.

At the eleventh session the relationship between the Protocol and the Convention was discussed, a discussion that had been tabled since the first session. This article became article one in the final text of the Protocol. At the eleventh session France proposed a draft which contained two paragraphs. The first paragraph states that the Protocol supplements the Convention and they will be interpreted together. The second states that offences in the Protocol are offences of the Convention and that provisions of Convention shall apply to the Protocol (Ad Hoc 2000h).

The informal working group also submitted a proposal for article one. This proposal consisted of two paragraphs, very similar in nature to the proposal submitted by the delegation from France. The difference between the two proposals was that in the second paragraph the informal working group suggested the wording “The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol” where the French version did not include the phrase “*mutatis mutandis*” (Ad Hoc 2000i). The final version contains the phrase “*mutatis mutandis*.” However, the delegation from Japan noted that some of the provisions of the convention would not be applicable to the Protocol because articles in the Protocol stated otherwise (Travaux Préparatoires 2006: 329). The interpretive note that was approved along with this text addresses to what “*mutatis mutandis*” refers. It means with necessary modification. Hence the provisions of

the Convention would apply to the Protocol though it was understood that when applied they might require modification for intent to stay the same (Ad Hoc 2000j).¹⁵

At the eleventh session article one on purpose was also finalized. It was amended based upon a proposal by delegations from Azerbaijan and Germany and took into account a position note submitted by UNHCHR, UNHCR and IOM at the eighth session. This position suggested that protecting trafficked persons should be an explicit purpose of the agreement along with preventing trafficking. The final text takes this into account.

Article 2 on definitions was again discussed and finalized at the eleventh session. Three different options were submitted by the informal working group. Though the substance of the three options was similar, the major difference between the three versions was the order of the words in the definition (Ad Hoc 2000k; Ad Hoc 2000l; Ad Hoc 2000m). At the eleventh session the text of this article was finalized and became article three. The interpretive notes adopted with the text define “abuse of a position of vulnerability” as referring to any situation when the person has no acceptable alternative but to submit to abuse. Prostitution and sexual exploitation are understood to only refer to the context of trafficking thus states can implement the Palermo Protocol regardless of their domestic laws on prostitution. It also noted that the removal of organs from children for medical purposes did not constitute trafficking but illegal adoption when it resulted in slavery did. It should also be noted that at the eleventh session certain states had reservations about the text of this article. Specifically the Iranian delegation had reservations due to the inconsistency of the article with its domestic law (Travaux Préparatoires 2006: 346).

¹⁵ The full text of the Interpretive Notes is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/736/86/PDF/N0073686.pdf?OpenElement>.

Article two on the “Scope of the application” was discussed. Given the nature of this article, it was only finalized after the corresponding parts of the Protocol had also been finalized. However, while it was discussed, substantively this article did not change. In the final text this article became article four.

At the eleventh session article three was finalized and approved, though it was changed to article five in the final text. It was amended based upon a proposal by the delegation from Azerbaijan which suggested replacing “legislative and other measures” with the word “such measures” and that the phrase “where such conduct is intentional” being added to the first paragraph. It was also decided that the text referring to penalties be deleted. The interpretive notes that were approved with this article defined “measures” as those being in addition to legislation. This presupposed the existence of laws already existing to address the issue. It was also noted that attempting to commit an offense referred to those acts that were carried out in preparation for the crime as well as those acts carried out even if the perpetration of the crime failed (Ad Hoc 2000j).

At the eleventh session the text for article four was amended after proposals from two delegations, Azerbaijan and Mexico, were submitted. These proposals focused on paragraph three and paragraph four respectively. The interpretive notes to this article address paragraph three and clarify that the provisions set forth in the paragraph are applicable to both the receiving state and the state of origin. It is applicable to the receiving state only up until the trafficked person is returned to the state of his or her origin (Ad Hoc 2000j).

At the eleventh session the text of article five was finalized and became article seven. There was one reservation, lodged by the delegation from the United Arab

Emirates. They stated they did not consider themselves to be bound by the right of residence addressed in paragraph two (Travaux Préparatoires 2006: 381).

Article six was approved and became article eight after an additional paragraph was added upon the recommendation of French delegation. In addition the paragraphs were rearranged in the final text. Several interpretive notes were included with this article. It was explained that permanent residence meant long term residence. It clarified that “preferably voluntary” did not place any obligation on the state that was returning the trafficked person. The phrase “travel documents” was understood to be a broad term that included any type of document required for entering or leaving the state (Ad Hoc 2000j).

Article ten was finalized and approved in the eleventh session and became article nine. It included an additional two paragraphs based in the United States’ delegation’s proposal and a proposal of similar nature that was submitted by the delegation from China delegation (Ad Hoc 2000h; Ad Hoc 2000f). Article seven was amended based upon proposals by the delegations from Cuba, Mexico, and the Netherlands (one proposal) and Canada (proposal two). In the finalized version this became article ten. The interpretive notes to this article defined travel documents as any document required for entering or leaving a state (Travaux Préparatoires 2006: 408).

Article eight was amended and finalized as article eleven. The minor modification included the deletion of text that referred to human rights. This was because such rights were addressed in a later article (Ad Hoc 2000j). The interpretive notes for this article stated that paragraph two distinguished between trafficking and smuggling. It also recognized that it was easier for carriers to identify smuggled individuals rather than

trafficked, thus legislative measures should take this into account. There was also a note regarding paragraph four. This note acknowledged that it was only necessary for carriers to make sure that travel documents were possessed by individuals. They did not necessarily have to validate their authenticity (Travaux Préparatoires 2006: 408).

Verification of documents was moved from article eleven to article nine. The wording changed slightly from the second session but the substantive idea behind it did not. It still asked States to verify travel and identity documents when requested by another state. The interpretive notes for this article again contained a definition of travel documents (Ad Hoc 2000j). Article fourteen was negotiated over three sessions, the second, the sixth, the ninth and the eleventh. At the eleventh session the text was finalized. The purpose of the article was to ensure that the Protocol would not interfere with the rights of other international instruments.

Conclusion

This chapter addressed historical anti-trafficking agreements along with a critical history of the negotiations. This history focused on the various revisions made to the Protocol as well as the issues debated and proposals submitted by state delegations and IGOs. Most revisions focused on slight changes to wording and the order of articles. As the next chapter will demonstrate, states largely used a security framework when negotiating the Palermo Protocol. It is largely through the proposals submitted by IGOs that the alternative narratives of human rights and migration became incorporated into the final text of the Protocol. Statements submitted by the Special Rapporteurs, the ILO, the IOM and UNHCHR drew attention to the individuals who are trafficked and their rights, while states largely focused not on the individuals, but legal measures and cooperation between state agencies. These strategies and the focus on state security

was a result of the influence of the security narrative which dominated the negotiations.

The next chapter looks at these negotiations in order to identify the influence of the narratives on the text of the Protocol.

CHAPTER 7

THE SECURITY DISCOURSE VERSUS THE HUMAN RIGHTS DISCOURSE: THE INFLUENCE OF NARRATIVES UPON THE PALERMO PROTOCOL

This chapter moves from a summary of the negotiations to consider the extent to which the different narratives influenced the drafting of the Palermo Protocol. Using discourse analysis and concentrating on the language of the text, this chapter uncovers the narratives incorporated into the text of the Protocol. The influence of each narrative is important because the narrative determines the framework used to address human trafficking and the strategies advanced to combat it. More than this however, each narrative constructs “trafficking victim” in a particular gendered way. The extent to which the narratives influenced the Palermo Protocol determines what kinds of identities are created for trafficked individuals and the state, an issue that will be returned to in Chapter 8. As this chapter shows, the most influential narrative upon the drafting of the Palermo Protocol was the security narrative. After exploring the influence of the security narrative, the human rights narrative and the migration narrative are addressed to identify their influence upon the drafting of the Protocol.

Security Narrative

The security narrative is the dominant narrative in the Palermo Protocol. Several things identify the security narrative. Evidence of the security narrative can be found in the link between organized crime and human trafficking. According to the security narrative, organized crime is the root cause of trafficking. When organized crime is linked to trafficking in the text of the Protocol this demonstrates the influence of the security narrative. Particular strategies also identify the security narrative. For example, strategies that focuses on prosecution as a way to stop organized crime, any strategy that strengthens border controls, legal measures or law enforcement or a strategy

aimed at improving the communication and coordination between enforcement agencies demonstrates the influence of the security narrative. Also when the state is cast as the rescuer and protector of trafficked persons or citizens this provides evidence of the security narrative because the security narrative constructs the state as protector.

As shown, the link between organized crime and trafficking is a major sign of the security narrative because this narrative identifies organized crime rings as the major perpetrators of human trafficking. This link is made several times in the various drafts of the Palermo Protocol as well as in the final text. The link is initially inferred because the Palermo Protocol was constructed to be part of the larger Convention, a convention which specifically addresses transnational organized crime. By placing the Palermo Protocol under the Convention the link is made that human trafficking is perpetrated by organized crime. The Protocol was placed under the larger convention inferring that the best way to address human trafficking is to address the root cause—organized crime.

At the first session both the United States and Argentina submitted drafts of the Palermo Protocol. The link to organized crime is made several times in each draft. For example, the draft submitted by the United States made the link to organized crime twice in the preamble. In subparagraph *b* it states “Gravely concerned by the significant and increasing activities of transnational organized criminal organizations and other that profit from international trafficking in persons” (Ad Hoc 1999a). Again in subparagraph *c* it makes a reference to organized crime rings with the statement “transnational criminal organizations engaged in trafficking in persons” (Ad Hoc 1999a). The draft proposal submitted by Argentina also makes the link to organized crime. In the preamble it states that there is a need for the Palermo Protocol because no instrument existed to deal with

human trafficking and organized crime. It states “There is no such instrument whose specific objective is to deal with the problem of international trafficking in children for any purpose or of trafficking in both categories of person by criminal organizations” (Ad Hoc 1999b).

The link to criminal organizations is also made in several of the articles in the original draft submitted by Argentina. In Article one, subparagraph a it states “To adopt effective measures. . .for preventing and severely punishing members of criminal organizations whose aims include international trafficking” (Ad Hoc 1999b). This statement not only links trafficking to organized crime. It also puts forth a strategy of prosecution and punishment as the way to prevent trafficking. This strategy arises directly out of the security narrative. In article three the definition of international trafficking in children includes specific reference to criminal organizations (Ad Hoc 1999b). Article five which addresses confiscation of gains also includes a specific reference to organized crime. It states “State Parties shall take all necessary and appropriate measures to all the seizure and confiscation of gains obtained by the criminal organization” (Ad Hoc 1999b). These references and the link between organized crime and trafficking show that each draft was heavily influenced by the security narrative and the story this narrative puts forth about human trafficking.

Revised versions of the Protocol also kept the association between organized crime and human trafficking. The joint version submitted by Argentina and the United States maintained the link between organized crime and trafficking that was found in the initial drafts. The preamble of the revised draft makes the association twice, incorporating the wording used in the preamble of the draft submitted by the United

States and the preamble of the draft submitted by Argentina (Ad Hoc 1999e). The association of trafficking with criminal organizations is also made in article two, option two of the revised draft. Under the heading of definitions, trafficking in women and children is linked to organized crime and criminal organizations (Ad Hoc 1999e).

Intermediate drafts of the Protocol continue to maintain the link with organized crime. This association was made permanent in the final text. The final text of the preamble states “Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in combating that crime” (Ad Hoc 2000o).¹ In this statement human trafficking is linked to organized crime solidifying the relationship between combating organized crime and combating human trafficking. This provides evidence of the influence of the security narrative. The association between organized crime and trafficking is also made in article one of the final text which states that the Protocol is supplement to the Convention and that the provisions of the Convention also apply to the Protocol (Ad Hoc 2000o). As with the previous statement this also identifies organized crime as the major perpetrators of human trafficking and contends that the strategies used to combat organized crime will be the successful in the fight to combat human trafficking.

Article four which addresses the scope of the Palermo Protocol also makes the association between human trafficking and organized crime. It states “This Protocol shall apply. . .to the prevention, investigation and prosecution of the offences

¹ The full text of the final draft is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/736/86/PDF/N0073686.pdf?OpenElement>.

established. . .where those offences are transnational in nature and involve an organized criminal group” (Ad Hoc 2000o). This statement specifically links organized criminal groups and trafficking and in some ways limits human trafficking to only being committed by organized crime groups. This directly shows the influence of the security narrative because the security narrative is the only narrative to specifically draw attention to criminal organizations as perpetrators of human trafficking. Article ten also associates trafficking and organized crime when it states “The means and methods used by organized criminal groups for the purpose of trafficking in persons” (Ad Hoc 2000o). The continual association of organized crime and human trafficking within the various drafts and final text of the Palermo Protocol show that states were heavily influenced by the story told about trafficking by the security narrative.

Certain strategies also identify the influence of the security narrative on the negotiations that produced the Palermo Protocol. Strategies that focus on law enforcement, prosecution, border controls, coordination and cooperation are all hallmarks of the security narrative. These strategies focus on the state and the criminalization of certain types of offences and behaviors. Border controls and strengthening law enforcement are logical outcomes of understanding human trafficking as perpetrated by organized crime. According to the security narrative, the best way to stop human trafficking is to keep criminals out of state borders and apprehend them once they are in a state’s territory. Most of the strategies put forth in the Palermo Protocol to combat human trafficking are these kinds of strategies.

A strategy of prosecution dominates in the various drafts as well as the final text of the Protocol. In the original draft put forth by the United States, article three focuses on

legal measures. Entitled “obligation to criminalize,” this article focuses on implementing legal measures in domestic law to make sure that the offense of human trafficking is considered a criminal offense (Ad Hoc 1999a). The creation of laws is part of a prosecution strategy to combat human trafficking. Article four also incorporates legal measures and makes specific reference to court proceedings. For example, subparagraph c (ii) states “Assistance to victims of crimes covered by this Protocol, enabling their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders” (Ad Hoc 1999a). While ensuring that trafficked persons have the right to present their “views” or stories is evidence of the influence of the human rights narrative, it only occurs within the context of criminal proceedings or prosecution. This shows the stronger influence of the security narrative. Argentina’s draft also has provisions relating to prosecution. Article one includes provisions regarding the adoption of “relevant penal and administrative provisions” as well as adopting “effective measures...for preventing and severely punishing members of criminal organizations whose aims include international trafficking of women and children” (Ad Hoc 1999b). This includes measures to criminalize trafficking in domestic law in order to make it a prosecutable offense.

The revised text also maintains a focus on prosecution. For example, in article one it states that part of the purpose of the Palermo Protocol is to “investigate and punish international trafficking” (Ad Hoc 1999e). Investigation and punishment relate back to prosecution. The revised text incorporates the measures proposed by the United States in regards to criminalization of offences and court proceedings (Ad Hoc 1999e). The

revised text, much like the text found in the original drafts, continued to maintain a focus on prosecution. This provides evidence of the influence of the security narrative.

The final text of the Palermo Protocol is also heavily influenced by the security narrative. This is evidenced by the prosecution and legal strategies it advocates. For example, article four states “The Protocol shall apply. . .to the prevention, investigation and prosecution of offences established” (Ad Hoc 2000o). Prosecution is specifically stated as an objective of the Protocol and as a strategy for combating human trafficking. Article five also focuses on this strategy. Article five addresses criminalization and requires states to adopt legislative measures that would criminalize trafficking or any behavior associated with it (Ad Hoc 2000o). Outlawing behaviors aids states in prosecuting them when they do occur.

Article ten combines two strategies. It addresses exchange of information as well as training of law enforcement. By strengthening law enforcement these strategies relate back to prosecution. This article also contains provisions in order to “strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons” (Ad Hoc 2000o). All of which point to the fact that states believed that prosecution was the best strategy for addressing human trafficking. This strategy comes directly out of the security narrative.

A second strategy that arises out of the security narrative is a focus on border controls. This strategy is also evident in the original and revised drafts of the Palermo Protocol. In the original version presented by Argentina reference is made to the illegal nature of trafficking by phrases such as “illegal conduct” and “unlawful acts” (Ad Hoc 1999b). Article one requires states “to adopt effective measures, in conformity with their

domestic law” and “To adopt relevant penal and administrative provisions” (Ad Hoc 1999b). It also requires states to “undertake to classify as a criminal offence trafficking in women and children” (Ad Hoc 1999b). All of these provisions point to prosecution and as a strategy to combat human trafficking.

The original version presented by the United States also includes similar measures. For example, the preamble references the “need to punish traffickers” (Ad Hoc 1999a). Article one contains reference to prosecuting traffickers and article three requires states to “adopt such measures as may be necessary to establish as criminal offences under its domestic law conduct set forth in article 2” (which defines trafficking) (Ad Hoc 1999a). Again, these measures point to a strategy of strengthening legal measures and pursuing prosecution as the method to combat human trafficking. Both measures draw directly on the security narrative.

The revised version of the Palermo Protocol submitted by Argentina and the United States also contains measures relating to the law and prosecution. Article one asks states to adopt measures that would punish traffickers (Ad Hoc 1999e). It also incorporates measures to criminalize trafficking which would aid in the prosecution of traffickers. Article four refers to criminal proceedings which implies prosecution (Ad Hoc 1999e). There is also an article entitled “law enforcement measures.” This article specifically addresses aspects of law enforcement and measures which would strengthen law enforcement (Ad Hoc 1999e). All of these strategies point to the influence of the security narrative.

The final draft also incorporates attention to border controls. For example, article seven states “each State Party shall consider adopting legislative or other appropriate

measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases” (Ad Hoc 2000o). This addresses one issue of border control, the issue of who is legally allowed in a state’s territory and who is not. This provision, though it encourages states to make exceptions in their immigration law, also reinforces the idea of state sovereignty. It does not require states to implement such measures but only ask them to consider it. This means that it is ultimately left up to state as to whom they allow to stay in their territory. This shows the influence of the security narrative and a denial of the strategies put forth by the migration narrative.

Article eight addresses a similar issue, that of repatriation. Article eight includes provisions to ensure that states accept the return of their nationals. States must also reissue identity or travel documents if the trafficked person is without them (Ad Hoc 2000o). This relates back to border controls as it focuses on ensuring the control and integrity of travel documents.

Article eleven deals specifically with border controls. Included in this article are provisions for strengthening border controls, limiting or denying visa which would allow legal entry into a state territory and improving the coordination of border control agencies in order to better identify trafficked persons (Ad Hoc 2000o). States, while desiring to combat human trafficking, also wanted to ensure the integrity of their borders and thus they created an article which would address it. This again demonstrates the security narrative because it advances the strategies of border controls.

A third strategy that arises out of the security narrative is a focus on communication and coordination of law enforcement agencies. This too is evident in the original drafts of the Protocol as well as the subsequent and final drafts. In the draft

submitted by Argentina the preamble specifically states “Reaffirming the importance of international cooperation in the effective prevention and suppression of unlawful acts” (Ad Hoc 1999b). Article one also has provisions regarding judicial cooperation (Ad Hoc 1999b). Article six addresses cooperation stating “States Parties shall cooperate with non-State parties in the prevention, suppression and punishment of illicit international trafficking in women and children” (Ad Hoc 1999b). All of these provisions demonstrate the influence of the security narrative because it is the security narrative that puts forth a strategy of cooperation and communication to combat human trafficking.

The draft submitted by the United States also focused on cooperation. For example, article one reads the “The purpose of this Protocol is to promote and facilitate cooperation among State Parties to prevent, investigate and prosecute trafficking in persons” (Ad Hoc 1999a). In this statement cooperation is the major reason for the creation of the Protocol. Combating human trafficking is only addressed after cooperation. Again this provides evidence of the security narrative as well as the fact that states were more concerned with their security than with the security of trafficked persons.

The focus on cooperation was maintained throughout the intermediate drafts of the Protocol. The final text of the Palermo Protocol emphasized the importance of cooperation and communication in combating human trafficking. Article two subparagraph c states “To promote cooperation among States Parties in order to meet . . . objectives” (Ad Hoc 2000o) One of the main objectives of the Palermo Protocol is to ensure state cooperation, a strategy that arises out of the security narrative. Article ten also charged state authorities to cooperate with each other. “Law enforcement. . . or

other relevant authorities of states parties shall, as appropriate, cooperate with one another by exchanging information” (Ad Hoc 2000o). This article focuses on both cooperation and communication and is reinforced by the substance of article eleven. Article eleven encourages the cooperation of border enforcement agencies by stating “States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication” (Ad Hoc 2000o). This continued repetition regarding cooperation and communication demonstrates that states thought it was an important strategy for helping to combat human trafficking.

A final thing that arises out of the security narrative is a focus on the state as protector and rescuer. The security narrative places the state in the position of rescuing and protecting trafficked persons. The Protocol also places state in this position through the provisions included in several articles. For example, article two states that the purpose of the Protocol is “to protect and assist the victims of such trafficking” (Ad Hoc 1999b). Because this is an agreement negotiated by states and which applies to states it is the state that protects and assists. This constitutes the state as the protector and rescuer of trafficked persons and is directly in line with the story told by the security narrative. Again in article four, which addresses the scope of the Protocol, the issue of protection is raised. It states “The Protocol shall apply. . .to the protection of victims of such offences” (Ad Hoc 1999b). Even though the states are not directly named because the Palermo Protocol places states in the position of protecting trafficked persons.

Article six also addresses state responsibilities and again places states in the position of protector and rescuer. Article nine asks states to “establish comprehensive

polices, programmes and other measures: to protect victims of trafficking in persons, especially women and children from revictimization” (Ad Hoc 1999b). States are not only charged with being the protector they are also charged with protecting individuals from being trafficking again. The state is both rescuer and protector after rescue. However the language of these provisions is not as strong as the language of other provisions. For example in article six it states that “Each State Party shall endeavour to provide for the physical safety of victims of trafficking in person while they are in the territory” (Ad Hoc 1999b). These provisions are not required, it is only suggested that states consider such measures. All of the strategies discussed arise from the security narrative and provide evidence that this narrative greatly influenced the actors negotiating the Palermo Protocol. The security narrative dominated the beginning of the negotiations and continued to dominate in the final text.

The security narrative was most dominant in the original drafts of the Palermo Protocol. It was largely the framework employed by the United States. Because the United State’s draft was the basis for most of the revisions and the final text, this means that the security narrative held a dominant position throughout the negotiations. However over the course of the eleven sessions the other two narratives did influence some of the changes to the text. Thus even though the influence of the security narrative dominated it was not as all encompassing in the final text. Though the final text still largely employed a security framework, it did incorporate parts of the human rights and migration frameworks. Through the work of NGOs and IGOs, which will be discussed in the following sections, these narratives began to influence the action of states as they revised the text. This meant that the final text incorporated the concerns

and strategies of the human rights and migration framework to a greater degree. However, as will be shown, the language of these provisions was not as strong as the security provisions as will be discussed in the next section.

Human Rights Narrative

The human rights narrative also influenced the drafters of the Protocol. There were multiple NGOs and IGOs that participated in the negotiations, either by lobbying state delegations (NGOS) or submitting position papers (IGOs). Because of the work of these organizations, the Palermo Protocol does incorporate human rights protections into some of the articles. Evidence of the human rights narratives can be identified in several ways. The human rights narrative links trafficking with prostitution, so a focus on prostitution can point to the influence of the human rights narrative. The human rights narrative also focuses on human rights. At several points in the text of the Protocol individual human rights are addressed, demonstrating the influence of this narrative. Reference to the role of nongovernmental organizations also points to the human rights narrative because this narrative is advanced by and associated with NGOs. The strategies that result from the human rights narrative and the framework it produces focuses on strategies of rehabilitation. Thus measures addressing rehabilitation or aiding trafficked persons provides evidence of this narrative.

A focus on human rights, though not extensive, was maintained in the various drafts of the Protocol. For example, the draft submitted by Argentina included several provisions which addressed discrimination and the rights of individuals, though it did not use the phrase “human rights.” Article one asks states to “To prevent any type of penalty from being imposed on women and children victims of international trafficking” as well as “To progressively abolish those practices which allow husbands, families or

clans to order the transfer of a woman to another person for payment” (Ad Hoc 1999b). Both these provisions address inequality and discrimination which is central to human rights considerations. The version submitted by the United States specifically used the phrase human rights in the preamble, stating “To protect victims of trafficking in persons, including by protecting their internationally recognized human rights” (Ad Hoc 1999a). These phrases show a slight influence of the human rights narrative and the framework it advances.

This phrasing used in the preamble of the draft proposed by the United States was incorporated into the preamble of the revised version of the Protocol. Over the negotiations several additional references were incorporated in regards to human rights. In the final draft of the Protocol several references are made to protecting human rights. In the preamble it states “to protect the victims of such trafficking, including by protecting their internationally recognized human rights” (Ad Hoc 2000o). Again in article two it states “To protect and assist victims, with full respect to their human rights” (Ad Hoc 2000o). Also in article ten the rights of victims are referred to when it states “prosecuting the traffickers and protecting the rights of victims” (Ad Hoc 2000o). These references demonstrate the influence of the human rights narrative over the course of the drafting of the Palermo Protocol.

The role of NGOs was also specifically addressed at different points in the text. In the draft submitted by Argentina the role of nongovernmental and civil society organizations in combating human trafficking was recognized. Article seven urges states to “Encourage, within the private sector, the setting up of professional associations, foundations, nongovernmental organizations and research institutes

concerned with the problem of international trafficking in women and children (Ad Hoc 1999b). It is interesting to note that the version submitted by the United States did not contain any reference to NGOs or civil society organizations. This demonstrates that Argentina's draft was initially more influenced by the human rights narrative. It was through the provisions made by Argentina that human rights provisions were incorporated into the later drafts of the Protocol.

The human rights phrases proposed by Argentina and the United States were incorporated into the revised version of the Protocol. The revised text states "Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of and witnesses to crimes covered by this Protocol" (Ad Hoc 1999e). Attention to recovery shows an influence of the human rights narrative. In the final text of article six the provision regarding NGOs was maintained. It stated "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 organizations, other relevant organizations and other elements of civil society" (Ad Hoc 2000o). This also shows a direct influence of human rights narrative by linking NGOs with recovery and rehabilitation strategies.

Rehabilitation is one strategy advanced in the Protocol and this comes from the influence of the human rights narrative. However these provisions did not require implementation. Any language that would have required implementation of these provisions was deleted in later drafts. For example, in article one of the draft submitted by Argentina it specifically states "To devote all means to guaranteeing victims

appropriate legal, medical, psychological and financial assistance whenever States Parties deem it necessary” (Ad Hoc 1999b). The United States version contains a similar provision in article four but it only urges states to provide “for the physical, psychological and social recovery of victims of and witnesses to trafficking in persons, in order to foster their health, self-respect and dignity” (Ad Hoc 1999b). The language of the draft submitted by the United States is not as strong and it links provisions to prosecution. This demonstrates that when states were influenced by the human rights narrative it occurred within the context of the security framework.

In the final draft of the Palermo Protocol rehabilitation measures are included in article six which addresses assistance to victims. Following the language of the draft submitted by the United States, it largely focuses on the role of victims in court proceedings and their right to testify and obtain information regarding court proceedings. It does include a provision requiring states “to take into account, in applying the provision of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children” (Ad Hoc 2000o). This provision was a direct result of the suggestions submitted by the ILO and the SRSC over the course of the negotiations. However this provision simply encourages states to take these issues into account. It does not require states to do so nor does it make specific provisions as to what this training should entail. Again this shows that though the human rights narrative had influence it was not as strong as the security narrative.

The human rights framework gained more influence as the negotiations progressed. The Argentinean draft has more human rights protections than the United States draft and in the revised text it was the influence of the Argentinean version that

led to the incorporation of many of the human rights provisions. While different IGOs, such as the ILO and the SRVW, tried to influence states to incorporate the human rights frameworks to a greater degree, these suggestions were often ignored by states during the drafting of the Protocol. Also, even though human rights provisions are included they are never required. This weakens the influence of the human rights narrative even when it was incorporated into the text.

Migration Narrative

The migration narrative was the least influential of the three narratives. This narrative was incorporated to a small degree in the original text of the Protocol as well as by position papers submitted by intergovernmental organizations such as the International Office of Migration (IOM) and the International Labor Organization (ILO). Several things identify the migration narrative. This narrative links the root cause of human trafficking to increased migration and the profitability that comes from trading and exploiting individuals, particularly in industries that have few legal protections. The strategies put forth by this narrative to combat human trafficking include improving legal measures such as labor laws as well as a focus on prevention. It also includes strategies for improving economic development in source countries to address factors which provide the impetus for migration and create a steady stream of easily exploited individuals. The migration narrative is the only narrative to recognize that trafficking happens to men and women, rather than only women. It is also the only narrative to recognize that trafficking can occur for reasons other than prostitution or sexual exploitation. The migration narrative tells a story about human trafficking rather than a story about sex trafficking.

One aspect of the migration narrative influenced the original draft put forth by the United States. The United States version addressed trafficking in persons rather than the trafficking of women and children. The United States recognized that trafficking occurred to persons of both sexes not just woman and children. This provides some evidence that the United States was influenced by the migration narrative, if only to a small degree. This position was reiterated by the proposal submitted by Australia and Canada at the first session. Australia and Canada's proposal advocated the use of persons over the use of only women and children. This influence was slightly modified however when they argued that special attention must be given to women and children even if the Protocol addressed trafficking in persons (Ad Hoc 1999a). The final text uses "trafficking in persons, especially women and children" (Ad Hoc 2000o). This demonstrates that the influence of the migration narrative was tempered by the other narratives over the course of the negotiations. Singling out women and children is not part of the migration narrative.

The migration narrative recognizes that trafficking occurs for multiple reasons, not just sexual exploitation. The influence of this aspect of the narrative is evidenced in article one of the draft submitted by the United States. This article identified trafficking as consisting of forced labor and sexual exploitation. "The purpose of this Protocol is to promote and facilitate cooperation among State parties to prevent, investigate and prosecute trafficking in persons for the purpose of forced labour, prostitution or other sexual exploitation" (Ad Hoc 1999a). This acknowledgement provides evidence of the influence of the migration narrative because it is the only narrative of the three that recognizes that human trafficking occurs for purposes other than sexual exploitation.

Forced labor was also included in the definition of trafficking proposed by the United States. Trafficking is defined as “for the purpose of prostitution or other sexual exploitation or forced labour” (Ad Hoc 1999a). Forced labor is recognized but the order of the wording tempers the influence of the migration narrative. Forced labor comes after the phrase sexual exploitation and prostitution. This shows that the influence of the migration narrative was not as great as the other two, both of which focus on trafficking for sexual exploitation. Similar evidence can be found in the draft submitted by Argentina. Though it recognized forced labor many of the illicit aims it defined included some form of sexual exploitation.

The strategies that arise out of the migration narrative focus on the improvement of legal measures regarding labor and migration laws. There is limited evidence of these strategies in the original draft of the Protocol submitted by the United States. This version had provisions regarding immigration law. For example, article four urged states to adopt “immigration laws that permit victims of trafficking in persons to remain in its territory” (Ad Hoc 1999a). The wording of this article is weak however, demonstrating that other concerns, such as those advanced by the security narrative, were stronger. This provision made it into the final text of the Palermo Protocol with slight modification. The final text states “Each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory” (Ad Hoc 2000o). The strength of the language did not increase from the original draft demonstrating that the influence of the migration narrative did not increase over the course of the negotiations.

The final text of article eleven reads “Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons” (Ad Hoc 2000o). States were influenced by IGOs, such as the IOM and ILO, to incorporate this provision however the rest of the article is focused on how to keep individuals out of borders. In some ways this negates the incorporation of these provisions because even when states recognize the free movement of people they do so in a limited context. Encouraging border controls does not contribute to the free movement of individuals but only limits it. This provides evidence that even when states acknowledged the story put forth by the migration narrative it did not influence the substantive provisions put forth by the Protocol.

Another strategy that comes out of the migration narrative is a focus on prevention. Article six of the draft presented by the United States specifically deals with the prevention of trafficking in persons. Strategies to achieve this include implementing policies and programs to raise awareness about trafficking with the aim of preventing it (Ad Hoc 1999a). These measures stayed through the multiple revisions and were included in the final text of the Protocol. Article nine specifically addresses preventive measures. These measures include the creation of policies and programs to prevent trafficking and revictimization, compiling research on trafficking, encouraging cooperation with non-governmental organizations, cooperation to address factors that lead to trafficking as well as cooperation to address exploitation (Ad Hoc 2000o). This demonstrates the influence of the migration narrative but it also shows that its influence did not change to any great degree throughout the negotiations.

The final strategy to come out of the migration narrative is a focus on improving economic development in source countries. Article nine of the final text addresses such measures. It states “States Parties shall take or strengthen measures. . .to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty [or] underdevelopment” (Ad Hoc 2000o). This article only includes measures to prevent exploitation. The next paragraph in the article reads “States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures. . .to discourage the demand that fosters all forms of exploitation in persons, especially women and children, that leads to trafficking” (Ad Hoc 2000o). Again this demonstrates the influence of the migration narrative because it encourages strategies that address the root causes of trafficking. Though the migration narrative did influence some of the provisions of the Palermo Protocol these largely did not change over the course of the negotiations. This shows that the migration narrative was the least influential of the three.

Conclusion

From this analysis it becomes evident that the security narrative was the most influential narrative in the drafting of the Protocol. Though all three narratives were incorporated to some degree, the security narrative is reflected not only in the articles of the Protocol but also in the overarching framework produced by the Protocol. The Palermo Protocol combats human trafficking largely through legal measures such as prosecution and the strengthening of law enforcement. Though the rights of trafficked persons are addressed, the language of these provisions is always weaker and often left up to the interpretation of the states.

This chapter has addressed the influence of the narratives on the negotiations because the narratives are important for four reasons. First, the narratives manifest the rules discussed in Chapters 3 and 4. The narratives are a form of instruction-rule. They provide the background knowledge and understanding about human trafficking which states used when attempting to address trafficking. Conceptualizing narratives as instruction-rules will be discussed in greater detail in the following chapter. While the narratives form instruction-rules, they also manifest the gendered directive-rules discussed in Chapter 4. The narratives were founded upon gendered rules regarding protection, agency and sexuality. These rules then became incorporated into the Palermo Protocol through the influence of the narratives.

Second, the narratives, by manifesting gendered directive-rules, constitute the category of “trafficking victim” in particular gendered ways. The category of “trafficking victim” is not an empty category which encompasses all trafficked persons. Instead, the narratives constitutes “trafficking victim” as a feminine individual lacking agency and in need of protection and who only demonstrates a chaste sexuality. By constituting “trafficking victim” in this way the narratives ignore the multiple and complex way individuals become trafficked. Nor does it acknowledge the variety of individuals, individuals of different gender, class, and ethnicity, that are trafficked. An elaboration of these rules and how they constitute the idea of “trafficking victim” will be elaborated upon in the following chapter.

Third, the narratives create a state of rule regarding anti-trafficking strategies. The narratives and the extent to which they are incorporated into the Protocol determine the framework used to address human trafficking. This state of rule dictates how states

should construct domestic anti-trafficking policy as well as who deserves to be helped by anti-trafficking law. The impact of this state of rule is the subject of Chapter 9.

Finally, the narratives have material effects on trafficked persons because the narratives determine the types of strategies that will be implemented to address human trafficking. The extent to which different narratives became incorporated into the Protocol determines the implementation of strategies that focus on law enforcement and prosecution rather than strategies that focus on the rehabilitation and protection of trafficked persons. This is a direct result of the narratives and their influence during the negotiations. A discussion of the policy implications of the narratives and the strategies they advance will be discussed in Chapter 9.

CHAPTER 8 RULES AND RULE IN THE PALERMO PROTOCOL

The Palermo Protocol is a treaty negotiated by states in an intergovernmental institutional context. It provides a framework to combat human trafficking. The Protocol and the framework it produces are composed of gendered social rules which reinforce each other. These rules constitute and regulate ideas about “trafficking victims.” In this chapter the instruction-, directive- and commitment-rules that are found in the gendered narratives and in the Palermo Protocol are examined. After these gendered social rules are probed, attention turns to how these rules construct gendered agents, identities and interests. This analysis uncovers the gendered state of rule produced through anti-trafficking law.

As discussed in Chapter 2, three forms of rules exist. Instruction-rules define beliefs and identities by instructing agents as to the way of things are. The narratives about and around human trafficking are largely instruction-rules. They provide information on the way trafficking is perpetrated, who “trafficking victims” are and the experience they have being trafficked. The instruction-rules provide the presupposition or background knowledge of trafficking. Directive-rules tell agents what to do. The gendered rules surrounding trafficking and found in anti-trafficking law are largely directive-rules. These rules not only tell men and women how to behave, they also tell states how “trafficking victims” should behave in terms of agency, protection and sexuality. The directive-rules regarding agency, protection and sexuality construct a particular kind of “trafficking victim” through predication and subject positioning. The third category of rules is commitment-rules. These rules are a form of promise that compels agents to certain types of actions. The Protocol is a binding international

agreement which commits states to the actions contained within it. The commitment rules that the Palermo Protocol creates commits states to taking certain actions to combat human trafficking. Together these rules form a gendered state of rule that governs anti-trafficking policies and state action towards trafficked persons.

Instruction- Rules

The narratives surrounding human trafficking which became incorporated into the Palermo Protocol constitute instruction-rules. Nicholas Onuf defines instruction-rules as assertives which “state, affirm, report, characterize, attribute, insist, dissent” (Onuf 1989: 87). Put into a different form instruction-rules are “of the form, I state that X counts as Y”(Onuf 1989: 90). Narratives are instruction-rules because they contend that the story they put forth (X) counts as human trafficking (Y). The narratives inform agents, particularly states what constitutes trafficking and how it occurs. The different narratives provide different forms of instruction-rules.

The security narrative provides one form of instruction-rule. It provides information that “trafficking victims” are women who are trafficked into the sex industry against their will. It provides the knowledge that trafficking is perpetrated by organized crime. This knowledge then produces specific strategies to prevent trafficking such as prosecution, strengthening law enforcement and controlling borders. The human rights narrative provides a different set of instruction-rules. This narrative provides the knowledge that trafficking is often the result of prostitution and that it most often occurs to women and children. Because it focuses on prostitution the strategies that result focus on rehabilitating victims and outlawing prostitution. The migration narrative provides an alternative set of instruction-rules. The migration narrative provides the background knowledge that trafficking occurs because of economic factors that encourage migration

as a result of the search for better opportunities. The strategies that result from this background knowledge include the creation of laws to allow for increased legal migration and addressing socioeconomic factors such as gender inequality and poverty.

The Palermo Protocol largely incorporates the security narrative and the instruction-rules that are produced by that narrative. While IGOs and NGOs tried to influence the incorporation of alternative narratives into the Protocol, they had varying degrees of success. The Palermo Protocol promotes the security narrative's story about human trafficking. The framework produced by the Protocol advances the story that human trafficking occurs because of organized criminal rings. To combat human trafficking strategies must address organized crime. Therefore the strategies best suited to combating human trafficking include increased prosecution, increased training and measures to strengthen law enforcement, coordination with other states and tightening border control measures in order to keep organized crime rings out of state territory.

The instruction-rules also construct a certain type of "trafficking victim." The "trafficking victim" is a female that lacks agency. This lack of agency is demonstrated because she was taken against her will and then forcibly moved across borders and into prostitution. This lack of agency means states need to protect "trafficking victims" because they do not have the agency nor the ability to protect themselves. It also constructs "trafficking victims" as a sexually passive madonnas. Sexually passive because "trafficking victims" do not have agency and madonnas because they were forced into prostitution. The instruction-rules that are created through the security narrative construct a state of rule that governs state action towards human trafficking. It

not only governs whom states identify as “trafficking victims,” it also governs notions about proper femininity.

Onuf (1989) states that instruction-rules combine to form hegemony. The narratives create hegemony because the narratives put forth a particular version of trafficking which then dominates how agents understand human trafficking. Onuf argues that “Hegemony refers to the promulgation and manipulation of principles and instructions by which superordinate actors monopolize meaning which is then passively absorbed by subordinate actors” (1989: 209). Leaving aside his focus on actors and instead focusing on narratives, a similar argument could be made about the narratives surrounding human trafficking. The narratives monopolize the meanings about human trafficking including the strategies created to address it. This meaning is then absorbed by the actors that accept this narrative as *the* way to understand trafficking. The story the security narrative puts forth becomes the dominant way to conceptualize human trafficking and thus the strategies the narrative creates to address trafficking become the only way to combat it. This is evidenced by the domination of the security narrative in the negotiations. It was absorbed by states as *the* explanation of human trafficking and thus strategies produced by this narrative became the only way to address human trafficking. Even when other narratives, such as the human rights or migration narrative, about human trafficking were advanced by NGOs and IGOs, states did not accept these versions of human trafficking and the strategies they put forth in the same way that they accepted the security narrative. The security narrative was reinforced by the gendered directive-rules it perpetuates. The security narrative is founded upon dominant ideas regarding disempowered femininity and empowered masculinity. The hierarchy created

by gendered directive-rules supported the hegemony created by the narrative's instruction-rules.

Directive Rules

Directive-rules direct agents how to act. Directive-rules also direct agents as to how other agents should act. Directive-rules do things such as “ask, command, demand, [or] permit” (Onuf 1989: 87). Gendered directive-rules command women and men to act in particular ways. They “state X person (should/must/may) do Y” (Onuf 1989: 90). Gendered rules of agency state that women (X) must be passive (Y). The gendered rules of agency direct men to behave in a different ways. These rules state that men (X) should be active agents (Y). Alternatively, rules of sexuality state that women (X) should be sexually passive and chaste (Y), that is women (X) must not be whores (Y). When these directive-rules are incorporated into the Palermo Protocol they not only reinforce particular notions about masculinity and femininity, they also tell agents, specifically states, how “trafficking victims” should act. They specify what behaviors identify an individual as a “trafficking victim.” In the Palermo Protocol the gendered directive-rules of protection, sexuality and agency construct the category of “trafficking victim” as a passive, chaste, feminized individual in need of protection. This construction is constituted in several ways. It occurs through predication, for example how words are linked together in the articles of the Protocol. It also occurs through subject positioning, for example where words, phrases and issues are positioned. These gendered-rules will be examined individually in the following sections.

Rules of Protection In Anti-trafficking Law

The masculinist logic of protection constructs a woman who is grateful to be protected, who demonstrates dependence and defers to the man in decision-making.

She does not follow her own will (Young 2003: 5). This has ramifications for trafficking law and anti-trafficking strategies, particularly when ideas of agency and protection are intertwined. For example, if an individual does not demonstrate agency then she is a “victim” and deserves protection from traffickers, protection that is provided by the state. However, if a trafficked individual does demonstrate agency, she is no longer a victim. She does not deserve protection from the state, but instead she should be punished, and deported as an illegal migrant. This follows from the gendered rules of protection. “Not only does the protector withhold protection from women who claim autonomy but they may become attackers” (Young 2003: 14). “Trafficking victims,” when they demonstrate agency, are not only vulnerable to traffickers but also to attacks by the state, such as arrest or deportation. This is because migrants demonstrate agency and trafficked individuals do not. Anti-trafficking law as well as migration law reflects these gendered rules of protection.¹

Uncovering the gendered rules of protection also illuminates how multiple masculinities and femininities are constituted in the Palermo Protocol. States are equated with good masculinity because they are protectors. Traffickers are equated with bad masculinity because they are what must be protected against. “Trafficking victims” that do not demonstrate agency are equated with good femininity and deserve protection as well as the provisions provided by anti-trafficking law. “Trafficking victims” that demonstrate agency (by agreeing to be smuggled, by desiring to leave home country for better opportunities) are equated with bad femininity and do not deserve

¹ For a discussion on the categorization of individuals as masculine migrants who demonstrate agency versus feminine trafficking victims who do not demonstrate agency and need protection, see Srikantiah 2007.

protection or the provisions provided in anti-trafficking law. These masculinities and femininities are constructed in opposition to one another and to each other.

The gendered rules of protection also become evident in the final text of the Protocol through predication and subject positioning. For example, the word protection is often used throughout the Protocol when discussing the victim. In the preamble it states “to protect the victims of such trafficking” (Protocol 2000). The preamble also states “persons who are vulnerable to trafficking will not be sufficiently protected” (Protocol 2000). Article two subparagraph *b* states “To protect and assist the victims of such trafficking (Protocol 2000). Article four states “the protection of victims of such offences” (Protocol 2000). Article nine, paragraph one, subparagraph *b* states “To protect victims of trafficking in persons (Protocol 2000). Again in article ten it states “protecting the victims from the traffickers” (Protocol 2000). The word protection is used a total of ten times and it is linked to the word victim eight times. This constructs trafficked persons as victims always in need of protection, either by the state or a nongovernmental organization. The gendered rules of protection work together with the gendered rules of agency discussed below to construct “trafficking victim” as women and children in need of protection. This is not only detrimental to trafficked persons but also to women and children because it reinforces disempowering notions about women’s passivity and weakness. It is this disempowerment that directly contributes to women and children’s vulnerabilities.² Gendered rules of protection deny women the ability to protect themselves and in doing so create their insecurity.

² Anti-trafficking legislation conflates women with children. Women and children must be addressed separately because children have different vulnerabilities and levels of agency. To be successful, anti-trafficking legislation must address women as a category and children as a category recognizing that each of these categories has many variations and differences within them.

The Palermo Protocol also contributes to the insecurity of trafficked persons because it does not protect those it constructs as needing protection. The Palermo Protocol constructs “trafficking victims” as in need of protection but then does not require states to provide it. This leaves trafficked persons in a vulnerable position. They cannot protect themselves but neither are they effectively protected through anti-trafficking law. The priority of protection can be determined through subject positioning. In the Palermo Protocol language addressing protection is always positioned last in an article. For example, in the preamble the first subparagraph addresses the issue of protection but it is placed last in the paragraph after the language of prevention and punishment. In article four it again comes at the end of the paragraph. In article ten it is addressed in the second to last paragraph. This subject positioning shows that while states were only concerned with protection after prosecution and punishment.

Compounding this is the fact that the provisions regarding protection employ weak language. For example, when discussing legal measures the verbs used are “shall ensure” or “shall take.” But when discussing the provisions related to directly aiding trafficked persons the verbs used are “shall endeavor” or “shall consider.” This wording demonstrates that states were more concerned with protecting themselves and their borders from organized crime than they were about protecting trafficked persons.

Rules of protection inform agents as to the correct actions. Rules of protection inform agents that femininity must to be protected and that masculinity must provide that protection. This is detrimental to trafficked persons because when they transgress ideas about feminine passivity they are denied protection. It denies them the ability to engage in resistance and increases their vulnerability because it constructs them in such a way

that they must wait for states to rescue them. These constructions that arise from the gendered rules of protection are supported through the gendered rules of agency.

Rules of Agency in International Trafficking Law

Gendered rules of agency are also evident in the construction of “trafficking victim.” Trafficked persons are constructed as “victims” thus they lack agency. The construction of trafficked individuals as “victims” feminizes all trafficked individuals because agency is a masculine trait. “Trafficking victims” are cast as naïve because they were deceived. They lack agency in how they came to be exploited and because they continue to be exploited until they are rescued. They have no choice in what they do or where they go. This is problematic not only because, in reality, trafficked persons can and do demonstrate agency, to construct all trafficked individuals without agency limits the very resistance in which they can engage. If trafficked individuals are constructed as lacking agency then when they do demonstrate agency they can no longer be “victims.” If they are no longer “victims” then anti-trafficking laws do not apply (Doezema 1999; Andrijasevic 2003; Agustin 2005).

The incorporation of gendered rules of agency has material consequences for trafficked persons. It also has the effect of reifying ideas about empowered masculinity and disempowered femininity. Agency constitutes masculinity just as the lack of agency constitutes femininity. It (re)produces a cycle where femininity is never equated with agency. The importance of agency to trafficked individuals and in anti-trafficking law can be summarized best as follows

The denial of agency is a denial of personhood that polarizes power relations. The definition of agency restricted to capitalist male autonomy denies the personhood not just of women but of other subjected groups. Such a definition provides the rationale for privileged male rule, since the rules claim that the oppressed have no legitimate desires of their own, no

abilities or motives or even interest in acting responsibly for themselves, and ,conversely that the actions they do take are self-destructive and destructive of the social order (Gardiner 1995: 13).

The denial of agency is detrimental to women and it is detrimental to the safety of trafficked individuals.

The gendered rules of agency are found in the Palermo Protocol in several ways. Through predication the phrase trafficked persons is often linked with the word victim. In the first paragraph of the preamble it states “to protect the victims of such trafficking” (Protocol 2000). Again in article two subparagraph *b* it states “To protect and assist the victims of such trafficking” (Protocol 2000). Article four subparagraph *b* states “The consent of a victim of trafficking in persons” (Protocol 2000). Again in article six paragraph one it states “the privacy and identity of victims of trafficking in persons” (Protocol 2000). Article seven also uses the word victim, stating “measures that permit victims of trafficking in persons to remain in its territory” (Protocol 2000). Article eight states “returns a victim of trafficking in persons” (Protocol 2000). The Palermo Protocol overwhelmingly constructs trafficked persons without agency by labeling them as victims. In fact the word victim is linked to trafficked persons a total of twenty eight times in the final version of the Protocol. Through predication, trafficked person becomes synonymous with victim.³

Second, trafficked persons are also linked with the phrase women and children through predication. For example, in the preamble it states, “*Declaring* that effective action to prevent and combat trafficking in persons, especially women and children”

³ A note must be made regarding the idea of victim. I am not denying that trafficked persons are victims. However, a problem arises when all trafficked persons are constructed as victims because this limits their ability to resist. When they do resist it means they run the risk of not being labeled as a victim but instead being labeled as an illegal migrant.

(Protocol 2000). This phrase appears again in the preamble in a later paragraph where it states “addressing trafficking in women and children” (Protocol 2000). The phrase appears again in article 2 subparagraph *a* which states “To prevent and combat trafficking in persons, paying particular attention to women and children” (Ad Hoc 2000o). Again in article nine the phrase appears in subparagraph *b* which states “To protect victims of trafficking in persons, especially women and children” (Ad Hoc 2000o).” The phrase ‘women and children’ appears after the phrase trafficking or trafficked persons a total of eight times. The linking women and children with trafficked persons constructs trafficked persons as women and children.⁴ Just as victim becomes synonymous with trafficked person, women and children become synonymous with trafficked persons. This also reinforces the association of femininity with victimization. Through predication the Protocol constructs “trafficking victims” as feminized individuals who lack agency because they are women and children.

Rules tell people how to act. Gendered rules of agency tell men to act with agency and they tell women not to act because they do not have agency. The gendered rules in the Palermo Protocol tell states that “trafficking victims” do not have agency. This has the effect of labeling anyone who demonstrates agency as not a “trafficking victim” and thus falling outside of the provisions of the Palermo Protocol. This has material consequences for individuals who are trafficked and reinforces the disempowerment of femininity by equating it with victimization.

⁴ Linking women and children together also reinforces the conflation of women with children. This denies agency to both women and children and reinforces the idea that women are children, thus they do not have agency.

Rules of Sexuality in Anti-trafficking Law

The gendered rules of sexuality are also found in anti-trafficking law. The gendered rules of sexuality are found in the link between prostitution and human trafficking. The gendered rules of sexuality construct trafficked persons as chaste. It is only if an individual is forced into sex, if she is a “madonna,” that she is considered a “trafficking victim.” If she was willing to work as a prostitute then she is a “whore” and deported, even if she was a trafficked person. The rules of sexuality feminize trafficked individuals by linking them with prostitution. This constructs trafficked persons as feminized and sexually exploited.

The rules of sexuality that feminize “trafficking victims” adversely effect men who are trafficked. The gendered rules of sexuality encourage men to have many sexual partners. This contributes to the idea that men cannot be raped or prostituted, thus they cannot be “trafficking victims.” Men are often ignored as trafficked individuals and simply treated as migrants and deported. The gendered rules of sexuality that construct “trafficking victims” as feminine are detrimental to men.

The rules of sexuality dominated in historical anti-trafficking agreements. The rules of sexuality can also be found in the final text of the Protocol. Rules of sexuality can be seen in article three which defines trafficking as for the purposes of exploitation. “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (Protocol 2000). The subject positioning of prostitution and sexual exploitation demonstrates that states were most concerned with this form of trafficking. It is also telling that states chose not to include the word forced prior to the word prostitution. This allows states to interpret all prostitution as

forced providing support for domestic anti-prostitution legislation. This also provides evidence of the gendered rules of sexuality because prostitution and sexual promiscuity are not acceptable behaviors for women

When these directive-rules combine they form a hierarchy (Onuf 1989: 211-212). A hierarchy is formed when actors or structures are placed in superordinate and subordinate roles. Gendered rules create a hierarchy of masculinity and femininity where masculinity and its associated characteristics are privileged in comparison to femininity and its associated characteristics. Gendered directive-rules in the Palermo Protocol construct a hierarchal relationship between trafficked persons, traffickers and states. By constructing “trafficking victims” as feminine the Protocol places “trafficking victims” in a subordinate position to both the state and traffickers. It also reinforces the disempowerment of femininity by institutionalizing notions of proper femininity through international law.

Commitment-Rules

Commitment-rules compel agents to act in particular ways. Commitment-rules reveal the “intention of being committed to a stated course of action” (Onuf 1989: 87). Commitment-rules “state that I (can, will should) do Y” (Onuf 1989: 90). The Palermo Protocol is a form of commitment-rule. When states sign onto the Palermo Protocol they are committing themselves to certain behaviors and actions regarding human trafficking. States commit themselves to the particular types of strategies the Protocol produces. By signing the Palermo Protocol, states commit themselves to strategies focused on prosecution, law enforcement and border controls. They also commit themselves to rescuing and aiding a gendered “trafficking victim.” However, because many trafficked

individuals do not conform to the gendered construction created in the Protocol, it is debatable as to how much of commitment is promoted by the Protocol.

Commitment-rules combine to form a situation characterized as heteronomy. The Protocol does not create a hierarchy of states nor does it create a hegemonic rule of one state. Instead it commits all states that sign onto it to certain actions. However this heteronomous rule reinforces the hegemony of the narratives and the hierarchy of states over “trafficking victims” because all states commit to addressing human trafficking through a security framework. The Protocol produces a security framework and in doing so perpetuates the instruction-, directive- and commitment-rules that construct specific agents, identities and interests. Agents are constructed with particular gendered identities which produces specific gendered interests.

Agents, Identities and Interest

Constructivist analysis is concerned with “the constitution of agents, their identities and interests” (Prugl 1999: 5). Feminist analysis is concerned with gender. Feminist constructivist analysis is therefore concerned with identifying the gendered constitution of agents, identities and interests. This section examines how the instruction-, directive- and commitment-rules found in the Palermo Protocol combine to create gendered agents, gendered identities and gendered interests.

Gendered Agents

Rules give actors agency because actors have the choice to follow rules or to not follow rules (Onuf 1989). Instruction-rules combine with directive-rules to construct gendered agents while commitment-rules institutionalize these constructions in international politics. The instruction-rules (narratives) construct states as agents. States are the protectors and rescuers of “trafficked victims” and the fighters of

organized crime. If instruction-rules create agents then they also create passive objects. Through instruction-rules “trafficking victims” become objects that are acted upon. This reinforces the construction of states as agents because they are constructed in opposition to specific objects. In the Protocol states and “trafficking victims” co-constitute each other just as subjects and objects co-constitute each other.

Together these rules combine in the Protocol to construct rigid and narrowly defined categories of “trafficking victim,” trafficker and states. The commitment-rules institutionalize these actors and objects by institutionalizing action (on the part of states) and inaction (on the part of “trafficking victims”). As states ratify the Palermo Protocol and use it as a model for national legislation, these constructions of object and agent are (re)produced at the national level. The construction of states as (masculine) subjects/“trafficking victims” as (feminine) objects shows that gendered rules do not only construct agents and objects but it genders them as well.

Gendered Identities

Instruction-rules create agents and objects and directive-rules gender these agents and objects as masculine or feminine. Just as objects are defined in opposition to subjects, identities are defined in relation to one another. “Identity is a social category that expresses not only the meaning of one actor attributes to self; rather self-definitions are related to definitions the self gives to others and others to the self” (Fierke 2007: 79). The feminine identity of “trafficking victim” is constructed in opposition to the masculine identity of the state. Gendered rules of protection, agency and sexuality construct feminine and masculine identities. Through the construction of gendered objects and agents interests are constructed as well.

Gendered Interests

Identities are the basis for interests. Gendered identities create gendered interests. The interest created by the Palermo Protocol is an interest in combating crime through legal measures. The interests would have been different if a different narrative had dominated. The instruction-rules which characterize trafficking create a situation where legal measures rather than socioeconomic development becomes the dominant strategy for ending human trafficking. When incorporated into the Protocol and combined with the directive-rules that gender states and trafficking victims, this creates specific interests for states. This interest is in the protection of state borders and territory. State security is in line with a masculine interest focused on protection. A feminine interest would have focused more on the individual and preventing discrimination. However because the security narrative dominated the drafting of the Protocol and because of the gendered rules this narrative manifests and perpetuates, the interest of states is constructed as masculine.

Rules into Rule

As discussed in Chapter 2, rules combine to form a state of rule. The state of rule that forms out of the Palermo Protocol governs the ideas surrounding who is identified as a “trafficking victim” as well as the strategies that are created to combat human trafficking. The construction of “trafficking victim” that arises out of the Palermo Protocol and is constructed through the various rules discussed is a female (or feminized) individual that lacks agency is in need of protection and is not sexually promiscuous. This governs who is identified as a “trafficking victim.” If a trafficked individual works in an industry that is not the sex industry then he or she runs the risk of being deported as an illegal migrant. Alternatively if the trafficked person worked as a prostitute in her

home country then she is also at risk for being treated as an illegal migrant and deported. This is also detrimental to trafficked persons because it ignores the various types of agency that individual engage in, even when their autonomy is taken away. For example, the use of drugs can be seen as a contextual form of agency (Raymond and Hughes 2001: 12). Taking drugs to numb feelings and to deal with exploitative situation can be viewed as a form of resistance and a demonstration of agency. Yet this is ignored in anti-trafficking strategies and in many cases the person is treated as an illegal migrant and deported.⁵

The gendered state of rule created through the Palermo Protocol also governs anti-trafficking strategies. This creates a focus on state security at the expense of the individual. Because “trafficking victim” is defined in such a narrow sense states can address prosecution and punishment instead of prevention. Rather than focusing on the economic and social factors that contribute to trafficking, constructing “trafficking victim” in a narrow sense through the security narrative allows states to only focus on implementing stricter border controls and legislative measures. This does not help the individual but allows the state to prevent those individuals it sees as undesirable from entering their territory.

Conclusion

The success of anti-trafficking policy continues to be debated ten years after the negotiations and eight years after the implementation of the Palermo Protocol. This project argues that it is the gendered agents and identities that the Palermo Protocol

⁵ I am not arguing that trafficked individuals do not need help. I am arguing against the construction of all trafficked persons as in need of protection because the idea of protection is gendered. In some cases trafficked persons do need protection but to construct all “trafficking victims” in this way reduces their capacity to resist and still be identified as a “trafficking victim.”.

created which contribute to its lack of success in ending human trafficking.

Understanding the gendered dimensions of anti-trafficking law is important because it is these gendered constructions that limit the types of policies states implement as well as the actions they take to combat and prevent trafficking.

This chapter specifically and the project generally has shown that the construction of “trafficking victim” as feminized leads much energy and research to focus on sex trafficking specifically rather than human trafficking generally. Even if the Palermo Protocol could put an end to sex trafficking, human trafficking for other forms of labor would still exist and human trafficking would flourish. Until alternative forms of victims and victimization is recognized by states and until the narratives and instruction-rules are enlarged and changed the Palermo Protocol will not successfully combat human trafficking.

The directive-rules in the Palermo Protocol also reinforce a state of rule regarding gender. Incorporating notions about feminine passivity, feminine sexuality and gendered protection is detrimental not only to trafficked persons but to women in general. These rules reinforce dominant ideas that encourage gender inequality and place women in a subordinate position.

Finally, the commitment-rules, while they do encourage states to fight human trafficking, only commit them to fighting it in a narrow sense. The Protocol commits states to passing laws and prosecuting organized crime. They do not commit states to addressing more preventative strategies such as development, opening more legal migration routes or ending inequality which places women in a vulnerable position. The commitment-rules must incorporate more than a legal framework focus on ensuring

state security, they must ensure the security of individuals in origin, transit and destination countries. The next chapter provides suggestions on potential avenues to achieve this.

CHAPTER 9 DISMANTLING THE GENDERED CONSTRUCTIONS OF HUMAN TRAFFICKING

At the beginning of this project a series of questions were posed. The previous chapters have provided evidence to answer to those questions. This chapter begins with a summary of the argument as well as the contributions of this project. It then returns to the initial questions, looking at the evidence that has been gathered thus far and the answers that are provided by this evidence. The chapter ends with a discussion of policy implications, pointing out ways to improve strategies designed to combat human trafficking.

This project has argued that the gendered narratives about human trafficking, which influenced the drafting of the Protocol, create a gendered category of “trafficking victim.” This gendered category is detrimental to the success of the Protocol because it defines “trafficking victim” so narrowly. It is a category that very few trafficked persons fall under, thus a majority of trafficked persons are not aided by the Protocol. This project has also pointed out how this gendered construction is detrimental to women because it advances stereotypical ideas which construct women as passive victims.

This project has made several contributions. The first contribution is conceptualizing gender as a series of rules and a state of rule. Feminist constructivist projects have focused on how gender affects rules in various spheres but have not gone so far as to conceptualize gender itself as a series of rules. Treating gender as a series of rules that create a state of gendered rule opens up new avenues of research. Not only in regards to research about gender, but also research that attempts to understand the influence of gender on politics and in the international system. Conceptualizing gender as composed of multiple rules illuminates how characteristics and categories are

based in a series of relationships which differ for masculinity and femininity. It also gives purchase for understanding the pervasiveness of gender and why gender norms are so difficult to change.

The second contribution of this project is its focus on the effects of gendered frames. This project identified the impact of gendered constructions in international law. It explored not only how gendered categories are created by international law, but also how gender influences the frameworks that are used to construct international law. It fills a gap in the literature by moving away from a focus on how gendered subjects are socially constructed to focusing on how the frameworks that construct these gendered subjects are also gendered.

The third contribution of this project is in its alternative explanation for the success of international law. Research on international cooperation and multilateral treaties often view success and failure in terms of the breadth versus depth dilemma (Downs et al. 1998). My project argues that success is not necessarily the result of an agreement being too narrow or broad. It is the gendered constructions that are found within the agreement that affects its success. This proposed alternative offers new avenues for understanding the success or failure of multilateral treaties and encourages researchers to look at how law constructs and is constructed in terms of gender.

The final contribution of this project is in its application of narratives to the construction of international anti-trafficking law. Previous research has explored narratives about human trafficking, but this is largely in a domestic context (Srikantiah 2007; Chuang 2010). This project is unique in that it applies these narratives to international law. It also points to additional avenues of research, research which must

now focus on how international and domestic narratives differ and/or influence one another in domestic and international contexts.

In addition to these contributions, this project has asked and answered several questions. The question driving this project was why has the Palermo Protocol not lived up to its initial expectations? This is a broad question that can be answered in multiple ways. The most obvious answer is that the Palermo Protocol was not designed to end human trafficking, only that it was the first step. It was designed to provide a framework that would give states the tools needed to combat it. This is a valid answer, however it is not sufficient. Agreements can be broad but still address the issue at hand. Moreover, the tools provided by the Palermo Protocol do not combat human trafficking. This project gives a more satisfying answer. The Protocol has not lived up to its initial expectations because of the gendered construction “trafficking victim” it creates. If the strategies created by the Protocol do not actually aid trafficked persons or address trafficking then perhaps the answer to the problem is in the way human trafficking is constructed. As this project demonstrates, the Palermo Protocol constructs human trafficking and “trafficking victim” in a very narrow and limited sense. The narratives around human trafficking tell very specific stories and the way they are incorporated into the Palermo Protocol impacts what the Protocol actually addresses. The Palermo Protocol addresses sex trafficking of women and children and largely leaves other forms of trafficking unaddressed.

The feminization of “trafficking victim” also limits the success of the Palermo Protocol. Only a limited number of individuals actually fit into the category of “trafficking

victim” described in this project.¹ Human trafficking cannot be combated if anti-trafficking law does not recognize a majority of the people that are actually trafficked.² The gendered construction of “trafficking victim” also limits the actions that trafficked persons can engage in and still be thought of as a “trafficking victim.” Most individuals who are victimized engage in some form of resistance (for example, using drugs to numb feelings), yet the Palermo Protocol constructs “trafficking victims” in way that denies them the ability to engage in any resistance. This means that anytime trafficked persons engage in resistance they are not victims and therefore the provisions of the Palermo Protocol do not apply. Unless alternative forms of resistance and agency are recognized in the construction of “trafficking victim” the Palermo Protocol will be of limited success.

The second question posed was why did states choose to implement a security framework over alternative frameworks that existed, such as a human rights or migration framework? The answer to this question is that states are concerned with their own security. The security narrative is really a state security narrative and implementing it allows states to increase their security. This is especially true in an ever increasing globalized world that leaves state borders more vulnerable and sovereignty more tenuous. A security narrative allows states to address multiple issues all in one framework. It allows states to simultaneously fight organized crime, human trafficking and illegal migration. The strategies the Palermo Protocol advances are also easier to implement. It is easier to pass laws than it is to improve the socioeconomic

¹ For a discussion on the disconnect between actual trafficked persons and the constructed category of “trafficking victim” in domestic anti-trafficking law, see Haynes 2006

² For example, current anti-trafficking law and its construction of “trafficking victim” would not recognize men who are trafficked, women who would willingly work as prostitutes, or individuals who willingly migrated illegally for employment.

opportunities of individuals. It is easier to strengthen border and border controls than it is to end gender inequality and discrimination. These factors contribute to the implementation of a security framework.

The final question posed was why is the security framework proving to limit state actions and responsibilities to trafficked persons and proving inadequate for dealing with the issue of human trafficking? It is because of the gendered identities and interests that are created through the Palermo Protocol. The feminized “trafficking victims,” the masculinized states and the interest in state security rather than the rights of the individual all contribute to the limited success of anti-trafficking law. This is because the framework addresses only one small aspect of a very large issue. Until this issue is recognized holistically, this problem will continue.

If anti-trafficking strategies have been less than successful what can be done to improve them? Several answers present themselves. First, more research is needed on human trafficking. Though research presents its own difficulties, as discussed in Chapter 2, this only points to the fact that much more is needed. States need to fund more research projects and they need to fund more organizations that collect data to better understand trafficking. This research needs to take place in all states—destination, transit and source. Several avenues of research should be explored. First, research should focus not only on individuals that self-identify as trafficked persons. Research should focus on vulnerable populations in source countries and on individuals in highly exploitative industries, for example migrant farm labor and prostitution. Focusing research not only on trafficked persons but on individuals who are exploited

would provide more information on trafficking as well as the different ways people become trafficked.

Research should also, to the extent possible, take into account traffickers. Relatively little information exists on individuals who traffic, however the research that does exist points to the fact that not only organized crime rings traffic individuals (Ucarer 1999). More research must be conducted in order to understand those who perpetrate human trafficking. Some of this research should focus on organized crime rings, modeling itself after other studies conducted on organized crime. Other research, particularly in source countries, needs to take into account the multiple ways people enter the trafficking process and focus not simply on individuals but also on family and community dynamics. This would broaden the knowledge that exists on human trafficking as well as allow for policies to take into account these alternative avenues of trafficking.

The more research that is conducted on both trafficked persons and traffickers the more opportunities for testimonials to be taken into account during the construction of law and policy. As of now, anti-trafficking law and policy is largely based on narratives. More testimonial and personal stories would increase understandings of human trafficking and create broader and more inclusive policy. This would have the effect of enlarging the narratives that exist or the creation of alternative narratives to the three presented. The more narratives that exist and the more they are incorporated into policy, the better the strategies created to combat human trafficking.

Legal strategies also need to be improved. Using legal measures to combat human trafficking is not necessarily detrimental to trafficked persons, however the

current legal measure are. Instead of focusing on prosecution more attention needs to be paid to migration law and labor laws. Migration law needs to be revised so that it addresses illegal migration rather than pushing it underground. Labor laws need to be strengthened, particularly for migrants, so that individuals have recourse to change exploitative situations. Also, legalizing prostitution so that it is treated as a job, could lead to the creation of legal measures for sex workers so that when they are exploited they have recourse to law. Strengthening labor laws would take away some of the vulnerability that migrants face and which often keep them in exploitative situations.

Finally attention must be paid to how gendered rules construct anti-trafficking law. As long as anti-trafficking law manifests gendered rules and a gendered state of rule, “trafficking victims” will continue to be constructed in a narrow gendered way. This project has demonstrated that it is the gendered social rules perpetuated in the gendered narratives about human trafficking as well as the gendered state of rule they construct that contributes to the lack of success of the Palermo Protocol. Until these constructions are changed human trafficking and trafficked individuals will never be truly addressed.

Moving away from anti-trafficking law, this project also shows the detrimental effects the rules of gender have in women’s lives. More research must take these gendered rules into account, not only in international law, but in all aspects of international, domestic, community and individual politics. As long as these gendered rules are maintained as well as the gendered state of rule they perpetuate, gender hierarchy will never be dismantled and gender subordination will never be truly addressed.

APPENDIX A
PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS,
ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS
CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Preamble

The States Parties to this Protocol,

Declaring that effective 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 recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention,

suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention

Against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of

this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. 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 organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in

persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

- (a) To prevent and combat trafficking in persons; and
- (b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers.

The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose

of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes

equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

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BIOGRAPHICAL SKETCH

Jessica Peet is a doctoral candidate in political science at the University of Florida. She was born and raised in central Ohio. Jessica completed her undergraduate work at the Ohio State University. She received her bachelor's degree in political science with a minor in international studies and women's studies in 2003. Jessica attended the University of Florida for her graduate work. She received her master's degree from the University of Florida in 2007. Her research has appeared in *International Feminist Journal of Politics*. Jessica is a member of the Gainesville Human Trafficking Taskforce and the Membership Coordinator for the Alachua County Humane Society.