

## **Trafficking and women's migration in the global context**

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*This chapter analyses the changing construction of trafficking as a global issue. It considers amongst other factors the first international conferences and conventions which introduced a new perspective to trafficking compared with the early twentieth century idea of “White trade”, which linked it strictly to prostitution. It looks at the definitions of trafficking, their core assumptions as well as how these inform the guidelines for legislation and social intervention. The chapter also examines some crucial features of the debate on trafficking, both academic and political, which has taken place over the years and policy measures produced. The complexity of the issue of trafficking is also illustrated by the analysis of the biographical interviews, collected during the FeMiPol project in five European countries (Italy, Germany, France, UK, Cyprus) and undertaken with women who, either can be categorized as “trafficked”, according to the existing definitions, or have lived experiences of exploitation that limited strongly their autonomy. Finally, it looks at good practices and argues for a new “holistic” approach, considering that the focus on the criminal dimensions of trafficking and a rigid dichotomy between criminals and victims, traffickers and prostitutes, cannot explain either the causes and the dynamics of the phenomenon nor the multiple collective and individual trajectories of those trafficked which have to be understood as embedded within different and specific migratory contexts.*

### **Introduction**

In the last twenty years, trafficking in human beings has become a subject of growing political concern at world level. The inhuman practices of trafficking and its links to organized crime have been

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denounced as a violation of human rights and a threat to the security of states; migrant trafficking has been recognized by migration experts (Salt and Stein 1997) and policy makers as undermining international collaborative efforts to produce ordered migration flows. New legal measures have been introduced and grass-roots interventions have been promoted. However, one of the most recent and relevant reports on the issue, the 2010 Trafficking in Persons (TIP) Report, published by the State Department of the USA, admits, on the basis of extensive research and of experts' opinion, that no truly comprehensive response has been given – so far – by any country in the world. The same Report also denounces the perverse effects that restrictive migratory policies in force in the European Union member states have on trafficking: *“Immigration enforcement, developed and implemented without taking into account anti-trafficking standards and victim care responsibilities, is an aggressive response that ignores basic tenets of victim protection.”* (TIP 2010: 24).

The position of the TIP 2010 Report is not isolated. The policies that the European countries have implemented to fight against trafficking – inside the framework of a very restrictive migratory regime – are considered inadequate by the NGOs (for example, Associazione On the Road, La Strada International, ACCEM and ALC2), which are active in the field, because they privilege the repressive aspects. Critics of policies and approaches come also from the academic world. The understanding of trafficking that appears in the recent academic literature has introduced new elements within previous categorizations and cognitive frameworks. The conceptualization of trafficking that results from in-depth fieldwork has enlarged the analytical frame produced by international organisations (UN, EU, OSCE, Council of Europe, IOM<sup>3</sup>, GAATW<sup>4</sup>). New approaches that take into account the complexity

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<sup>2</sup> See [http://www.e-notes-observatory.org/wp-content/uploads/E-notes-report\\_Adobe-61.pdf](http://www.e-notes-observatory.org/wp-content/uploads/E-notes-report_Adobe-61.pdf). Accessed 15 January 2012.

<sup>3</sup> IOM, International Organization for Migrations, founded in 1951, is the main intergovernmental organization for migrations.

<sup>4</sup> The *Global Alliance Against Traffic in Women* (GAATW) is an Alliance of 105 non-governmental organizations from Africa (9), Asia (46), Europe (20), LAC (23) and North America. The GAATW International Secretariat is based in

of trafficking which lies at the crossroad of migration, gender, policies *and* crime, within the context of globalization have been developed. The GAATW (see note 3) evokes a holistic understanding of trafficking, starting from the premise that trafficking is embedded within gendered migration and labour contexts, and women's complex realities. The Trafficking in Persons Report (TIP Report 2010) suggests a complex approach: "*trafficking is a fluid phenomenon responding to market demands, weakness in laws and penalties, and economic and development disparities.*" (TIP 2010: 6).

## **1. The construction and the definition of trafficking as a global issue**

In the nineties, the issue of trafficking was highlighted at world level by various State institutions, international organisations (IOM, UNICEF, UNICRI, ILO), transnational associations (Médecins sans frontières, Médecins du monde, Save the children...) and non-governmental organisations (NGOs), dealing either with migration and/ or with prostitution (CARITAS, TEMPEP). During this period, the volume of migration towards Europe increased dramatically because of the economic transition in Eastern Europe and the Balkan conflict, in the context of a restrictive migratory regime. Whilst a large proportion of this migration was taking place through unregulated channels, media reports evoked the role of traffickers and "mafias" in channelling irregular migration, part of which was ending up in the informal or illegal market (prostitution, begging, etc.). In this context, trafficking to the West became a crucial element of the political agenda of the European Union. In 1996, the European Commissioner Anita Gradin organized an international Conference in Vienna; other initiatives followed.

At world level, the 2000 United Nations Convention against Organised Crime in Palermo elaborated a legal definition of trafficking

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Bangkok, Thailand and co-ordinates the activities of the Alliance, collects and disseminates information, and advocates on behalf of the Alliance at regional and international levels.

in human beings and the guidelines for a global approach. Two protocols were presented: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air. The definition of trafficking, contained in Article 3 of the first protocol sounds<sup>5</sup>: “(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 or organs”.<sup>6</sup>

The Palermo Protocol definition broadens the previous United Nations perspective, which linked trafficking (at the time ‘traffic’) and prostitution, as indicated by the preamble of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others<sup>7</sup>: “*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.*”

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<sup>5</sup> United Nations – General Assembly (2000) UN Convention against Transnational Organised Crime, A/RES/55/25, Palermo, Italy.

<sup>6</sup> Consequently, exploitation can concern different sectors of informal economy –more or less illegal (prostitution market, domestic work, begging, forced labour).

<sup>7</sup> The first International Agreement against trafficking dates back to May 1904, the International Agreement for the Suppression of the White Slave Traffic, which was followed by the International Convention of 4 May 1910 for the Suppression of the White Slave Traffic and by the International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947.

In contrast with the twentieth century approach, still influenced by the “White Slave Traffic” idea<sup>8</sup>, the core concept in the Protocol of Palermo definition of trafficking is “exploitation”, both sexual exploitation “*exploitation of prostitution of others or other forms of sexual exploitation*”, and labour exploitation, “*forced labour or services, slavery or practices similar to slavery, servitude*”. As far as sexual exploitation is concerned, the protocol distinguishes between *voluntary prostitution* and *forced prostitution*. It states that involuntary forced participation in prostitution would constitute trafficking, but it rejects the idea that voluntary, non-coercive participation by adults in prostitution constitutes trafficking. Thus, the Trafficking Protocol expressly permits States to focus only on *forced prostitution* and other crimes involving force or coercion and does not require governments to treat all adult participation in prostitution as trafficking.

The concept of exploitation also allows the distinction between trafficking in human beings and smuggling, which has been defined in a separate *Protocol against the Smuggling of Migrants by Land, Sea and Air* entered into force in 2004. Trafficking is defined as a criminal activity aimed at exploiting the trafficked persons; the crimes committed (fraud, blackmail, intimidation, forgery of documents, etc.) during the transfer are steps towards exploitation in illegal/illicit circuits (forced labour, commercial sex, begging, pornography). This feature makes trafficking a human rights issue and justifies its definition as a modern form of slavery. Smuggling of migrants, instead, is a kind of illegal transportation of human beings from the country of origin to the one of destination (or covers one portion of the route only). The relationship between the smuggler and smuggled persons generally ends once the destination is reached. However, in practice, it is not always easy to disentangle trafficking and smuggling: a complex reality cannot be framed in rigid definitions which list criminal actions but which cannot address

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<sup>8</sup> This term refers, among other things, to “white” women taken to Muslim harems, a topic that caused considerable concern in Europe and the United States in the second half of the nineteenth century. More generally, the term “White Slavery” variably described licensed prostitution, all forms of prostitution (licensed and unlicensed) and prostitution based on coercion and fraud.

trafficking processes. This predominantly criminological approach is precisely the limit of the Palermo definition of trafficking: the UN Palermo Convention, which represents a milestone in the establishment both of a legal frame and a frame for political action, gave guidelines for an appropriate governmental response to trafficking the “3P” paradigm: prevention, criminal prosecution, and victim protection. In practice, as we will see, the second paradigm has been predominant in the actions of European states.

In line with the Palermo protocols and guidelines is the European Union Council Framework Decision of July 19<sup>th</sup> 2002<sup>9</sup>, which links trafficking with exploitation, both labour and sexual, and deprivation of the basic rights (Article 1). However, if the Palermo Convention suggested the 3P paradigm to deal with trafficking, the Framework Decision insists on the reinforcement of the criminal prosecution of traffickers and encourages the making of new criminal laws in the member States. These are invited to punish any form of recruitment, transportation, transfer or harbouring of a person who has been deprived of his/her fundamental rights. All criminal conduct that abuses the physical or mental vulnerability of a person will be punishable; the victim’s consent is irrelevant where the offender’s conduct is of a nature which would constitute exploitation within the meaning of the proposal, that is, involving the use of coercion, force or threats, including abduction; the use of deceit or fraud; the abuse of authority or influence or the exercise of pressure; the offer of payment.

The IOM definition of trafficking is similar to the Palermo Protocols and to the EU Council Framework decision. In 2002, trafficking is established “*when a migrant is involved in an illicit way (kidnapped, sold or simply recruited) and/or is transported, either within a country, or to a third country. Traffickers benefit from it, at some stage of the process are involved, in an economic or any other manner, by fraud, coercion and/or other forms of exploitation, under conditions which violate the fundamental individual rights of the migrants*”. The IOM also distinguishes between trafficking and smuggling, the latter being defined as facilitating illegal entrance of

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<sup>9</sup> <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:203:0001:0004:EN:PDF> Accessed 15 January 2012.

a person, who is neither a national nor a permanent resident in a state, for material advantage .

The GAATW (see note 3) has a strong gendered perspective and insists on the importance of the concepts of servitude and slavery: “*all acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person (a) involving the use of deception, coercion (including the use or threat of force or the abuse of authority) or debt bondage (b) for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage*”.

The International Labour Organization (ILO, 2002)<sup>10</sup> focuses on trafficking for forced labour. The *involuntary nature of work* (the “*route into*” forced labour) is defined by the presence of one or more of the following features: birth/descent into “slave” or bonded status, physical abduction or kidnapping, sale of person into the ownership of another, physical confinement in the work location – in prison or in private detention, psychological compulsion, i.e. an order to work, backed up by a credible threat of a penalty for non-compliance, induced indebtedness, deception or false promises about types and terms of work, withholding and non-payment of wages, retention of identity documents or other valuable personal possessions.

The *menace of a penalty* (the *means* of keeping someone in forced labour) is defined by the actual presence or credible threat of physical violence against worker or family or close associates, sexual violence, (threat of) supernatural retaliation, imprisonment or other physical confinement, financial penalties, denunciation to authorities (police, immigration, etc.) and deportation, dismissal from current employment and exclusion from future employment, exclusion from

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<sup>10</sup> The ILO estimates that “at least 12.3 million people around the world are trapped in forced labour. Forced labour takes different forms, including debt bondage, trafficking and other forms of modern slavery.”  
[http://www.ilo.org/global/About\\_the\\_ILO/Media\\_and\\_public\\_information/Feature\\_stories/lang--en/WCMS](http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Feature_stories/lang--en/WCMS). Accessed 15 January 2012.

community and social life, removal of rights or privileges, deprivation of food, shelter or other necessities, shift to even worse working conditions and finally the loss of social status.

In the second half of the nineties, the attention of the media, of politicians and of academic research focused mainly on trafficking for sexual exploitation. The attention of ILO to trafficking for forced labour (ILO, 2005a, 2005b) opened a new perspective. Lim (2007), a researcher at the ILO, reminds us that the focus on trafficking for sexual exploitation and on trafficked women as victims may hide the real dimension of trafficking for forced labour. Among the persons trafficked for labour, men comprise a significant number of victims.

The study of trafficking for labour exploitation also highlights the complex dynamics of the trafficking process which the dichotomy criminal/victim cannot explain, placing trafficking at the crossroads between migration (mainly irregular), structures of work and the economy. The approach that constructs a dichotomy between passive victims and active criminals doesn't help the understanding of the processes: victims may want to leave their country; criminals are part of an economic system where the borders between legal and illegal activities are blurred; restrictive migratory policies force people who want to leave their country to take extraordinary decisions.

## **2. European policies against trafficking and the question of victims' protection**

The European Union Council Framework Decision of July 19<sup>th</sup> 2002 invites the member states to take measures to fight against the trafficking in human beings, following the three P paradigm. Two years after, a specific Council Directive –2004/81/EC of 29 April 2004– concerns the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Consequently, according to the Directive, the cooperation with the authorities in the fight against trafficking is a condition for obtaining a residence permit. Following the Framework Decision and the Directive, anti-trafficking legislation and mechanisms have been put in place at national level in almost all 27



EU Member States. Social protection programmes for presumed and/or identified trafficked persons have been provided by public and non-governmental organisations (NGOs) everywhere in Europe. In the meantime, the Council of Europe has adopted a Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005)<sup>11</sup>, which entered into force on 1st February 2008<sup>12</sup>.

A few months ago, the 5th April 2011, the Council Framework Decision 2002/629/JHA has been replaced by a new DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on preventing and combating trafficking in human beings and protecting its victims. The new Directive has adopted “*an integrated, holistic, and human rights approach to the fight against trafficking in human beings.*” (article 7), focusing on “*victims’ rights*” as a priority in respect to the anti-immigration policies. The new Directive insists on the fact that the victims should be able to exercise their rights effectively (article 18): “*Therefore assistance and support should be available to them before, during and for an appropriate time after criminal proceedings.*” However, in practice, national legislations have the decision power, which can produce a contradiction between victims’ protection and harsh anti-immigrant legislation. The Directive encourages flexibility, suggesting that the victims should “*be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to*

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<sup>11</sup> Published in the Council of Europe Treaty Series (ETS) No. 197, [http://www.e-notes-observatory.org/wp-content/uploads/E-notes-report\\_Adobe-61.pdf](http://www.e-notes-observatory.org/wp-content/uploads/E-notes-report_Adobe-61.pdf). Accessed 15 January 2012.

<sup>12</sup> [http://www.coe.int/t/DG2/TRAFFICKING/campaign/default\\_en.asp](http://www.coe.int/t/DG2/TRAFFICKING/campaign/default_en.asp). Accessed 15 January 2012. The Convention has been signed by 21 Council of Europe member states: Andorra, Belgium, Finland, Germany, Greece, Hungary, Iceland, Italy, Ireland, Lithuania, Luxembourg, Montenegro, Netherlands, Poland, San Marino, Serbia, Slovenia, Sweden, FYROM, Ukraine and the United Kingdom. Until now only 16 states have ratified the “Council of Europe Convention on Action against trafficking in Human Beings”, namely: [Armenia](#), [Austria](#), [Bosnia and Herzegovina](#), [Bulgaria](#), [Croatia](#), [Cyprus](#), [Denmark](#), [France](#), [Georgia](#), [Latvia](#), [Malta](#), [Moldova](#), [Norway](#), [Portugal](#), [Romania](#) and Slovakia.

*trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators.” (art.14) It is too early to evaluate the impact of this Directive. So far, in practice, national legislations have mainly followed the country’s political agenda against irregular migration.*

A Reports monitoring the anti-trafficking policies and interventions implemented in these ten years, the 2010 “E-notes monitoring exercise”<sup>13</sup>, shows precisely the importance of the national legislations for dealing with trafficking and the discrepancies among them: “*The E-notes project has showed that there are substantial discrepancies between EU Member States on fundamental aspects of anti-trafficking policy and practice within the EU, such as national legislation to prohibit human trafficking and definitions (or interpretations by relevant government agencies) of what constitutes trafficking, the existence of coordinating bodies and the process to identify trafficked persons.*” (On the Road 2010: 30).

Even the definition of trafficking used in different legislatures is problematic, as the comparison between the French and the Finnish examples shows. The French government introduced the 2003 *Law on Internal security* that created a new infraction in the penal code, the trafficking in human beings. Art. 225-4-1 of the penal code defines it as “*the act, in exchange for remuneration or any other advantage or promise of remuneration or advantage, of recruiting a person, of transporting them, transferring them, housing or hosting them, in order to put them at the disposition of a third party, even unidentified, in such a manner as to permit the commission, against this person, of infractions of procurement, sexual aggression or assault, exploitation of begging, work conditions or housing contrary to their dignity, or to force this person to commit any crime or infraction*”. As a result of this very broad definition, more than 900 individuals have been convicted in France of trafficking in a single year (2008), but, in fact, “*on closer scrutiny, however, it was apparent that slightly over half (521) were convictions for “aggravated*

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[http://www.e-notes-observatory.org/wp-content/uploads/E-notes-report\\_Adobe-61.pdf](http://www.e-notes-observatory.org/wp-content/uploads/E-notes-report_Adobe-61.pdf). Accessed 15 January 2012.

*pimping*” (an offence nearer to that defined as trafficking in other EU States) and just 18 convictions related to offences that are recognised as ‘trafficking’ under the regional definitions adopted in the EU’s 2002 Framework Decision and the Council of Europe Convention.” (On the Road 2010: 26). In Finland, the situation is just the opposite to France: cases that according to regional standards should have been treated as trafficking have been considered as ones only involving procuring or pimping (On the Road 2010: 26). The organisations taking part in E-notes believe that more effort should be made by the European Union, by EU Member States themselves and by civil society to strengthen the common basis of the policy framework, at national and EU levels.

The E-notes Report analyses also national experiences, country by country: the conclusions show that the introduction of harsher legal measures to punish the traffickers has not been accompanied by an adequate protection of trafficked persons. The E-notes Report complains about the lack of information given by the states about rules and practices relating to protection or assistance for trafficked persons; numbers of trafficked persons receiving assistance; forms of protection given, compensations. Very few countries were able to say how many trafficked persons received protection, which, by the way, consists of numerous different acts. According to the Report, in terms of formal identification, only 11 out of 27 Member States had a single government agency or structure that was responsible for making a formal identification of anyone who is presumed to have been trafficked. E-notes could not find out how many presumed trafficked persons were identified in these 11 countries. The identification is a first step, followed by the period for reflection and recovery for adults who are presumed to have been trafficked. Countries have different proceedings about the reflection period: i.e. for 2008, information was available from 11 countries about a total of 207 people who were granted reflection periods. For 2009, information was available from 18 countries and far more were reported to have benefited: 1,150 trafficked persons. The same uncertainties concern the return (repatriation) practices and the permits given to those who collaborate with the justice. Data are not available, because victim witnesses involved in court hearings are sometimes under programs

of protection.

The TIP 2010 also reaches very negative conclusions about the policies and measures implemented by the EU member states in matters of trafficking: the EU member states have passed from the “3P” paradigm: prevention, criminal prosecution, and victim protection to the 3D phenomenon of detention, deportation and disempowerment. The 2010 TIP critiques the general approach to irregular migration: “*Many destination countries throughout the world face seemingly insurmountable challenges in confronting illegal immigration. In response to this crisis, governments of developed destination countries are summarily deporting undocumented migrants in large numbers, without careful consideration of whether they are in need of protection or without screening them for indicators of exploitation and human trafficking.*” (TIP 2010: 24). The TIP makes an explicit critique to the Italian policy: “*For instance, in 2009, after forging a partnership with the Libyan government, Italy intercepted thousands of sub-Saharan migrants in boats en route to Italy and returned the migrants to Libya and the custody of Libyan authorities.*” (TIP 2010: 24). The consequences of these policies are double: the multiplication of the cases of trafficking and the impossibility of protecting the victims: “*Immigration enforcement, developed and implemented without taking into account anti-trafficking standards and victim care responsibilities, is an aggressive response that ignores basic tenets of victim protection. It undercuts victim-centred law enforcement approaches, which place a premium on protecting all regardless of immigration status. Beyond hindering the effectiveness of anti-trafficking efforts, harsh anti-migration responses can contribute to new cases of human trafficking. Migrants who were not yet in trafficking situations become more vulnerable to forced labor and forced prostitution when exploiters can effectively use the threat of their detention and deportation – without the opportunity to seek legal redress for human trafficking complaints – to obtain or maintain the migrants’ forced labor or service. They also become vulnerable to trafficking when expelled to third countries with no protections for undocumented foreigners.*” (TIP report 2010: 24).

The 2010 TIP invites the governments to respect: “*the laudable principles and guidelines on human trafficking victim protections*

*and rights developed in New York, Geneva, and Vienna: in order to achieve this goal, governments need to bring immigration controls and practices into conformity with anti-trafficking policies.”* (TIP report 2010: 6).

Both the E-notes report and the 2010 TIP fail to analyse the deep-rooted causes that have provoked the shift from the 3P paradigm to the 3D one. Amongst these are the present migratory regime, which places irregular migration at the core of the problems states face (Abdelkhah and Bayart 2007) and the political context in Europe (where governments are challenged by the growth of populist forces, from the Northern League in Italy to the Freedom Party in Holland, using the hostility towards immigrants and immigration as a main electoral argument). In this context the borders, both physical and symbolic, have become a core topic and irregular migration has become an obsession. Trafficking is a form of irregular migration which governments renounce, thereby pandering to the public opinion. This broad perspective has been developed by academic research, which has largely abandoned the journalistic approach which focuses on the most awful, but also more spectacular aspects of trafficking, such as the enslavement of the women and the violence of the criminals<sup>14</sup>.

### **3. Towards a broad perspective: trafficking, globalisation, migration and gender**

In the second half of the nineties, most of the research on trafficking dealt with sexual exploitation. Investigations focused on the victims as objects of study; the criminal networks are often described on the basis of the victims’ narratives or the Police data (see IOM)<sup>15</sup>. Many

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<sup>14</sup> See, for example, Victor Malarek (2004), *The Natashas: Inside the New Global Sex Trade* that focus on the fact that crimes and the criminal/victim dichotomy have played an important role to denounce the problem, but have not sufficiently taken into account the complexity of the phenomenon.

<sup>15</sup> Richard O’Neil (2001), “International Trafficking in Women: a Contemporary Manifestation of Slavery and Organised Crime”, paper presented at the Inter-

reports also analysed the activities of the NGOs and on good practices to assist the victims. Since the mid-nineties, however, scholars have tried to develop a broader perspective: some have linked trafficking to the changes produced by *globalization* in the international labour market (including the role of organized crime) and the migratory context; others have looked at new trends as the feminisation of migration; other scholars have considered the impact of restrictive migratory policies in trafficking. We will now give an overview of the main researches.

According to Ruggiero (1997), globalization and the opening of markets for goods, services and capital have facilitated the expansion of cross-border organized crime, which has found a new source of profit in trafficking. On the basis of his research on crime, Ruggiero (1997) states that the trafficking industry represents in fact an increasing area of illicit economy in terms of profits generated, which benefit all levels of crime that are involved in the trafficking industry, from individuals and small criminal groups to big mafia type organizations (there exists different level of cooperation amongst agents, transporters, recruiters, guards, buyers, owners, forgers, clients).

John Salt and Jeremy Stein (1997) conceive of trafficking as an intermediary part of the global migration business facilitating movement of people between origin and destination countries. The model is divided into three stages: the mobilization and recruitment of migrants; their movement en route; and their insertion and integration into labour markets and host societies of destination countries. The global business of international migration has both legitimate and illegitimate sides. Migrant trafficking is at the core of the illegitimate business.

In a rich study on trafficking as a specific form of international migration, Aronowitz states that trafficking in migrants wouldn't have reached the present dimension if it wasn't supported by power-

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national Conference on *Strategies of the EU and the US in Combating Transnational Organised Crime*, Gent (Belgium), 2001.

ful market forces (Aronowitz 2001: 171). In fact, trafficking can be considered a “parallel” market, as relevant as the drug market and arms market, but it would be wrong to see it as separate from the official or regular market. On the contrary, the official or regular market clearly benefits from this sector, as from others informal sectors.

In the same line, Schloenhardt (1999) suggests that in the global world market there is a continuity between some sectors of the informal economy and both the formal economy and criminal one as they are intermingled. The same national and transnational networks organizing trafficking are not always acting outside the “normal society”. They may even enjoy respect in the societies from where migrants come and even known personally to the migrants. On the basis of this analysis, both Ruggiero and Schloenhardt consider as inadequate the repressive strategy against trafficking, even if it is combined with prevention (through information campaigns) and protection of the victims.

Ruggiero and Schloenhardt argue that trafficking is fuelled by the contradiction between global markets of consumerism and services, on one hand, and a work force which is still “bordered” by restrictive migratory policies implemented by the rich countries against migrants from poor countries. Less restrictive migratory policies would reduce trafficking. This is the first step to consider, in order to deal with the problem. This point of view is shared by David Kyle and Rey Koslowski (2001) who link the growth of trafficking to the intersection between globalization, migration and transnational crime. They also look closely at the legal construction of victimized women trafficked into slavery, the social construction of smuggled immigrants as threats to social order, and the sanctioning of unauthorized employment of illegal immigrants, questioning strategies based on the dichotomy criminals/victims.

In the first decade of the 21st century, more scholars criticized restrictive migratory policies, the criminalization of irregular migrants and the strategies to fight trafficking that are oriented towards crime-punishment (and, to a lesser extent, victim-protection). Munck (2002) is critical of “managing” migratory flows, in a world so deep-

ly divided between very rich and very poor countries. The international perspective of human rights, supported by the United Nations International Agencies, is also problematic. The individual perspective on rights doesn't question the economic and political logic of globalization that puts at the centre the economy. Moreover, the international human rights perspective ignores a clear form of human rights- freedom of circulation. On the contrary, irregular migration has become a major political concern both at the European level and in the wider international context, and little attention is paid to people who take enormous risks to migrate. The prevailing political approach focuses almost solely on the prevention of irregular migration.

Van Liempt (2006) criticizes the forms that the fight against trafficking has taken in Europe, both in term of laws and measures of protection towards victims. The criminalization of irregular migrants is the approach to avoid, but even the "victimization" approach is problematic since it provides support to categorising individuals precisely as "victims". Treating them as victims in order to allow them to become regular and to enter the "formal" labour market cannot be an answer to the complexity of the issues involved. Van Liempt (2006) notes that the victimization approach, which is often used by many NGOs, can even justify deportation, in the name of "saving" the victims from the traffickers. Instead, it would be necessary to develop a "holistic" perspective, understanding trafficking as a "normal" part of the existing global economy and migratory context. The present trend in restrictive migratory policies, criminalizing migrants, is fuelling trafficking, which is an important element, even if contested, of the present trend of globalization.

Gargi Bhattacharyya<sup>16</sup> (2005) analyses the "construction" of trafficking, identified by the developed countries as the major threat to international order, because it brings unwanted and undocumented people into the hidden crevices of rich societies. At the same time,

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<sup>16</sup> Gargi Bhattacharyya is Senior Lecturer in Cultural Politics and Religion at the University of Birmingham. She is author of *Race and Power: Global Racism in the Twenty-First Century* with John Gabriel and Stephen Small (2001), *Sex and Society* (2002), and *Tales of Dark-Skinned Women* (1998).



according to Gargi Bhattacharyya, the official economy relies on the illegal economy. Without it, globalisation cannot access cheap labour, it cannot reach vulnerable new markets, and it cannot finance expansion into the places most ravaged by human suffering. Trafficking has become the secret basis of global expansion.

The gender perspective is introduced by a few scholars, who have done new field work with trafficked women. El-Cherkeh (2004), in her pioneering work on trafficked women from Eastern Europe, develops a gender perspective in the study of trafficking. The feminisation of migration is at the core of the issue of trafficking together with the supply and demand components at the origin of the migration process: *“There are two lines along which the feminisation of migration is usually investigated. First, by looking at women’s motivations to migrate and identifying a growing weight of motives, which are solely, gender specific and not related to family reunification. Second, by figuring out the increasing number of foreign born women employed in EU countries. From this double perspective women’s migration can be analysed in general economic terms by modelling supply and demand components.”* (El-Cherkeh 2004: 12). The migratory potential in the post-communist world is mainly represented by women, who want to migrate<sup>17</sup>; in the EU there is a growing demand for care work and sex work; restrictive migratory policies interfere in the matching of between supply and demand, blocking the flows. Finally, many women end up being trafficked.

Guillemaut (2004) focuses also on gender discrimination. According to her, gendered inequalities in work place women in a structural position of subordination in all economic sectors and restrictive migratory policies create a market for smugglers. Media populism produces stereotypes that stigmatise migrant women, even in the position of naïve victims, to whom any agency is denied<sup>18</sup>.

El-Cherkeh and Guillemaut insist on the feminisation of migration, on the role women play in supporting the families in the coun-

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<sup>17</sup> It must be stressed that migration with consent does not mean “trafficking with consent”. “Trafficking with consent” is a contradiction in terms, because no one ever consents to slavery-like, servitude or forced-labour conditions.

<sup>18</sup> <http://sociologias-com.blogspot.com/2010/01/les-femmes-migrantes-dans-letau-des.html>. Accessed 15 January 2012.

try of origin, where they have been expelled from the labour market. The ethnicisation of some sectors of the labour market (domestic labour and sex work) and the intersectionality between gender/race and class are the analytical categories that can allow a more accurate vision of trafficking, thereby dispelling the criminals/victims dichotomy.

#### **4. The biographical experience of migrant women**

The issues that are underlined by the literature on trafficking such as the restrictive migratory policies, the networks channelling migration at the border between legal and illegal activities, the feminisation of migration, the gendered and ethnicized labour market and the supply/demand components, are all contained in the biographical experiences of migrant women, collected in the FEMILPOL project in various European countries (Italy, Germany, France, the UK, Cyprus).

The collected biographies (six) from different countries show a great variety of trajectories among women who, for different reasons, either can be categorized as “trafficked” or, even if they are entered into prostitution without being forced, are using provisions foreseen for “victims” of trafficking in order to get out of a semi-slavery condition in prostitution<sup>19</sup>.

From the interviews, three main aspects can be underlined:

- trafficked women come to Europe as part of a large migratory movement characterized by the feminization of migration. Trafficked women do not represent an exception. Their trajectories can be read in terms of gender specific motivations to migrate and in economic terms of supply and demand;

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<sup>19</sup> The six women come, Brazil, Nigeria, Latvia, Guinea, and live in four EU member states, Italy, France, Germany, the UK.

- migration regimes often put the persons in position of vulnerability that affect irregular migrants when they are already in the immigration country, making them victims of the traffickers;
- the core issue in the trajectories is exploitation and not prostitution.

Once the specific exploitation conditions imposed by traffickers have taken much of the freedom of action away from the immigrant women, the legal context of the receiving country plays an important role. The legislation for the protection of the persons who want to get out from conditions of exploitation is consequently, crucial in the battle against trafficking.

The residence permit is in fact the main factor giving women some degree of security and stability, allowing them to make a life project after the dramatic experience of trafficking; good social services and trained personnel, shelters and support play a crucial role in helping the women to overcome the past and have a new start.

Among the European countries, Italy has, until the return of the right in power in 2008, offered a relatively favourable context through article 18 of immigration law decree no. 286 of 1998<sup>20</sup>. This Law combines the granting of a special residence permit with social protection programmes that provide specific services for the rehabilitation and reintegration of trafficked persons. A foreign person on Italian soil who is in a situation of sexual exploitation characterized

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<sup>20</sup> Italian Legislation Art. 18 (D. Lgs. 286/98) Stay permit for social protection reasons.

Art. 18 Stay permit for social protection reasons states that: *“When, in the course of police operations, investigations or proceedings related to prostitution legislation violations and in cases of arrest in the act, or during assistance interventions carried out by social services or NGOs, a situation of violence and serious exploitation towards a foreign person is discovered and concrete dangers for his/her safety emerge, as a consequence of attempts to escape the constrictions exercised by a criminal organization or of testimonies given during preliminary investigations or the trial, the head of police administration, also on a judge’s proposal or with his/her favorable opinion, will provide the foreigner with a special residence permit to allow him/her to escape the violence and constrictions exercised by the organized criminal group and to participate in a social integration and assistance programme”*.

by violence and who faces danger to his/her safety as a consequence of attempts to escape the constrictions exercised over him/herself, can be granted a special residence permit for social protection reasons even if he/she have entered the country illegally, in order to allow him/her to escape the violence and restrictions exercised by the organised criminal group and to participate in a social integration and assistance programme.

In addition to this temporary permit, victims are integrated into a social protection programme, even if they do not testify against traffickers. The temporary permit lasts six months and can be renewed for an additional year, or alternatively could be converted into a work or study permit. In some cases it could last longer, especially if a judicial procedure is initiated against the traffickers or if, in the mean time, the person has found a job or a study programme. Another key point is the activation of social, medical and psychological assistance and integration programmes for the victims of trafficking. The difference between the legislations has a strong importance on the fragile lives of these women.

The analysis of biographical interviews shows that women victims of trafficking and/or constricted in semi-slavery conditions seem have experienced quite difficult situations before leaving their home countries. Accumulating disadvantages seem to contribute to expose potential migrant women to the possibility of being trafficked: usually, a difficult socio-economical situation characterized not only by deep poverty, but also by very low education level, lack of professional skills, lack of language skills, irregular status in the host country etc.

Some interviewees stressed that they voluntarily accepted the proposal of traffickers: the main reasons is that they “have nothing to lose” and the perspective of a better life simply attracted them. The interviews show also that restrictive migratory policies throw women who do not have sufficient competences and/or networks into the hands of the traffickers. It emerges also that, in some cases, the lack of access to information and support (sometimes combined with a scarce language competence), puts migrant women in a vulnerable condition that very often expose them to demands for sexual services in exchange of accommodation as well as of employment

opportunities (usually in informal labour market) *even when they are already in the immigration country where trafficking can also take place. This means that trafficking is not only the passage from one country to another but also the enslavement in the immigration country of vulnerable migrant women.*

In relation to our biographical interviews, the issues of forced or free prostitution, or the fact that they knew or otherwise, before leaving their native country, that they would be working as prostitutes or not, is irrelevant, because the core issue is exploitation. As a matter of fact, interviewed women seem not to suspect the conditions of nasty exploitation that they would endure as prostitutes. The sex business and prostitution are a very diversified sector: what the women of the sample experienced was a condition of over-exploitation. It is consequently fully evident that, given these conditions, they decided that prostitution was not for them. This is also the case of the two Brazilians who – even if not trafficked and not oppressed by pimps – try to use the possibilities offered by article 18 in Italy, because they do not want to be street prostitutes. They are forced to be over-exploited prostitutes because of their particularly difficult socio-economic situation.

From the biographical interviews, it appears that repatriation is not desired as an option by the women. Even if they are victims of trafficking, they had a migratory project – they were not kidnapped and brought by force to Europe. Consequently, protection programs, not binding too strictly permit and denunciation of the pimps, can better help victims to escape from their difficult situation. Victims of trafficking, for the most part, are undocumented. In most EU countries, when identified by the police, they are deported like other undocumented/irregular migrants. Only in cases where they decide to cooperate with the police and testify in court against the traffickers are victims of trafficking able to obtain a short-term residence permit. This stay permit only lasts for the duration of the court procedures. As we have illustrated with the example of the Italian law on trafficking, combining the granting of a special residence permit with social protection programmes with specific services for rehabilitation and reintegration of trafficked persons, represents an exception and can be seen as an example of good practice.

The biographical interviews also show the very important role of the NGOs in the protection system, if they represent a place where women can find protection. For instance, the presence of NGOs in the streets – giving information to prostitutes – can really help women who have been victims of trafficking and forced into prostitution in order to escape their condition. On the contrary, the rude behaviour of the police doesn't help the victims to have confidence in the authorities of the host country (and to help the police to fight criminal networks).

## 5. Conclusion and discussion

The biographical interviews collected in the FeMiPol project confirm the idea that current restrictive migratory policies play a role in the traffic in human beings and also constitute a major obstacle for victims' protection. This idea has progressively changed the type of approach to trafficking by the international organisations as well as by the United States of America as the TIP report shows. However, the European States continue approaching trafficking in human beings only at the level of criminal action, without considering its link with migratory policies. European policies addressing the victims of traffic share the same approach aimed to repatriation (the abovementioned Italian article 18 can be regarded as an exception) regardless of what situation victims might encounter in their countries and the risk of exposing them again to traffickers.

The critique made by the TIP Report towards these policies is very harsh: *“In the 10 years since the passage of the Palermo Protocol with its “3P” paradigm of prevention, protection and prosecution, a competing, more unfortunate, paradigm seems to persist in impeding greater anti-trafficking progress: the “3D” phenomenon of detention, deportation and disempowerment. The use of this approach in detaining and deporting trafficking victims is most often the outgrowth of immigration policies or archaic laws that have yet to fully appreciate the phenomenon of modern slavery”* (TIP 2010: 23). The TIP Report criticizes as well policies of deportation of undocumented migrants, in large numbers: *“without careful considera-*

*tion of whether they are in need of protection or without screening them for indicators of exploitation and human trafficking.” (TIP 2010: 24).*

Moreover, when irregular migrants arrive in the countries, they are exposed to forms of (semi-) slavery conditions, being “*more vulnerable to forced labor and forced prostitution when exploiters can effectively use the threat of their detention and deportation – without the opportunity to seek legal redress for human trafficking complaints – to obtain or maintain the migrants’ forced labor or service. They also become vulnerable to trafficking when expelled to third countries with no protections for undocumented foreigners.*” (TIP 2010: 24).

At the same time, The Guide on Gender-Sensitive Labour Migration Policies published by OSCE in 2009 underlines that a lack of gender perspective and of specific migration policies addressing female workers’ needs, make them “*particularly vulnerable to exploitation, and in the worst case, fall victims to human trafficking. Thus, while migration provides new opportunities for women and benefits national economies, it also often gives rise to threats specifically against their security and human rights.*” (OSCE 2009: I).

The Guide affirms: “*Female migrant workers often experience different disadvantages in comparison to men at all stages of the migration process, due to their status, to the nature of the employment sector and type of educational requirements as well as stereotyped roles of men and women. [...] To remedy the situation, attention has been drawn to the need for special measures to enforce current legislation and to develop and adopt policies and programmes for female migrant workers both in countries of origin and destination.*” (OSCE 2009: II).

In conclusion, the fight against trafficking by the EU member states and the programs of protection for the victims are inadequate from the point of view of the human rights issue. For that reasons, it is urgent to elaborate a more integrated and coherent policy on migration at the EU level that opens official immigration channels, abandoning the obsession with irregular migration. It is urgent to

formulate more precise protection policies, based on respect and empowerment, taking into account gender perspective. The path towards this necessary shift will be, however, long.

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