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UNIVERSITY OF SUSSEX

LAW SCHOOL

Dissertation for the Degree of Doctor of Philosophy

On the subject of

**Attempts to Address the Problem of Trafficking in
Women at the Bridge Connecting Europe and Asia: The
Case of the Former Soviet Republics to Turkey from 1992
to 2016**

PHD Candidate:

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2017

DECLARATION

I hereby declare that this thesis has not been submitted, either in the same or different form, to this or any other University for a degree and the work produced here is my own except stated otherwise.

Sign:

Furkan YILDIZ

Date:

Acknowledgements

The journey of this thesis would not have been completed without the assistance and support of a number of people. First and foremost, Prof. Richard Vogler and Dr Charlotte Skeet were everything you could want from supervisors. Indeed, in many respects, they went above and beyond the call of duty; they read multiple drafts, provided excellent feedback and were always patient and kind in their advice. I could never thank them enough for all the help and guidance they have given me. This thesis owes its existence to the Turkish Ministry of National Education Scholarship, without whom this project would not have been financially viable. Additionally, I was generously offered a Student Alumni Reward at the University of Sussex.

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Above all, I am grateful to my mom Sebiha Yildiz and dad Habip Yildiz for their support and struggles throughout my journey of education outside Turkey. In addition, I should express my gratitude to my brother Taha Yildiz for being my best friend, supporting and trusting me. I am most grateful to my wife Pelin Dikmen Yildiz for her support, understanding and constructive criticisms. During my PhD journey, besides all my academic skills, marrying her is my biggest achievement. In addition, among all my stressful days and nights, my newborn daughter-Hatice Mina Yildiz- is my only hope for the future. This thesis is dedicated to my daughter, my wife, my mom and dad, and my brother.

Abstract

This thesis focuses on trafficking in human beings, particularly in women, to Turkey after the dissolution of Soviet Union. The study analyses legal responses and their reflections on Turkey's policy making mechanism to find a comprehensive and victim-oriented anti-trafficking strategy at two levels, international and national. The research is structured into eight chapters, proceeding from the general background of human trafficking, particularly female trafficking, to the development of the framework of anti-trafficking measures in Turkey's domestic structure. From the literature review it is found that human trafficking is a multi-faceted problem, which needs a more comprehensive approach to tackle it. Despite the recognition of all forms of human trafficking, trafficking for sexual exploitation in Turkey of female victims from former Soviet republics is the focus of this study.

While doing so, the study analyses and compares the legal, political, and administrative differences between two specific periods: from the dissolution of the Soviet Union to 2002; and from 2002 to 2016. In the first period, the study focuses on the political and sociological transformations' effects on trafficking in women as push factors in source countries, and the domestic responses of Turkey in prevention, prosecution, and protection. After these analyses, the study examines how the political, regional, and international aspirations of the AKP governments affect the transformation of legal measures on human trafficking in the Turkish legal system. In addition to these analyses and criticisms, the study utilizes the relevant parts of the US Department of State Trafficking Reports and EU Regular and Progress Reports to highlight the positive and negative sides of the domestic transformation of Turkey's anti-trafficking strategy.

Concerning the development of Turkey's anti-trafficking measures, this study explores what could be changed for a comprehensive anti-trafficking model for Turkey as the future of their anti-trafficking strategy. The study critically analyses previous and current legal, political, and social mistakes against victims in the processes from identification to protection, to build up a preventative and victim-oriented strategy by means of legal instruments and their effects on political measures. The study highlights the weaknesses, problems, and deficiencies to demonstrate the current situation, and also evaluates the influences of international instruments on Turkey's domestic legal and political structures.

Preface

Before the main text, it is important to point out my motivation for this research. There are two main points which led me to conduct this study. First are my childhood memories: in the 1990s (especially the latter half of the decade), media organizations tended to emphasize the impact of imported women from former Soviet Republics on Turkey's culture, society, and family structure, while the government preferred to ignore the plight of the victims.

The second motivational issue is the relative lack of academic attention paid to trafficked women and their exceptionally vulnerable position. During my research, I was generally obliged to use foreign sources rather than Turkish studies. At the beginning of the research, I saw that I had an opportunity to highlight the desperation of trafficked women from the former Soviet states to Turkey, and to propose potential solutions about the trafficking of women.

In regard to these issues, this thesis will fill the academic gaps with its analytical examinations and comprehensive recommendations and will reflect the importance of memories and self-experience on academic works as a push factor.

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Translation Notes

In this study, all of the titles of Turkish sources are given in their original form. But in order to allow English speakers to understand the content of these sources, all Turkish titles are also translated into English. In addition to the sources' titles, all interviews were conducted in Turkish. All translations from Turkish are mine unless otherwise stated.

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ECtHR, Case of *Rantsev v. Cyprus and Russia*, Application no. 25965/04, (ECHR 07 January 2010)

ECtHR, Case of *M. and Others v. Italy and Bulgaria*, Application no.40020/03, (ECHR 31 July 2012)

ECtHR, Case of *Akkoyunlu v. Turkey* (Application no. 7505/06), 13 October 2015

ECtHR, Case of *İrmak v. Turkey* (Application no. 20564/10), 12 January 2016

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ECtHR, Case of *Baytar v. Turkey* (Application no. 45440/04), 14 January 2015

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ECtHR, Case of *Trampevski v. the Former Yugoslav Republic of Macedonia* (Application no.4570/07), 10 October 2012

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The Prosecutors and Peoples of Asia Pacific Region v. Hirohito (Women's Int'l War Crimes Trib. 2000, Dec. 12, 2000)

U.S. of America vs. Charles Floyd Pipkins a.k.a. Sir Charles, Andrew Moore, Jr. aka Batman

Abbreviation List

AKP: Justice and Development Party
AP: Accession Partnership
BSEC: Black Sea Economic Cooperation
CATW: Coalition against Trafficking in Women
CEDAW: Convention on the Elimination of All Forms of Discrimination against Women
CFSP: Common Foreign and Security Policy
CIS: Commonwealth of Independent States
CoE: Council of Europe
EC: European Commission
EU: European Union
EWL: European Women's Lobby
FTW: Foundation of Turkish Women
GAATW: Global Alliance Against Traffic in Women
GRETA: Group of Experts on Action against Trafficking in Human Beings
HRDF: Human Resource Development Foundation
IAF: International Abolitionist Federation
ICC: International Criminal Court
ICCPR: International Covenant on Civil and Political Rights
ICTR: International Criminal Tribunal for Rwanda
ICTY: International Criminal Tribunals for Former Yugoslavia
IGO: Inter-Governmental Organizations
IOM: International Organization for Migration
MASAK: Financial Crimes Investigation Board
MNC: Multinational Corporations
NAP: National Action Plan for Asylum and Immigration
NATO: North Atlantic Treaty Organization
NGO: Non-Governmental Organizations
NPAA: National Programme for the Adoption of the Acquis
NSWP: Network for Sex Work Projects
NTF: National Task Force
OECD-ODIHR: Office for Democratic Institutions and Human Rights

OIC: Organisation of Islamic Cooperation
OIC: Organisation of the Islamic Conference
OSCE: Organization for Security and Co-operation in Europe
RTUK: Radio and Television Supreme Council
SAARC: South Asian Association for Regional Cooperation
SIDA: Swedish International Development Agency
SP: Stability Pact
SPTF: Stability Pact Task Force on Trafficking in Human Beings
TIP: US Government's Trafficking in Persons Report
TVPA: Trafficking Victims Protection Act
UN.GIFT: UN Global Initiative to Fight Human Trafficking
UN: United Nations
UNHR: Universal Declaration of Human Rights
UNHCR: United Nations High Commissioner of Refugee
UNODC: United Nations Office Drug and Crimes
USSR: Union of Soviet Socialist Republic

1. Introduction

1.1. Introduction

Trafficking in human beings as a phenomenon has a long and brutal history, ranging from antiquity to the present day.¹ Its long history includes a significant element of slavery, and the trafficking issue as it stands now is considered to be a modern form of that brutal practice.² Beyond the problems associated with the long history of slavery, slavery-like practices, and the trafficking of human beings, there are definitional difficulties and controversies that determine the legal and social parameters of the concept of trafficking in human beings.

Trafficking in human beings, especially women and girls, is a critical and highly prevalent issue. Bachelet emphasizes this in her assessment that ‘an estimated 80% of all trafficked persons are used and abused as sexual slaves. This human rights violation is driven by demand for sexual services and the profit that is generated. The commodification of human beings as sexual objects, poverty, gender inequality and the subordinate positions of women and girls provide fertile ground for human trafficking.’³ Despite the laws of 134 countries which criminalize the practice, according to the United Nations Office on Drugs and Crime (UNODC)’s 2014 Global Report on Trafficking in Persons, women and

¹ Marvin Perry, *Western Civilization: Ideas, Politics, and Society* (10th edn, Cengage Learning 2012) 8-14

² Kevin Bales, *Disposable People: New Slavery in the Global Economy* (University of California Press 2012) 1-34

³ Speech by Michelle Bachelet, Executive Director of UN Women, at the UN General Assembly Interactive Dialogue, *Fighting Human Trafficking: Partnership and Innovation to End Violence against Women and Children* (3 April 2012)

girls together account for 70 per cent of detected global trafficking victims.⁴ 97% of these women and girls are trafficked for the purposes of sexual exploitation.⁵

Notwithstanding its global aspect, trafficking in women is also a regional problem. The UNODC reports that victims representing 152 different nationalities were identified in 124 countries worldwide between 2010 and 2012.⁶ The UNODC also identified approximately 510 routes, not only for global trafficking, but also regional and domestic trafficking during this period.⁷ The UNODC has emphasized that trafficking flows are dominated less by clear geographic boundaries, and more by relative pockets of economic disparity, with victims flowing from poorer to richer areas within countries, regions, or even across the globe.⁸ According to the UNODC, most victims are trafficked within their home country or region of origin.⁹ About 34% of the identified victims were trafficked domestically, while another 40% of all reported trafficking victims were trafficked within a limited geographic area or ‘sub-region’ such as Europe, South Asia, or the Americas. Only 26% of identified victims were trafficked internationally or ‘transregionally’ across continents.¹⁰

In this respect, Turkey is one of the most vulnerable countries due to its geopolitical location – particularly since the disintegration of the Soviet Union – when many desperate people left their homes because of political, economic, and social problems. Due to Turkey’s location and cultural similarities with some of the former Soviet states, such as Turkmenistan, Azerbaijan, the Kyrgyz Republic,

⁴ UNODC, *Global Report on Trafficking in Persons* (UNODC, 2014) 5

⁵ ILO, *Minimum Estimate of Forced Labour in the World* (ILO, 2005) 6 : UNODC, *Global Report on Trafficking in Persons* (UNODC, 2012) 7

⁶ UNODC (n 4) 7

⁷ The Advocates for Human Rights, ‘Trafficking Routes’ (July 2015) <http://www.stopvaw.org/Trafficking_Routes> accessed 03 August 2015

⁸ UNODC (n 4) 38

⁹ Ibid, 1

¹⁰ Ibid, 38

Kazakhstan, and Uzbekistan, it has become a popular target destination. Most of the identified victims were/are women and vulnerable from sexual exploitation.¹¹ Despite changes in the Turkish Penal Code as well as various laws and administrative measures to prevent trafficking in human beings, especially in women, between 2005 and 2013, 98% of the total number of victims came from the former Soviet Republics, and almost 99% of the victims were female. In the same time period, 88% of the 522 identified victims were sexually exploited, and 3% of them were, in addition, forced to perform labour.¹²

Trafficking in human beings, especially in women from the former Soviet states, is one of the least often researched issues in Turkish academia, despite various international legal agreements and regional efforts. This thesis addresses an academic and theoretical gap in the existing literature and presents an analysis of what is wrong. It also develops and extends existing models to create a new model to address the specific problems in Turkey in section 3.5 of Chapter 3.

1.2. The Aim and Tasks of the Thesis

The three major tasks of this thesis are: first, to analyse the domestic legal and administrative transformation of Turkey's response to trafficking in human beings, especially in women, from the former Soviet states, from the dissolution of the Soviet Union to 2016. Second, the thesis will attempt to critically evaluate the deficiencies in Turkey's anti-trafficking strategy in connection with its relationship between international and regional structures. And finally, it will recommend proposed anti-trafficking strategies to overcome these deficiencies. The thesis uses the female victims of the former Soviet states as an illustration of

¹¹ Section 2.4.1 will give more detailed and statistical information about this issue.

¹² Counter Trafficking, 'Who Is At Risk' <<http://www.countertrafficking.org/whose.html>> accessed 13 January 2013

the entire human trafficking problem in Turkey. To fully understand the issue and to undertake meaningful research about trafficking in human beings in/to Turkey, female victims from the former Soviet states are the obvious and most prominent examples that bring the issue not only into the legal and political but also into academic and media agendas.

In order to understand the issues set out earlier in this chapter, the following questions need to be answered: First, why is the Turkish System failing to tackle the problem of trafficking in human beings, especially in women? Second, what can be done to improve the approach of Turkey in line with International Obligations/theoretical considerations? Finally, how can those obligations be translated into the Turkish Law and System?

In later chapters, these main research questions, and the subsidiary questions on which they rest, will be fully addressed in order to identify the problems and recommend potential comprehensive and victim-oriented solutions for Turkey.

The research seeks to ensure that the following issues are to be taken into consideration:

This thesis aims to explore the complexity surrounding human trafficking, endeavouring to achieve a balance between theory and practice both at the international and domestic levels, as well as mapping out issues that should be addressed for the creation of a comprehensive approach.

It also aims to identify adverse effects which could reduce the effectiveness of the anti-trafficking law at the Turkish national level. Finally, the thesis evaluates the factors which make for best practice in combating human trafficking.

The overall aims are to harness the potential of anti-trafficking methods in order to establish proposals for new anti-trafficking legislation and policies for Turkey and to fill the gap in Turkish academic literature.

1.3. The Scope of the Thesis

Two main elements determine the scope of the thesis: victims and time periods. In short, the research project focuses on the political, legal, and social perceptions of Turkey, both for and against trafficking victims, from the dissolution of the Soviet Union to 2016.

There are five core aspects which constitute the main sections of the research frame, around which the thesis is organised. The first element of the research project will examine the ‘push and pull’ factors concerning the former Soviet republics and Turkey. The second aspect concerns the causes and effects of the Turkish government’s changing political attitudes towards these women in this specific period. The third aspect will concentrate on why Turkey has begun to take steps against human trafficking and why these steps have not been effective at resolving the problem. The fourth aspect will examine Turkey’s legal and political efforts to provide a comprehensive and victim-oriented solution. The final element will analyse the interactions between international anti-trafficking instruments and Turkey’s domestic strategies. Aside from this analysis, this section will identify and emphasize what make these interactions ineffective.

Human trafficking has three main elements, as will be discussed in Chapter 3: the acts, the means, and the purposes. Accordingly, the thesis will evaluate all three elements in terms of the trafficking in human beings, especially in women, to Turkey and particularly from the former Soviet Republics, to show their effects

on trafficking flows to Turkey. Whilst fully acknowledging the importance of other trafficking concerns in Turkey, the research focuses on the trafficking of women for all exploitative purposes as an illustration of and to evaluate Turkey's efforts against the entire trafficking system at various stages. Trafficked women from the former Soviet states are the starting point, but the research will also enable me to reflect on Turkey's responses to the whole problem of trafficking more generally.

1.4. The Interdisciplinary Framework of the Research: Cause and Effect Relation

To combine the micro (Turkey's domestic structures) and the macro (transformation in international instruments and political, economic, and legal parameters) levels, I have established my thesis within an interdisciplinary framework. I believe that this multi-dimensional approach is the most effective way to analyse my material and that it will help the reader to understand better the relationship between causes and effects.

When I began this research, I sought to distinguish the significant roles of different disciplines in the core theme of my research. As a result of this, I discovered the importance of the role of 'the reasoning (push factors)' in terms of finding a solution. To analyse the role of push factors, I drew on insights from the basic elements of the various disciplines of economics, sociology, history, and politics, which provided me with a wide range of critical perspectives. To achieve the final aim of the research, I evaluated all critical perspectives within the crucible of the discipline of law.

After this short introduction to the interdisciplinary features of my research, I intend to demonstrate the main interaction points among these disciplines, in accordance with this research plan. As mentioned in the introductory section, the core theme of my dissertation is Turkey's anti-trafficking responses and its shortcomings regarding the flow of female victims from the former Soviet states.

1.5. Methodology

My study adopts a multi-level approach in order to provide an integrated perspective on the topic of the trafficking of women in/to Turkey. Scholars in Turkey generally adopt a one-dimensional approach, which means sociologists look from the window of sociology in their work on this topic, while legal scholars look from a doctrinal window, and it is hard to find interdisciplinary research regarding human trafficking. It is also hard to find directly related publications, not only on trafficking in human beings but also on trafficking in women and its multifaceted patterns, in Turkish academic literature. For example, 'How Do Smuggling and Trafficking Operate via Irregular Border Crossings in the Middle East? Evidence from Fieldwork in Turkey' by Icduygu and Toktas in 2002 was the first significant work concerning the crime of trafficking, but it did not directly relate to trafficked women from the former Soviet states.¹³ In this article the authors highlight the problem of sexual exploitation in the trafficking context. 'Geo-Political Position and Importance of Turkey in the Crime Trafficking Between the Continents Asia, Europe and Africa' by Keser and Ozel in 2008 provides more specific and detailed information about trafficking in human beings, but not about many issues relevant to trafficking in women

¹³ Ahmet Icduygu and Sule Toktas, 'How do Smuggling and Trafficking Operate via Irregular Border Crossings in the Middle East? Evidence from Fieldwork in Turkey' [2002] 40(6) International Migration 25

specifically.¹⁴ The authors merely underline the source countries and gender of victims in a rather cursory way. According to Keser and Ozel, the victims of trafficking were mostly women and girls from Moldavia, Ukraine, and other eastern neighbours of Turkey. It was not until the publication of Demir's 'Methods of Sex Trafficking: Findings of a Case Study in Turkey in 2010' that a wide range of data on trafficked women from the former Soviet states was provided.¹⁵ 'Victims of Sex Trafficking in Turkey: Characteristics, Motivations, and Dynamics' by Demir and Finckenauer in 2010 outlined a detailed analysis of female victims of sex trafficking from the former Soviet states.¹⁶ The study by Demir and Finckenaur has many similarities with Demir's previous publication, such as the number of victims and formal interviewees, as well as the figures which are analysed. In 2012, Toktas and Selimoglu published a journal article entitled 'Smuggling and Trafficking in Turkey: An Analysis of EU–Turkey Cooperation in Combating Transnational Organized Crime', aiming to examine the relationship between trafficking and transnational organized crime.¹⁷ This was the first article to analyse the European Union Regular and Progress Report on an annual basis. Unfortunately, it evaluates the issue from a broad perspective, and offers limited assessments of trafficking in women. So far, Turkey's academicians and politicians appear to believe that this problem can be solved by using only legal or political instruments. However, human trafficking engages various elements of different societal problems, such as security and inequality, alongside

¹⁴ Nurdan Keser and Ali Ozel, 'Geo-Political Position and Importance of Turkey in the Crime Trafficking between the Continents Asia, Europe and Africa' [2008] 3(2) *International Journal of Environmental and Science Education* 75

¹⁵ Oguzhan Omer Demir, 'Methods of sex trafficking: findings of a case study in Turkey' [2010] 11(3) *Global Crime* 314

¹⁶ Oguzhan Omer Demir and James O. Finckenauer, 'Victims of Sex Trafficking in Turkey: Characteristics, Motivations, and Dynamics' [2010] 20(1-2) *Women & Criminal Justice* 57

¹⁷ Sule Toktas and Hande Selimoglu, 'Smuggling and Trafficking in Turkey: An Analysis of EU–Turkey Cooperation in Combating Transnational Organized Crime' [2012] 14 (1) *Journal of Balkan and Near Eastern Studies* 135

political and economic considerations. To respond to the collective impact caused by all of these problems, I believe the Turkish government needs to develop a much more comprehensive and holistic anti-trafficking strategy. This study fills these academic gaps and provides an interdisciplinary perspective on the human trafficking issue.

Turkish legal scholars have investigated and examined the doctrinal dimension of the topic. Similarly, Turkish sociologists have evaluated merely the sociological perceptions for/against the trafficking of women. I believe that the combination of different disciplinary approaches and methodologies helps to open a new dimension for understanding the phenomenon of the trafficking of women in Turkey. The aims of this study therefore go beyond the pure analysis of legal doctrine relating to trafficking in human beings in the Turkish Criminal Code, and encompass an interdisciplinary approach.

This study differs methodologically from other studies in Turkish academia in a number of ways. Firstly, this study adopts different methodological accounts, because a single methodology is not adequate to demonstrate the entire process from recruitment to exploitation. Secondly, this study uses various disciplines to understand all the content of the problem, because the problem of the trafficking of women not only has legal dimensions, but sociological, economic, and political ones as well. Thirdly, every country or region has their own characteristic features. To understand and analyse this, this study focuses on the main triggers of trafficking among former Soviet citizens. These factors encouraged me to adopt a research methodology which combines the following approaches: doctrinal methodology, socio-legal methodology, and process-tracing methodology. Unlike most Turkish scholars and politicians, I decided to further utilize the socio-legal

methodology in order to investigate the sociological dimension of the issue, and adopt the process-tracing methodology (addressed later in this section) in order to study the causal mechanisms linking causes with outcomes.¹⁸

Doctrinal research methodology helps to find answers to questions about the role and function of international and domestic law in relation to the trafficking of women. According to Chynoweth, doctrinal research is concerned with the formulation of legal ‘doctrines’ through the analysis of legal rules.¹⁹ In short, doctrinal research is research into the law and legal concepts.²⁰ Clearly, legal rules dictate how individuals ought to behave.²¹ As an obvious result of this, they are inadequate either to explain, predict, or even to understand human behaviour. In my research, doctrinal methodology provides both international and domestic legal parameters for the control of the trafficking of women in order to suggest ways in which the legal structure in Turkey could be transformed. I use this methodological account to answer the question in section 6.2 of Chapter 6: ‘what is the current state of the law with regard to the trafficking of women in Turkey?’

Slater and Mason demonstrate that ‘doctrinal analysis seeks to provide a detailed and highly technical commentary upon, and systematic, exposition of, the content of legal doctrine. The doctrine is interpreted as if it is a separate, independent and coherent system of rules.’²² In this regard, this methodology supplies an opportunity to utilize my interpretative and systematic skills in both the international and domestic legal dimensions of the female trafficking issue.

¹⁸ Derek Beach and Rasmus Brun Pederson, *Process-Tracing Methods Foundations and Guidelines* (University of Michigan Press 2013) 2-3

¹⁹ P. Chynoweth, ‘Legal Research’ in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Blackwell Publishing 2008) 29

²⁰ Nigel Duncan and Terry C. Hutchinson, ‘Defining and describing what we do: Doctrinal legal research’ [2012] 17(1) *Deakin Law Review* 83, 88-96

²¹ Hans Kelsen, *The pure theory of law* (M. Knight tr, University of California Press 1971) 11-27

²² Michael Salter and Julie Mason, *Writing Law Dissertations: an Introduction and Guide to the Conduct of Legal Research* (Longman 2007) 49

Doctrinal research is the research process used to identify, analyse, and synthesise the content of the law.²³ In this context, I use various sources of law, such as international treaties and conventions, customary international law and judicial decisions, textbooks, journal articles, and general web-based research, to focus on the subject and area of study, and to evaluate the effectiveness of the law to indicate the transformation in the legal paradigm relating to the trafficking of women. These sources are used to clarify the issue and show the interaction between international and national documents against the trafficking of women. Both Turkish and international sources are used and evaluated. Hutchinson has emphasised the essential features of the legislation and case law. According to him, they are examined critically and then all the relevant elements are combined or synthesised to establish an arguably correct and complete statement of the law on the matter in hand.²⁴ In this regard, adopting this approach, it appears that Turkey has attempted to respond to the relevant instruments of the UN in order to develop more up-to-date trafficking laws. The directions of the EU have proved influential, both to meet membership requirements and to fill its domestic legal and political gaps on the subject of trafficking in human beings.

However, in addition to the legal normative dimension, there are sociological and economic dimensions to the trafficking issue. To analyse the different dimensions of this multi-faceted phenomenon, I will also use a socio-legal methodology, which is an umbrella term for what is now an exciting, wide-ranging, and varied area of research activity.²⁵ Goode and Hatt have underlined that socio-legal methodology embraces disciplines and subjects concerned with

²³ Terry Hutchinson, 'Doctrinal Research: Researching the jury' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2013) 9

²⁴ Ibid, 10

²⁵ ESRC, *Review of Socio-Legal Studies: Final Report* (Swindon, ESRC, 1994) 1

law as a social institution, with the effect of law, legal processes, institutions and services, and with the influence of social, political, and economic factors on the law and legal institutions.²⁶ In this regard, the ‘socio-legal approach’ can be defined as the study of law and legal processes, which covers the theoretical and empirical analysis of law as a social phenomenon.²⁷ This methodology enables me to engage with the ‘law in action’.²⁸

Wheeler and Thomas define broadly the term ‘socio-legal’ by noting that ‘the word “socio” in socio-legal studies means to use an interface with a context within which law exists, be that a sociological, historical, economic, geographical or other context’.²⁹ In this context, socio-legal methodology allows me to build bridges between law and other disciplines such as economics, history, sociology, and politics, and to critique Turkey’s legal regulations on the trafficking of women by means of international and regional cooperation, international law, and regional policies. Furthermore, the socio-legal methodology may look upon the law as an effective instrument to achieve social, political, and economic objectives. In particular, Chapters 5 and 6 demonstrate the significance of this methodology by using linkages between international politics and international law; between international politics and Turkey’s political and legal structure; between international law and Turkish law; between political/social/economic problems and organized crime; between supply and demand; between domestic legal and political structures; and between political aspirations and legal transformations.

²⁶ William J. Goode and P. K. Hatt, *Methods in Social Research* (McGraw-Hill Book Company 1986) 45

²⁷ ESRC (n 25)

²⁸ Ashish Kumar Singhal and Ikramuddin Malik, ‘Doctrinal and socio-legal methods of research: merits and demerits’ [2012] 2(7) Educational Research Journal 252, 254

²⁹ S. Wheeler and P.A. Thomas, ‘Socio-Legal Studies’ in D. Hayton (ed), *Law’s Futures* (Hart Publishing 2000) 271

In this regard, the combination of doctrinal methodology and socio-legal methodology provides me with a better understanding of the legal transformation in Turkey. A doctrinal approach provides a normative dimension, legal transformation, and subjective objects of the study – in short, the raw international and domestic materials of the dissertation – whereas the socio-legal approach supplies with me a construction plan by means of linkages and interaction points. To make this research more original and up-to-date, I undertook qualitative research interviews as a part of my socio-legal methodology. In these interviews, I have looked for answers to the economic, social, legal, and academic questions which relate to the trafficking of women in/to Turkey from the former Soviet Union. It is important to explain in more detail the type of interviews which have been used and the methodology adopted. The interviews were semi-structured in order to allow for focused, conversational, two-way communication, since this offered a more flexible and fluid approach.³⁰ Jennifer Mason summarizes the aim of this type of interview as: ‘to ensure flexibility in how and in what sequence questions are asked, and in whether and how particular areas might be followed up and developed with different interviewees.’³¹ This provided me with the opportunity to conduct interviews shaped by the interviewee’s own understanding as well as my interests in the phenomenon of the trafficking of women. In particular, various notes from the interviews will be used in order to show the current situation and to evaluate future work. I conducted two interviews: the first interviewee was a financial expert in the Financial Crimes Investigation Board (MASAK). The aim of this interview was to evaluate the financial dimensions of

³⁰ Sharlene Bagy Hesse-Biber and Patricia Leavy, *The Practice of Qualitative Research* (Sage 2011) 102

³¹ Jennifer Mason, ‘Semistructured Interviews’ in Michael S. Lewis-Beck, Alan Bryman and Tim Futing Liao (eds), *The SAGE Encyclopedia of Social Science Research Methods* (Sage 2004) 1021

human trafficking and the Board's influence on the investigation process. The second interviewee was a migration expert in the Migration Policy and Projects Department, Ministry of the Interior. The aim of this interview was to assess the deficiencies of the Department and to highlight its importance for future anti-trafficking strategies.

However, there are significant difficulties in conducting interviews in Turkey which do not necessarily arise elsewhere, and these have severely curtailed access to reliable interview data. In addition to the interviews mentioned above, I planned to conduct a third interview with a representative from groups working with victims. However, I did not receive any response to my verbal and written attempts to arrange an interview. I tried to reach the Human Resource Development Foundation (HRDF), which is responsible for a shelter in Istanbul, and the Foundation for Women's Solidarity (FWS), which is responsible for one in Ankara.³² I chose these two foundations because they have experience of victim support action in Turkey and I had expected to obtain information about the current situation of shelters, up-to-date statistics about victims, and further developments for anti-trafficking strategy. This is one of the problems of undertaking interview work in Turkey. People do not want to talk about government actions. Although the coup attempt on 15 July 2016 heightened fears of the loss of financial and governmental support, these concerns were already prevalent. Further limitations to interviewing were that government officials were unwilling to talk because human trafficking is a sensitive issue as a result of the Syrian refugee crisis. In addition to this, my existing interviewees did not always

³² I sent e-mail to reach someone in charge for both foundations. In addition to this, I called their official landlines to show my intent to conduct semi-structured interviews. I called and e-mailed them twice: my first attempt was on 4 October 2016; my second attempt was on 12 October 2016.

provide genuine information, merely repeating the information which could be found on their institutions' websites. Another critical limitation is I that I could not conduct interviews anonymously. Before contacting my interviewees, I obtained necessary permissions from the institutions for whom my interviewees work. Their head officials directed me to them and they agreed to give an interview, using their full name. This made them reluctant to provide further information about my questions and to reveal their real feelings about the government's efforts. I was hoping to collect information in order to understand the economic dimension of trafficking and to critically analyse the political implications of current developments, and to hear about the main problems for experts working in the field. As a result of these limitations, my interviews necessarily provide somewhat limited information.

There are two significant facts which further limited my research. The first is that Turkey does not publish regular reports or statistical data about trafficking victims. The second is that it is hard to identify human trafficking-related cases. Turkey only publishes a limited number of cases or older cases. That is why the thesis can utilize only open-access cases. These two chapters elaborate the main arguments related to Turkey's struggle against not only female trafficking but human trafficking in general. I argue that from 1992 to 2002 Turkey ignored the problem and did not take steps to prevent trafficking or to protect the victims. During this period, Turkey blamed victims and prosecuted them for various crimes, such as prostitution and illegal entry. After 2002, although Turkey has implemented several steps in its national system, these progressions were prompted by its political aspirations, rather than related to the necessity of the steps themselves. In other words, the political aspirations of Turkey are the main

triggers for this transformation in the human trafficking agenda. The government has pursued its anti-trafficking agenda to further its political aspirations rather than to prevent violations of human rights or to tackle organized crime. Despite the criminal features of human trafficking, the most important part of a comprehensive and victim-oriented anti-trafficking strategy is victim protection, which still remains hidden behind the prosecutorial approach to trafficking in Turkey.

As a final methodological technique, in order to critique the intervening steps that occur between the introduction of informational inputs and the decision outcomes, a process-tracing methodology is adopted in Chapter 4 to analyse the transformation of international instruments, and in Chapter 6 to evaluate the inputs and outputs of Turkey's legal and political changes. George and Bennet define this as a 'method [that] attempts to identify the intervening causal process – the causal chain and causal mechanism – between an independent variable (or variables) and the outcome of the dependent variable.'³³ Authors introduce causal mechanisms as 'ultimately unobservable physical, social, or psychological processes through which agents with causal capacities operate, but only in specific contexts or conditions, to transfer energy, information, or matter to other entities.'³⁴ George and McKeown demonstrate this methodology as 'a within-case analysis to evaluate causal processes of decision-making, charting various initial conditions to their linked outcomes.'³⁵ Accordingly, Reilly states that 'process

³³ Alexander L. George and Andrew Bennet, *Case Studies and Theory Development in the Social Sciences* (MIT Press 2005) 206

³⁴ *Ibid*, 137

³⁵ Alexander L. George and T.J. McKeown, 'Case Studies and Theories of Organizational Decision Making' in Robert F. Coulam and Richard A. Smith (eds), *Advances in Information Processing in Organizations*, vol 2 (JAI Press Inc. 1985) 35

tracing is a data analysis method for identifying, validating, and testing casual mechanisms within case studies in a specific, theoretically informed way.’³⁶

This methodology helped me to understand the influence of domestic political aspirations on domestic legal transformation. By means of process-tracing, I have analysed Turkey’s domestic and international political efforts to provide harmonization with the European Union *acquis* as an input, and I critique the reflections of these efforts on domestic legal and political structures as an output. In addition to this, I have evaluated the effects of the United Nations’ documents, alongside treaties and conventions on Turkey’s domestic structure, within the input and output perspectives. For instance, constant factors (e.g. geopolitical location and the role of organized crime groups) and the increasing demand for human rights, EU membership, and an influential role in the international arena, are the ‘independent variables (inputs)’ of Turkey’s anti trafficking strategy. Legal transformation and administrative regulations are political efforts which form the ‘dependent variables (outputs)’, to reach comprehensive and victim-oriented anti-trafficking methods.³⁷ This methodology gives me an opportunity to discuss one of my arguments related to Turkey’s political aspirations and their negative effects on Turkey’s anti-trafficking strategies in a systematic way.

1.6. Organization of the Thesis

The thesis will be arranged in three parts and organised in six chapters, in addition to the current Introduction and the final Conclusion. The thesis argues that Turkey’s anti-trafficking efforts fail to tackle human trafficking because of

³⁶ R.C. Reilly, ‘Process Tracing’ in Mills, A., Eurepos, G. & Wiebe, E (eds), *Encyclopaedia of Case Study Research*, vol 2 (Sage 2010) 734

³⁷ I will adopt this methodology to analyse critically all relevant transformation in sections 4.2.1 and in section 5.4. of Chapter 5, and in section 6.2. of Chapter 6.

their focus on Turkey's political agenda rather than the protection of the victims' violated rights. It also argues that the adoption of the '5P' (prevention, protection, prosecution, partnership, and perception) model by the Turkish government would be an appropriate way to compensate for the shortcomings of existing anti-trafficking methods in terms of international obligations and theoretical considerations related to human trafficking. The breakdowns of the major arguments of the thesis can be grouped in three general focal points, which are theory, international instruments, and related arguments which are specific to the Turkish situation. The thesis addresses the research questions through an analysis of the Turkish system in the following chapters. Chapters 2, 3, and 4 form the first part of the thesis, which provides a detailed identification and critique of Turkey's response to the female trafficking phenomenon, and of various fundamental theoretical approaches and terminological debates, alongside a historical evolution of international instruments relating to the theme of the thesis. Chapter 2 focuses on what trafficking in women is and why it is such an important phenomenon on the global, regional, and domestic levels. It shows Turkey's failure from 1992 to today in general as a basis for the argument in the following chapters. Chapter 3 concentrates on the elaboration of the concept, sources, and scope, as well as the theoretical basis of trafficking in human beings. Theoretical arguments are critically analysed in this chapter. Most of the common theoretical accounts concentrate on only one side of the human trafficking problem. They provide economic, criminological, and migration-related aspects of trafficking. However, trafficking in human beings is a multi-purpose and multi-dimensional crime, and needs a comprehensive and multi-disciplinary theoretical approach that focuses on victims' rights rather than trafficking purposes or means. In this regard, one-

dimensional approaches to the complex problems raised by human trafficking do not provide an appropriate opportunity to analyse all the elements and outcomes of trafficking. To reduce the prevalence of trafficking in women, the underlying theories on which practice is based need to apply holistic and humanitarian approaches. I argue that theories and practices should direct us towards the human rights of the victims. In this context, theoretical responses to trafficking should be located within the dichotomy of ‘traffickers’ and ‘trafficked victims’. This chapter sets out the ‘5P’ model and offers it as an alternative model for Turkey to adopt.

Chapter 4 explores the origins of the principle and then proceeds to analyse the historical evolution of the international instruments in chronological order, from the Abolition of the Slave Trade Act 1807 to the present day. This chapter concentrates on arguments related to international instruments. I argue that trafficking is a human rights issue which must be regarded as a serious threat to the promotion and protection of human rights. The existing international framework on human trafficking has proven itself to be ill-equipped and inadequate to deal with the current problem of human trafficking. Most regional organizations and bilateral treaties also do not devote their efforts to victim-oriented and preventative purposes.

Chapters 5 and 6 form the second part of the thesis, which provides a comprehensive review of the contemporary anti-trafficking regime of Turkey, mainly based on analysis and critique of the transformation in Turkey’s perception of female victims of trafficking from 1992 to 2016. Chapter 5 examines Turkey’s efforts relating to the trafficking of women at the regional and bilateral levels. It will also critically evaluate why these efforts are inadequate in preventing the phenomenon of female trafficking from former Soviet states to Turkey. I address

the question of Turkey's ratification of the COE's Trafficking Convention and its causes. This also underpins one of my central arguments, which is that Turkey introduced the necessary amendments only because of its political aspirations. Chapter 6 underlines Turkey's legal and political responses to the trafficking of women. This chapter has three significant levels of analysis: the first level examines the legal transformation of Turkey and its triggers. The second level concentrates on Turkey's political and administrative reforms on the trafficking of women. The third level assesses the evaluations of the European Union's Regular and Progress reports, and the US Trafficking in Persons Reports by the US Department of State, with regards to Turkey's efforts. In addition to these tasks, this chapter critically evaluates key cases not only from domestic courts but also from the European Court of Human Rights (ECtHR), related to trafficking in human beings, especially in women. The ECtHR considers that there can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims, and cannot be considered compatible with a democratic society and the values expounded in the Convention.³⁸ It considers that trafficking in human beings, by its very nature and the aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry though also elsewhere. It implies close surveillance of the activities of victims, whose movements are often circumscribed. It involves the use of violence and threats against victims, who live and work under poor conditions. It is described in the explanatory report accompanying the Anti-Trafficking Convention as the modern form of the old worldwide slave trade. In

³⁸ *Rantsev v. Cyprus and Russia*, Application no. 25965/04, (ECHR 07 January 2010)

those circumstances, the ECtHR concludes that trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Human Rights Convention.³⁹

Chapter 7 forms the third section of the thesis, which deals with the problems of Turkey's anti-trafficking strategies and possible solutions. It will critically assess what Turkey has done so far, and what should be done to reach a result-oriented, comprehensive, multidimensional, and victim-oriented anti-trafficking solution. Both the strengths and weaknesses of previously produced solutions will be evaluated in detail. The shortcomings of Turkey's anti-trafficking program will be identified by using the requirements of its international obligations and scholars' opinions to determine the necessary elements of a comprehensive and victim-oriented anti-trafficking strategy. This section addresses these elements in the Turkish context in connection with the '5P' model in order to eliminate the shortcomings not only in relation to the legal and political structure of the Turkish state but also in society's perception of the crime of human trafficking.

Finally, the Conclusion provides a general summary of the analysis of the thesis. In this final section, a position on the future of the trafficking of women from the former Soviet Republics is provided. This presents the ultimate findings of the thesis. Before discussing the main issues relating to Turkey, its domestic practices and consequent recommendations, the next chapter provides a general overview of the trafficking of women across global and local levels.

³⁹ Ibid. Para 281-282: *M. and Others v. Italy and Bulgaria*, Application no.40020/03, (ECHR 31 July 2012)

2. The Problem of the Trafficking of Women from the Global View to the Domestic Position

2.1. Introduction

Trafficking in human beings, especially in women and girls, is a global phenomenon that affects countries, regions, and sub-regions. In this chapter, I will give an overview of the condition of the trafficking of women, from the international and regional levels to the domestic level in Turkey.

This chapter has an important role in relation to the background of this research and aims to provide answers to the question: ‘What is the problem of human trafficking?’ This chapter aims to show the tendencies of global trafficking crime and the main aims of regional trafficking networks. It provides the groundwork for analysing Turkey’s trafficking problem by explaining in detail the nature of the trafficking problem in the region and in Turkey itself.

The chapter provides an analysis of the pandemic effects of human trafficking at the global, regional, and domestic levels. Before seeking answers to the question outlined above, the chapter analyses both the characteristics of human trafficking itself and the specific features of the trafficking problem in Turkey. It therefore provides a basis for Chapter 6, which will analyse the legal response to, and policies against, the trafficking in human beings, especially in women, on a national level. In other words, this chapter provides an outline of the phenomenon of the trafficking of women from 1992 to today from a Turkish perspective, as a basis for the subsequent analysis of prevention strategies.

2.2. Globalization and the Dark Face of Global Trafficking in Women

Trafficking in human beings has increased dramatically with globalization, the rise of illicit trade, and the end of the Cold War.¹ Free markets, free trade, greater economic competition, and a decline in state intervention in the economy have been hallmarks of the globalizing process.² Globalization is also characterized by greater mobility of goods and people, and more rapid communications.³ Migrants travel abroad searching for economic opportunities.⁴ The root causes of migration are economic deprivation and a lack of economic opportunities in source countries. According to Dinan, trafficking in persons is largely a matter of economically motivated migration.⁵

Munir explains the relationship between globalization and human trafficking thus: ‘globalization has facilitated the rise of human trafficking by marginalizing many rural communities, impoverishing women and children in many regions, and accelerating rural to urban migration.’⁶ Dinan also categorises the trafficking

¹ Vesna Nikolic-Ristanovic, ‘Sex Trafficking: The Impact of War, Militarism and Globalization in Eastern Europe’ [2003] 17 Gender and Globalism, <<http://quod.lib.umich.edu/cgi/t/text/text-index?cc=mfsfront;c=mfs;c=mfsfront;idno=ark5583.0017.001;rgn=main;view=text;xc=1;g=mfsfg>> accessed 25 November 2015; Cheryl O’Brien, ‘An Analysis of Global Sex Trafficking’ (2009) 11 Indiana Journal of Political Science 7, 8; Firat Bayar, ‘Küreselleşme Kavramı ve Küreselleşme Sürecinde Türkiye- Globalization and Turkey in the Globalization Process’ (2008) 32 Uluslararası Ekonomik Sorunlar Dergisi

<<http://www.mfa.gov.tr/data/Kutuphane/yayinlar/EkonomikSorunlarDergisi/sayi32/firatbayar.pdf>> accessed 10 April 2014; Anthony Giddens, *The Consequences of Modernity* (Stanford University Press 1991) 64; Kinsey Alden Dinan, ‘Globalisation and National Sovereignty: From migration to trafficking’ in Sally Cameron and Edward Newman (eds), *Trafficking in Humans: Social, Cultural and Political Dimensions* (United Nations University Press 2008) 59; Manfred B. Steger, *Globalization: A Very Short Introduction* (Oxford University Press 2009) 11

² Louise Shelley, *Human Trafficking: A Global Perspective* (Cambridge University Press 2010) 37

³ Louise Shelley, C. Corpora and J. Picarelli, ‘Global Crime Inc.’ in Maryann Cusimano Love (ed), *Beyond Sovereignty: Issues for a Global Agenda* (Wadsworth 2003) 143-166

⁴ See Chapter 3, section 3.3.1

⁵ Kinsey Alden Dinan, ‘Globalisation and National Sovereignty’ (n 1) 60

⁶ Shafqat Munir, ‘Trafficking South Asia and Pakistan’ (Journalists for Democracy and Human Rights)

<<http://www.jdhr.org/publications/articles/Himal%20South%20Asia%20Sept%202003%20Article%20on%20Trafficking.pdf>> accessed 01 December 2014

in persons as a manifestation and a consequence of globalisation.⁷ The ‘push’ factors in the origin countries motivate people to seek better living standards abroad. The increasing volume of international trade and speedy, low-cost communication, as well as rapid innovation, are a boon to the traffickers.⁸ In addition to these factors, diminishing trade barriers help traffickers meet the demands of the destination countries.⁹

Trafficking in human beings¹⁰ is not only the worst form of labour exploitation, but one of the dark sides of globalization.¹¹ Women and children are the most vulnerable elements of the age of globalization, due to the massive increase in trafficking in certain regions such as the post-Soviet republics, Thailand, and Pakistan.¹² Women who have been duped are sold into commercial sexual exploitation or indentured servitude. This is regarded as the dark underside of international mobility.¹³ From impoverished areas of the post-Cold War countries, women and children have been trafficked to wealthy industrialized countries for high profit.

Because of the clandestine nature of the practice, it is difficult to accurately determine the true extent of trafficking in women. Women who have been

⁷ Dinan (n 1) 63

⁸ Martin Larkin, ‘Globalization and Health’ [1999] 4 Critical Public Health 435, 438

⁹ Shelley, *Human Trafficking: A Global Perspective* (n 2) 40-45

¹⁰ According to the UNODC data, the highest origin countries are Albania, Belarus, Bulgaria, China, Lithuania, Nigeria, Republic of Moldova, Romania, Russian Federation, Thailand and Ukraine. Main Destination areas are Western Europe, Western Africa, Asia, Arab Nations, and North America. The highest destination countries are Belgium, Germany, Greece, Israel, Italy, Japan, Netherlands, Thailand, Turkey, and the USA.

¹¹ Loring Jones and others ‘Globalization and Human Trafficking’ [2007] 34(2) Journal of Sociology & Social Welfare 107, 108

¹² Michele A. Clark, ‘Human Trafficking Casts Shadow on Globalization’ (Yale Global, April 2003) <<http://yaleglobal.yale.edu/content/human-trafficking-casts-shadow-globalization>> accessed 11 December 2014

¹³ Devin Brewer, ‘Globalization and Human Trafficking’ (Topical Research Digest: Human Rights and Human Trafficking, 2009) <<http://www.du.edu/korbel/hrhw/researchdigest/trafficking/Globalization.pdf>> accessed 01 October 2014

trafficked and have the opportunity to report it to the authorities may be reluctant to do so because they fear retaliation, prosecution, or deportation.¹⁴ Many countries have not developed standardized methods for collecting and reporting reliable data on trafficking crimes or their victims.¹⁵ Police, prosecutors, and other related officials frequently fail to identify trafficked women as victims, treating them instead as illegal migrants or ‘voluntary’ commercial sex workers.¹⁶

Trafficking forms regional patterns and triggers. For example, in Asia, trafficking has two faces, both regional and international.¹⁷ Women in Asia are trafficked from the Philippines, Thailand, and Indonesia to Japan, South Korea, Hong Kong, and the Middle East for domestic service and the sex trade.¹⁸ Japan is a major destination country in Asia, with trafficked women from the above countries as well as Eastern Europe and the former Soviet states, alongside South America.¹⁹ Women and girls from Nepal and Bangladesh are trafficked to India as wives and for the sex industry.²⁰ China faces some internal trafficking for marriage, as well as child trafficking for labour and sexual exploitation.²¹

¹⁴ U.S. Department of State, *The 2014 TIP Report* (Washington, U.S. Department of State) 27

¹⁵ UN Women, ‘Conducting research, data collection and analysis’

<<http://www.endvawnow.org/en/articles/322-conducting-research-data-collection-and-analysis-.html>> accessed 03 August 2015

¹⁶ UN General Assembly, *Sixty-ninth session Report of the Special Rapporteur on trafficking in persons, especially women and children (A/69/33797)* para 29

¹⁷ Stephanie A. Limoncelli, ‘Human Trafficking: Globalization, Exploitation, and Transnational Sociology’ [2009] 3(1) *Sociology Compass* 72, 77

¹⁸ Nicola Piper, ‘A Problem by a Different Name? A Review of Research on Trafficking in South-East Asia and Oceania’ [2005] 43 *International Migration* 203, 217

¹⁹ June J.H. Lee, ‘Human Trafficking in East Asia: Current Trends, Data Collection, and Knowledge Gaps’ [2005] 43 *International Migration* 165, 179; Seo-Young Cho, Axel Dreher and Eric Neumayer, ‘Does Legalized Prostitution Increase Human Trafficking?’ [2013] 41 *World Development* 67, 68

²⁰ Therese Blanchet, ‘Bangladeshi Girls Sold as Wives in North India’ [2005] 12 *Indian Journal of Gender Studies* 305, 318

²¹ Gracie Ming Zhao, ‘Trafficking of Women for Marriage in China: Policy and Practice’ [2003] 3 *Criminal Justice* 83, 91; Cindy Yik-Yi Chu, ‘Human Trafficking and Smuggling in China’ [2011] 20(68) *Journal of Contemporary China* 39, 48

In Latin America and the United States, child trafficking, often from South to Central America, has also been a problem. Children are trafficked from Guatemala for adoption and from Colombia, Ecuador, El Salvador, Guatemala, and Peru for use as soldiers. Girls have also been trafficked for domestic service.²² Latin America's source countries are the Dominican Republic, Brazil, Guatemala, Honduras, Nicaragua, Colombia, and Venezuela. Destinations for the victims from Latin America are Costa Rica, Panama, Ecuador, Belize, and Mexico. The latter is a source and transit country for trafficking men and women to the United States for nonsexual forced labour, and women and girls for the sex industry.²³ The United States also acquires trafficked persons from East Asia and Eastern Europe. Victims are taken into trafficking for the purposes of agricultural work, sweatshop labour, domestic service, and the sex trade.²⁴

In Africa, human trafficking is a serious crime, not only regionally but also domestically. Central and West Africa are source areas for European countries and the Middle East for the purposes of both domestic labour and the sex industry. Male victims are often trafficked for agricultural work, plantation work, and mines.²⁵ Female victims, particularly Nigerian women, have been trafficked to Europe for the sex trade, and Ethiopian women have been trafficked to Yemen as

²² Pamela Sumner Coffey, Amy Vallance Phariss and Tamar Renaud, 'Literature Review of Trafficking in Persons in Latin America and the Caribbean' (United States Agency for International Development, August 2004)
<<http://oas.org/atip/Regional%20Reports/USAID%20LAC%20TIP%20Literature%20Review.pdf>>
> accessed 23 November 2015

²³ International Human Rights Law Institute, *In Modern Bondage: Sex Trafficking in Americas* (DePaul University College of Law 2002) 36-56

²⁴ Limoncelli (n 17) 78

²⁵ Thanh-Dam Truong and Maria Belen Angeles, *Searching for Best Practices to Counter Human Trafficking in Africa: A Focus on Women and Children* (UNESCO, 2005)

domestic servants.²⁶ South Africa is a primary destination country for persons trafficked from Asia and Eastern Europe.²⁷

These regional trends demonstrate that the trafficking of men, women, and children occurs across the globe in specific configurations that are unique to particular regional, national, and local areas.²⁸ As a consequence of these trends, it can be easily concluded that trafficking affects almost every country, either as a country of origin, transit, destination, or any combination thereof.²⁹ This also highlights the causes of inadequate and unsuccessful regional and domestic efforts against the trafficking of women.

2.3. The Problem of the Traffic in Human Beings: Regional Assessment

This section analyses Turkey's position as a state located centrally across regional trafficking routes, by evaluating the relationship between source countries' push factors and Turkey's pull factors. The 2015 Trafficking in Persons Report (TIP 2015) showed that trafficked victims in Turkey are primarily from Central and South Asia, Eastern Europe, and Syria.³⁰ Because I will analyse the cases related to victims from Central Asia and Eastern Europe in later sections and chapters, in this section of the study I will be focusing on the other trafficking victims rather than victims from the former Soviet republics.

²⁶ Jorgen Carling, *Migration, Human Smuggling and Trafficking from Nigeria to Europe* (IOM, 2006) 8

²⁷ Johathan Martens, Maciej 'Mac' Pieczkowski and Bernadette van Vuuren-Smyth, *Seduction, Sale and Slavery: Trafficking in Women and Children for Sexual Exploitation in Southern Africa* (International Organization for Migration Regional Office for Southern Africa-May 2003) 120-130

²⁸ Limoncelli (n 17) 79

²⁹ UNODC, 'Human Trafficking' <<http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>> accessed 07 July 2013

³⁰ U.S. Department of State, *The 2015 TIP Report* (Washington, U.S. Department of State) 340

During the reporting period of TIP 2015, an estimated one million Syrians and 100,000 Iraqis arrived in Turkey.³¹ Because of the geographical location of Turkey, which shares very long land borders with both Iraq and Syria – both of which suffer from domestic instability and ineffective governments – Turkey serves as a crucial escape route for many of their nationals. This situation represents a simple model of ‘push and pull’ factors of trafficking in this region. TIP 2015 noted that the problems posed by Syrian refugee women and girls is particularly challenging, as ‘they are vulnerable to sex trafficking by prostitution rings – including those run by extremist groups. Syrian girls are reportedly sold into marriages with Turkish men, in which they are highly vulnerable to domestic servitude or sex trafficking.’³² In other words, Syrian female refugees are forced into sexually exploitative situations ranging from illicit marriages to outright prostitution. According to Reuters, the Syrian women who fall into the trap of these arrangements are often young widows or divorcées who have no strong social or family networks. Girls are also targeted for early marriage or sexual exploitation. In some cases, male relatives are complicit.³³

This exploitative behaviour is not only prevalent in Turkey. At the regional level, trafficking in Syrian girls extends to Lebanon, Jordan, and other Middle Eastern countries. For instance, in one of the exploitation cases in Turkey, Samaa, a Syrian refugee interviewed by Pektas, explains that ‘If a Syrian woman asks for help – whether it is money, work, or a place to rent – there is immediately a request for something in return, something that is haram [sinful] which means

³¹ Ibid

³² Ibid

³³ Umit Pektas, ‘In Turkey, Syrian women and girls increasingly vulnerable to exploitation’ *Reuters* (26 October 2014) <<http://www.csmonitor.com/World/Middle-East/2014/1026/In-Turkey-Syrian-women-and-girls-increasingly-vulnerable-to-exploitation>> accessed 01 December 2015

sleep without marriage.’³⁴ In Jordan, Lebanon and Saudi Arabia, local male citizens use similar exploitative scenarios and methods to benefit from the Syrian refugees’ vulnerable situations.³⁵

At the regional level, as a subject of trafficking, female citizens of the former Soviet states have played a significant role. After the Syrian refugee crisis, women (especially underage girls and widows) have become a target for traffickers. As a push factor, political instability and security concerns will be evaluated in the context of the trafficking of former Soviet citizens. However, in this case, these two push factors drive these vulnerable women and girls into the trafficking business.

2.4. Turkey: From ‘the Natasha Trade’ to ‘the Trafficking of Women’

This section addresses the problems associated with the geographical location of Turkey, its importance after the disintegration of the Soviet Union, and the effects of the latter on Turkey in the context of the trafficking of women. I will give details on the cause and effect relationship between the geopolitical location of Turkey and the dramatic increase of women being trafficked after the USSR’s disintegration.

This section is divided into three sub-sections: the first deals with the geopolitical location of Turkey and its effects on the problem of women-trafficking after the disintegration of the Soviet Union; the second addresses the

³⁴ Ibid.

³⁵ Lee Harper, ‘Syrian women in Jordan at risk of sexual exploitation at refugee camps’ *The Guardian* (London, 24 January 2014) <<http://www.theguardian.com/global-development/2014/jan/24/syrian-women-refugees-risk-sexual-exploitation>> accessed 21 November 2015; Ruth Sherlock, ‘Syrian girls ‘sold’ into forced marriages’ *The Daily Telegraph* (London, 23 January 2013) <<http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9821946/Syrian-girls-sold-into-forced-marriages.html>> accessed 21 November 2015

Soviet disintegration process and its effects on Turkey between 1991 and 2002; the third addresses the main changes post-2002 to provide a background for Chapter 6. In other words, all these sections illustrate why Turkey is failing in human trafficking.

2.4.1. The Geographical Situation of Turkey and its Place(s) in the UNODC's Country Classification

Turkey is a peninsula that is situated, bridge-like, between Europe and Asia. In other words, it straddles two continents. Historically, the Anatolian peninsula and its coastline was one of the main junctions of trade routes, such as those that brought the spices and silk of the Far East to the West, called the Silk and Spice Roads, and for the ships and vessels of the Mediterranean states, called *Via Maris*.³⁶ During the period of the Ottoman Empire, Levant trade was important to the coastal lands of the eastern Mediterranean. Commodities such as spice and silk from various states such as Asia Minor and Phoenicia (modern-day Turkey, Syria, and Lebanon), Greece and Egypt, and especially from Africa (as a consequence of the trans-Saharan slave trade) were the main merchandise.³⁷

Although, historically, its location may appear advantageous, for contemporary Turkey it has served as a huge disadvantage in terms of human trafficking. Because of its geographical position, Turkey is a source, destination, and transit country for many women, men, and children subjected to sex trafficking and forced labour.³⁸ Trafficking victims identified in Turkey are mostly from

³⁶ Encyclopaedia Britannica, 'Silk Road' <<http://www.britannica.com/topic/Silk-Road-trade-route>> accessed 22 November 2015

³⁷ T.S. Willan, 'Some Aspects of English Trade with the Levant in the Sixteenth Century' [1955] 70 (276) *The English Historical Review* 399, 404

³⁸ U.S. Department of State, TIP 2014 (n 14) 383

Azerbaijan, Kyrgyzstan, Turkmenistan, Uzbekistan, Tajikistan, Kazakhstan, Georgia, Bangladesh, Belarus, Moldova, Russia, and Ukraine.³⁹

As I pointed out in section 1.1, Turkish governments have not devoted enough energy to solving the problem of trafficking in human beings. As a direct consequence, almost no data has been collected regarding the victims' origins, age, and sex by Turkish authorities.⁴⁰ In 2002, Kuzio provided some estimated data on exclusively Ukrainian victims in trafficking destination countries. According to his research, in the brothels of Turkey, the United Arab Emirates, Italy, Greece, and Spain, an average of 10 percent of the women are from Ukraine.⁴¹

Year	Numbers of Victims	Victims from the CIS	Female Victims	Male Victims
2005	220	219	220	0
2006	191	189	191	0
2007	118	116	113	5
2008	78	76	78	0
2009	75	71	71	4
2010	26	23	25	1
2011	35	35	35	0
2012	18	17	17	1
2013	3	3	3	0
	764	750	753	11

Table 1: Numbers of victims and their origins⁴²

³⁹ Sueda Elif Tuba Dunder, 'Human Trafficking and Turkey' in Nilufer Narli, *Trafficking in Persons in South East Europe- A Threat to Human Security* (National Defence Academy Publications 2006) 119

⁴⁰ It is possible to find records of trafficking victims in Turkey. But when compared with data from the US Department of State and the EU, it becomes apparent that the Turkish authorities' data regarding human trafficking is incomplete. I discuss this issue in Chapters 5 and 6.

⁴¹ Taras Kuzio, 'Ukraine's "Natasha trade": modern-day slavery and organized crime' *The Ukrainian Weekly* (Odesa, 08 December 2002)

<<http://www.ukrweekly.com/old/archive/2002/490207.shtml>> accessed 11 July 2014

⁴² Counter Trafficking, 'Who Is At Risk' <<http://www.countertrafficking.org/whose.html>> accessed 13 January 2013

*Because of the lack of data, 2009 is examined as 56 instead of 75, and 2012 is examined as 15 instead of 18.

This table suggests the reason for the two main thematic focuses of this dissertation: the citizens of the former Soviet Republics, and female victims.

	Total	Sexual Exploitation	Forced Labour	Sexual Exploitation and Forced Labour	Intended to be exploited
2006	191	177	10	4	-
2007	118	101	15	2	-
2008	78	70	2	4	2
2009*	56	45	5	3	3
2010	26	17	3	3	3
2011	35	34	1	-	-
2012*	15	14	-	-	1
2013	3	3	-	-	1
	522	460	36	16	10

Table 2: Classification of intentions⁴³

This table provides data regarding the primary intentions of perpetrators in respect of their victims. In addition, it illustrates why it is necessary to focus on the vulnerability of female victims. As can clearly be seen, 88% of the 522 identified victims are sexually exploited, and 3% of them are sexually exploited as well as being forced to do other kinds of labour. The data published by Turkey is inadequate. It can clearly be seen that, in 2013, the data only shows 3 victims. However, the 2014 TIP report indicated that the government identified 15 adult female victims of sex trafficking in 2013. There was inconsistency between the numbers. It proves one of my arguments in Chapter 6 about inadequate statistical data collection and sharing in Turkey.

These two tables emphasize the importance of the location of Turkey in two main respects: firstly, that Turkey is a common transit route and destination for those being trafficked from the former Soviet republics (because of Turkey's visa

⁴³ Ibid

policies, and long land and sea borders shared with these republics),⁴⁴ and secondly that those female victims are trafficked to meet the sexual desires of Turkish as well as European men. Shelley emphasizes that women from Southern Russia, Ukraine, Moldova, and the Caucasus consider Turkey to be an important destination for working and earning money to support their families. They enter by plane or by boat from Odessa in Ukraine on the Black Sea, and by land from Georgia.⁴⁵ However, on their way many of them find themselves being drawn into the trafficking business.

In 2006, the UNODC published *Trafficking in Persons: Global Patterns*. This report listed Turkey as a leading reported destination country, alongside Belgium, Germany, Greece, Israel, Italy, Japan, the Netherlands, Thailand, and the USA.⁴⁶ According to the UNODC's 2012 Trafficking in Persons report, Turkey is one of the most common destination countries for nationals of Eastern Europe and Central Asia.⁴⁷ The UNODC's 2014 report also observed that Turkey is one of the main destination points for European victims trafficked from Central Europe and the Balkans.⁴⁸ In this regard, Turkey's geo-strategic location is one of the main reasons for its relationship with trafficking crime. The contemporary Syrian refugee crisis and the ongoing problem of trafficking flowing from Eastern Europe and Central Asia impact upon Turkey in particular, because of its land and coastal borders.

⁴⁴ Alan Fielding, 'Mass migration and economic restructuring' in Russell King (ed), *Mass Migration in Europe* (Belhaven Press 1993)

⁴⁵ Shelley (n 2) 190

⁴⁶ UNODC, 'Trafficking in Persons: Global Patterns' (2006)

<<http://www.unodc.org/documents/human-trafficking/HT-globalpatterns-en.pdf>> accessed 24 November 2015, 17-18

⁴⁷ UNODC, *Global Report on Trafficking in Persons* (UNODC, 2012)

⁴⁸ UNODC, *Global Report on Trafficking in Persons* (UNODC, 2014) 59

2.4.2. The Soviet Disintegration; Reflections on Trafficking

The dissolution of the Union of Soviet Socialist Republics (USSR) was finally completed on 26 December 1991. *Declaration no. 142-H of the Soviet of the Republics of the Supreme Soviet of the Soviet Union* officially dissolved the Soviet Union, and created the CIS.⁴⁹

The disintegration of the Union caused many problems within the CIS. These problems are classified under three main headings: ethnic problems, administrative problems, and security problems. The collapse of communism triggered ethnic tensions across south-eastern Europe and the former Soviet Union, which were previously held in check by repressive regimes.⁵⁰ Administrative and security problems yielded similar and related results. For instance, because of political instability in Russia and the former Soviet republics, corruption and organized crime have become rampant.⁵¹ However, one of the most significant problems in the former Soviet republics was individual economic hardship caused by low production, unemployment, inflation, and the collapse of wages. After the collapse of the USSR, individuals were no longer able to benefit from state-funded healthcare, assured employment, and controlled prices/wages, as they had under communist rule.⁵²

The dramatic increase in the transnational trafficking of women from Eastern Europe and the former Soviet Union began during the *perestroika* of the 1980s,

⁴⁹ Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, and Ukraine

⁵⁰ Valery Tishkov, Zhanna Zatinchkovskaya and Galina Vitkovskaya, 'Migration in the countries of the former Soviet Union' (Global Commission on International Migration, 2005) <https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/rs/RS3.pdf> accessed 14 July 2014

⁵¹ 'Fall of the USSR' <<http://www.mconway.net/page1/page9/files/Collapse%20of%20USSR.pdf>> accessed 13 July 2014

⁵² Shelley (n 2) 174-179

during which border controls in Eastern Europe were relaxed to encourage the development of new trade links and tourism between the former Soviet satellite states and the West. According to a IOM report, while these measures did meet their objectives, they also facilitated trans-border criminal activities.⁵³ Organized crime syndicates were quick to identify lucrative markets for Eastern European women in the brothels, massage parlours, streets, and bars of Western Europe.⁵⁴ Increasing demand, high profit rates and other previously mentioned problems caused a dramatic increase in the trafficking in human beings from CIS countries after the disintegration. Individuals of each sex and every age group were the subject of human trafficking for both sexual and labour exploitation.⁵⁵ In the 1990s, because of this heavy traffic, Turkey began to use its own terminology for identifying the victims. Trafficked women from Russia and other republics of the former Soviet Union were so prevalent that all prostitutes were called ‘Natashas’ in Turkey and most of the destination countries.⁵⁶ In the Turkish language, this has come to mean a sex worker from the former Soviet Union and is often used as a generic name for all women from these countries, even for tourists.⁵⁷

⁵³ IOM, ‘Trafficking for Sexual Exploitation: The Case of the Russian Federation’ Prepared for IOM by Donna M. Hughes (IOM Migration Research Series, No:7, June 2002) <http://publications.iom.int/system/files/pdf/mrs_7.pdf> accessed 27 September 2016

⁵⁴ Johathan Martens, Pieczkowski and van Vuuren-Smyth, (n 27) 116

⁵⁵ Irina Ivakhnyuk, ‘Migrations in the CIS Region: Common Problems and Mutual Benefits’ (International Symposium on International Migration and Development, Turin, June 2006, UN/POP/MIG/SYMP/2006/10)

⁵⁶ Martina Vandenberg, ‘The Invisible Woman’ *Moscow Times* (Moscow, 08 October 1997) <<http://www.themoscowtimes.com/news/article/the-invisible-woman/299368.html>> accessed 11 December 2013

⁵⁷ International Helsinki Federation for Human Rights, *Women 2000: An investigation into the status of women’s rights in Central and South-eastern Europe and the Newly Independent States* (International Helsinki Federation for Human Rights 2000)

In this regard, the Natasha issue has provoked much societal debate on the sanctity of the family, even causing stress between husbands and wives.⁵⁸ One of the primary influences behind this social prejudice in Turkey is the media. Female victims of trafficking (or voluntary prostitutes) from the former Soviet states, and even tourists, were blamed for increasing AIDS/STDs, divorce, and corrosion in the Turkish family structure.⁵⁹ The main reasons behind this ‘victim blaming’ issue were that there was no criminal definition or any legal provision in the Turkish Criminal Code concerning the trafficking of human beings, and the government and media organs did not provide any victim-oriented perspective to inform society and to establish awareness about this violation of human rights. As a Turkish national living in this period, I have watched and read such news items, experienced the silence of the Turkish government and the victim-blaming policy adopted by law enforcement agencies, together with the defamatory reporting of trafficking issues by media organs. All of these were the main causes for increasing negative reactions against women who suffered from the brutal consequences of the trafficking business.

2.4.3. The Trafficking of Women from the CIS as an Organized Crime Activity

Transnational organized crime has become a serious issue in the region due to a significant increase in cross-border criminal activities facilitated by a vacuum of

⁵⁸ Leyla Gulcur and Pinar Ilkcaracan, ‘The “Natasha” Experience: Migrant Sex Workers from the Former Soviet Union and Eastern Europe in Turkey’ [2002] 25(4) Women’s Studies International Forum 411, 414

⁵⁹ This relates to my individual research on trafficking in women in the Turkish media from 1991 to 1994. I examine in detail the two most circulated Turkish newspapers (*Zaman* and *Milliyet*) and their 17 related news articles.

authority caused by the disintegration of the Soviet Union.⁶⁰ Trafficking in human beings is one of the services provided by organized crime groups to meet sexual, labour, and household demands in destination countries. The UN Convention against Transnational Organized Crime defines (Article 2(a)) an ‘organized criminal group as ‘a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.’⁶¹

Every year, thousands of people of every gender and age are trafficked abroad from their own countries. Due to the content and subject of this dissertation, the trafficking of women from the former Soviet republics to Turkey will be emphasized and analysed. These republics are the largest source of trafficking for sexual exploitation; around 100,000 women are trafficked each year from these countries.⁶²

In addition to the general factors mentioned above, the reasons for this rapid increase in female victim numbers from the former Soviet republics include the feminization of poverty, the decline of social protections for women and family, increased interfamilial violence, child abuse, and alcoholism.⁶³ Because of the economic transformation that these countries underwent after the dissolution of

⁶⁰ John Salt, ‘Trafficking and Human Smuggling: A European Perspective’ [2000] 1 International Migration 31, 39

⁶¹ This definition provides a solid basis to point out the product of section 3.3.2.2. That section draws upon the operation schemes of organized crime groups in trafficking crime.

⁶² C. Hill, ‘Measuring Transnational Crime’ in Philip Reichel (ed), *Handbook of Transnational Crime and Justice* (Sage 2005) 58

⁶³ Igor Kon and James Riordan (ed), *Sex and Russian Society* (Indiana University Press 1993) 6 : Chris Corrin, *Superwomen and the Double Burden: Women's Experience of Change in Central and Eastern Europe and the Former Soviet Union* (London, Scarlet Press, 1992); Chris Corrin, ‘Transitional Road for Traffic: Analysing Trafficking in Women from and through Central and Eastern Europe’ [2005] 57(4) *Europe-Asia Studies* 543, 543 and 547; Gail Kligman and Stephanie Limoncelli, ‘Trafficking Women after Socialism: To, Through, and From Eastern Europe’ [2005] 12(1) *Social Politics: International Studies in Gender, State and Society* 118, 128-129.

the Soviet system, a feminization of poverty arose. This mainly centred on lack of income. In addition to this specific aspect, Chant lists other major elements: women represent a disproportionate percentage of the world's poor; feminization of poverty is deepening; and women's increasing share of poverty is linked with a rising incidence of female household governance.⁶⁴ In the case of the former Soviet states, this meant that women and children no longer had access to long-term preferential economic jobs. After the dismantling of the socialist system, women lost many of their social and economic rights, such as guaranteed employment and child subsidies.⁶⁵

In other words, the declining socio-economic status of women in the CIS provided significant opportunities for traffickers. A lack of government action, including weak border controls, corruption, and relationships with crime networks, allowed for a dramatic rise in the number of female trafficking victims.⁶⁶

The CIS countries are the fastest-growing source region by a significant margin for trafficked people.⁶⁷ To protect their lucrative cargo, traffickers use flexible routes and various tactics. The Budapest Group⁶⁸ has detected trafficking and

⁶⁴ Sylvia H. Chant, 'Re-thinking the "feminization of poverty" in relation to aggregate gender indices' [2006] 7(2) *Journal of Human Development* 201, 203

⁶⁵ A. Heitlinger, 'The Impact of the Transition from Communism on the Status of Women in the Czech and Slovak Republic' in Nannette Funk and Magda Mueller (eds), *Gender Politics and Post-Communism* (Routledge 1993) 98-101

⁶⁶ Gillian Caldwell, Steven Galster and Nadia Steinzor, *Crime & Servitude: An Expose of the Traffic in Women for Prostitution from the Newly Independent States* (The Trafficking of NIS Women Abroad Conference, Moscow, November 1997)

⁶⁷ John Morrison and Beth Crosland, 'The trafficking and smuggling of refugees: the end game in European asylum policy?' (2001) *New Issues in Refugee Research* April/2001, 39 <<http://www.unhcr.org/3af66c9b4.pdf>> accessed 01 February 2015

⁶⁸ The Budapest Process is a consultative forum with over 50 governments and 10 international organizations working to develop comprehensive and sustainable systems for orderly migration. The Budapest Group meets annually or bi-annually, gathering senior officials from all participating states and organizations to discuss developments, to determine primary policy directions and to support the Budapest Process

smuggling routes from CIS countries to the European Union.⁶⁹ For one of these routes, Turkey plays a significant role as a transit country *en route* to the EU via Albania, Hungary, or the Czech Republic.

2.4.4. The ‘Natasha Trade’: The New Name of Desperation from 1992 to 2002

Trafficking can be seen as a relationship of supply and demand. Some countries with large sex industries generate a significant demand for women workers in the sex trade. Conversely, suppliers from other countries seek to meet these demands. Before the collapse of the Soviet Union, Central Asia was the main supplier of trafficked persons for sexual exploitation in the region. It was even mentioned by Mark Twain in 1869 that ‘Circassian and Georgian girls are still sold in Constantinople [Istanbul] by their parents, but not publicly.’⁷⁰ However, since then, former Soviet republics such as Belarus, Latvia, Moldova, Russia, and Ukraine have become the main suppliers for most of the global sexual demand.⁷¹ For these countries in particular, Turkey became the main destination point, where women arrived by boat or plane from the city of Odessa⁷² and also came overland via Georgia. Since the early 1990s, Turkey has been one of the world’s largest markets for Slavic women, with its rapid economic growth and relatively soft visa requirements.⁷³

In addition to the geographical location of Turkey, the Turkish visa regime, together with cultural similarities between Turkey and the countries of origin,

⁶⁹ Budapest Group, *The Relationship Between Organized Crime and Trafficking in Aliens* (International Centre for Migration Policy Development, 1999)

⁷⁰ Mark Twain, *The Innocents Abroad* (Literary Classic 1984) 290

⁷¹ Donna M. Hughes, ‘The ‘Natasha’ Trade: Transnational Sex Trafficking’ [2001] 246 *National Institute of Justice Journal* 9

⁷² Shelley (n 2) 190

⁷³ Craig S. Smith, ‘Turkey's sex trade entraps Slavic women’ *The New York Times* (New York, 28 June 2005) <<http://www.nytimes.com/2005/06/27/world/europe/27iht-turkey.html>> accessed 01 August 2014

further explain why Turkey is a destination country.⁷⁴ Despite these factors, there remain critical observations surrounding the visa regime. The Turkish visa policy was the most important reason shaping the victims' decision to migrate, in particular the fact that Turkey had either a visa-free or lenient visa regime for the Turkic Republics (Azerbaijan, Kazakhstan, Kyrgyzstan, Turkmenistan, Uzbekistan) because of cultural similarities. As a consequence of these policies, every year thousands of visitors arrived in Turkey to benefit from this flexibility. According to the research of Omer Demir and Finckenauer, the lenient visa regime made entering Turkey easy for sex workers and victims. Contrary to what is believed, their interviews (conducted with high-level police officials), demonstrated why the visa regime played only a subsidiary role.⁷⁵ If Turkey were to apply a stricter visa regime to prevent human trafficking, this would only result in more illegal entries.⁷⁶ In this respect, Avdan has argued that '[t]ighter visa policies against origin and transit states will result in increased levels of trafficking in human beings from and through these states.'⁷⁷

Because Turkey did not classify and identify trafficking victims before the 2000s, data was very limited and available only from countries of origin. For instance, according to the estimation of the Ukrainian Ministry of the Interior, 400,000 Ukrainian women were trafficked to different countries between 1990 and 2000.⁷⁸ Between 1991 and 1998, the International Organization for Migration

⁷⁴ Oguzhan Omer Demir and James Finckenauer, 'Victims of Sex Trafficking in Turkey: Characteristics, Motivations, and Dynamics' in Francesca P. Bernat (ed), *Human Sex Trafficking* (Routledge 2012) 73-76

⁷⁵ Ibid, 74

⁷⁶ Ibid

⁷⁷ Nazli Avdan, 'Human trafficking and migration control policy: vicious or virtuous cycle?' [2012] 32(03) *Journal of Public Policy* 171, 178. Further discussion about tighter border controls will be conducted in section 6.5.

⁷⁸ IOM, *Information Campaign Against Trafficking in Women from Ukraine-Research Report* (Geneva, Switzerland: International Organization for Migration, July 1998)

estimated that 500,000 Ukrainian women had been trafficked to the West.⁷⁹ Based on this approximate data, it appears that the most popular destination countries were Canada, the Czech Republic, Germany, Greece, Hungary, the Netherlands, Turkey, the United Arab Emirates, the United States, and Yugoslavia.⁸⁰ Hughes suggests that there were 6,000 Ukrainian women in prostitution in Turkey.⁸¹ An average of 10 per cent of the women had been trafficked from Ukraine into the brothels of Turkey, the United Arab Emirates, Italy, Greece, and Spain.⁸² Seventy per cent of the 6,600 female victims from Moldova had been exploited for the purpose of sexual services. This Moldavian data suggested that seventy per cent of these 6,600 victims were girls and young women working in sexual services.⁸³

2.4.5. Trafficking of Women to Turkey after 2002

The discussions in this section are for later chapters when I am talking about Turkey's policy and legal responses to trafficking. However, it is important to highlight them in this part of the research in order to indicate the main failures of Turkey after 2002. This section evaluates the weaknesses of 'partnership' proposals in Turkey and the reflections of these deficiencies on Turkey's prevention, perception, and prosecution strategies.

Some states ratify treaties to show to other important actors their commitment to human rights.⁸⁴ In this respect, Turkey has signed and ratified many

⁷⁹ Chris Bird, '100,000 Ukrainians slaves of West's sex industry,' *Reuters*, 6 July 1998

⁸⁰ Hughes (n 71) 9

⁸¹ Donna M. Hughes, 'The 'Natasha' Trade: The Transnational Shadow Market of Trafficking in Women' [2000] 53(2) *Journal of International Affairs* 625, 633

⁸² Kuzio (n 41)

⁸³ Tishkov and others (n 50) 31

⁸⁴ Ryan Goodman and Derek Jinks, 'Measuring the Effects of Human Rights Treaties' [2003] 14 *European Journal of International Law* 171, 172

conventions and protocols on the scope of human trafficking.⁸⁵ All these ratifications, and particularly the TOC, have shaped Turkey's domestic legislation to a significant degree. Since 2002, a significant determinant of Turkey's policy has been its political aspirations. For example, Turkey has focused on its relationship with the EU. In this regard, the requirements of pre-accession, involving an interregnum period of adoption and harmonization of Turkish policies and legislative provisions with the EU *acquis*, have been fulfilled by Turkey.⁸⁶ However, the fulfilments of the requirements of the EU are essentially a box-ticking process. Another example is Turkey's ratification of the Council of Europe Trafficking Convention in 2016. Turkey ratified it because it is a part of the EU's requirements for the visa liberalization process.⁸⁷ In short, between 2002 and 2016, Turkey's main purpose was not directly concerned with human trafficking. Ultimately, it could be argued that all states ratify a treaty or convention for political reasons. However, it is asserted that Turkey deliberately uses international and regional tools to meet its political desires rather than to solve the human trafficking problem. The violated human rights of the victims are systematically ignored by the government. Hathaway suggests that, because of the legal character of international human rights treaties, ratification is virtually costless, in that unenforced treaty rules do not require any actual changes in state

⁸⁵ The Slavery Convention signed at Geneva (1926); The Supplementary Convention on the Abolition of Slavery (17 July 1964); The Slave Trade and Institutions and Practices Similar to Slavery; The Abolition of Forced Labour Convention; The Convention on the Rights of the Child (4 Apr 1995); and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, and Child Prostitution and Child Pornography (9 June 2006). In addition, the UN Convention against Transnational Organized Crime (TOC), adopted on 15 November 2000 with its three protocols, was ratified by Turkey on 25 March 2003 (the Supplementary Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition was ratified 4 May 2004).

⁸⁶ Pre-accession period covered from 1999-2005

⁸⁷ I will provide further discussion of these issues in section 5.4.

practice.⁸⁸ International actors reward ratifying states by reducing political pressure to promote human rights standards, thereby actually increasing human rights violations.⁸⁹ This suggests that Turkey may well ratify international instruments merely to reduce political pressure and to obtain the evident political beneficial outcomes associated with these instruments.

2.4.6. Assessment from 1992 to 2016: Trafficking in Human Beings, Especially in Women, to Turkey

When we look at the 1990s, we find a lack of academic sources, policies, and government reports on the subject of human trafficking, accompanied by insensitive and accusatory publications in the media. In this environment, trafficked women were treated as criminals or voluntary prostitutes. Particularly prevalent was the accusation that trafficked women were responsible for rising occurrences of AIDS/STDs and divorces, without any recognition of their vulnerable situation.⁹⁰ Successive governments in Turkey preferred to ignore this crime and its victims. Trafficking in human beings, especially in women, was the unknown face of prostitution and vulnerability.

⁸⁸ Oona A. Hathaway, 'Do Human Rights Treaties Make a Difference?' [2002] 111 The Yale Law Journal 1870, 2007

⁸⁹ Daniel W. Hill Jr., 'Estimating the Effects of Human Rights Treaties on State Behaviour' [2010] 72(4) The Journal of Politics 1161, 1163-1164

⁹⁰ 'AIDS Patlaması Kapıda- AIDS is the enemy at the gates' *Zaman Gazetesi* (Istanbul, 01 December 1994) <http://www.zaman.com.tr/aile-saglik_aids-patlamasi-kapimizda_305418.html> accessed 01 February 2015; 'İthal fuhuş, AIDS de getiriyor- Import prostitution brings AIDS' *Zaman Gazetesi* (Istanbul, 17 January 1995) <http://www.zaman.com.tr/aile-saglik_ithal-fuhus-aids-de-getiriyor_313230.html> accessed 01 February 2015; 'Aile müessesesi AIDS'e engel- Family notion prevents AIDS' *Zaman Gazetesi* (Istanbul, 06 September 1994) <http://www.zaman.com.tr/aile-saglik_aile-muessesesi-aids-e-engel_298260.html> accessed 01 February 2015; 'Nataşa'yla nasyon evlilik hayatını kararttı- Fake marriage with Natasha causes many problems' *Zaman Gazetesi* (Istanbul, 13 February 2002) <<http://arsiv.zaman.com.tr/2002/03/13/haberler/h12.htm>> accessed 01 February 2015; 'Karasu'da evliliklere 'yabancı hayat kadını' darbesi- Foreign prostitutes decrease the number of happy marriage at the Karasu' *Milliyet Gazetesi* (Istanbul, 04 August 2008) <<http://www.milliyet.com.tr/evliliklere-yabanci-darbe-/gundem/gundemdetay/04.08.2008/974565/default.htm>> accessed 01 February 2015

In the early 2000s, the accusatory language of the media and some institutions such as the Turkish National Police and the Ministry of the Interior began to change in a positive way. They accepted that victims are driven into slavery by force and deception.⁹¹ Since 2002, the government has begun to follow international trends in order to realise its political aspirations, such as being a member of the EU and a powerful regional actor. At this point, it might be argued that the government has pursued its anti-trafficking agenda to further its political aspirations rather than to prevent violations of human rights or tackle organized crime. This thesis will critically evaluate Turkey's agenda in order to show the failures of its political and legal progress, and will provide a sincere anti-trafficking strategy for Turkey.

In summary, before 2002, Turkey's governments, academia, and media ignored the humanistic dimension of the problem and instead placed blame on the victims, linking the issue to AIDS or sexual demand. Since 2002 (when the AKP (Justice and Development Party) came to power), Turkey has tried to design a comprehensive anti-trafficking strategy, which covers legal, political, and social elements, in order to eliminate the sociological biases against trafficked women, and as a part of its political strategy to reduce international pressure and achieve

⁹¹ 'Kadin Ticaretine Hayir-Stop The trafficking of women' *Milliyet Gazetesi* (Istanbul, 02 September 2001) <<http://www.milliyet.com.tr/kadin-ticaretine-hayir---/yasam/haberdetayarsiv/02.09.2001/82119/default.htm>> accessed 01 February 2015; Tacik seks köleleri Türkiye'de- Sex slaves from Tajikistan in Turkey' *Milliyet Gazetesi* (Istanbul, 27 August 2001) <<http://www.milliyet.com.tr/tacik-seks-koleleri-turkiye-de/turkiye/sondakikaarsiv/27.08.2001/81179/default.htm>> accessed 02 February 2015; 'Çocuk bakmaya geldiler, fuhuş batağına saplandılar- They came for babysitting but they were forced into prostitution' *Zaman Gazetesi* (Istanbul, 14 January 2002) <<http://arsiv.zaman.com.tr/2002/01/14/marmara/h1.htm>> accessed 01 February 2015; 'Emniyet: Nataşa demek rencide eder- Turkish National Police stated that the word 'Natasha' had derogative meanings' *Milliyet Gazetesi* (Istanbul, 05 May 2003) <<http://www.milliyet.com.tr/emniyet--natasa--demek-rencide-eder/siyaset/haberdetayarsiv/05.05.2003/9984/default.htm>> accessed 01 February 2015

membership of the EU. However, these efforts need to be supported by sincere steps which concentrate on victims and their violated rights.

2.5. Conclusion

This chapter has addressed the context of Turkish policy and practice by examining the nature of the trafficking problem in the region. It has addressed two arguments for this research. Firstly, it is asserted that Turkey views trafficking in human beings as a transnational organized crime not directly related to any human rights violations. Secondly, from 1992 to 2002, Turkey ignored all aspects of the problem and did not take steps to prevent trafficking or to protect the victims. The reasons for this failure were a lack of any clear understanding in public perception, in the laws, and at an ‘operational’ level, of what a victim is. After 2002, the government pursued its anti-trafficking agenda to further its political aspirations rather than to prevent violations of human rights or to tackle organized crime.

This chapter critically examined the origin and progression of current practices. One could argue that it was obvious that Turkey had ignored the existence of trafficking crime. According to Turkish governments and academia, the problem was related to illegal immigration, prostitution, and organized crime, not related to trafficking. Victims suffered from traffickers’ behaviours, customers’ insults, and law enforcements’ insensitivity. Despite these attitudes, even after 2002 the government adopted an anti-trafficking agenda in order to attain the requirements of EU membership and become a powerful international actor, rather than to prevent this crime and protect the victims’ violated human rights.

This brutal business affects almost all countries. International institutions need to determine changing trends and tendencies and to take preventative steps against them, such as enhancing operational cooperation, sharing information and amendments in international instruments. Turkey is one of the most vulnerable countries in terms of this transformation in trends. A regional crisis has the ability to change states' secure nature. For instance, the Syrian refugee crisis directly affects Turkey. However, migrant smugglers and traffickers benefit from the vulnerability of these people. Consequently, a regional crisis begins to affect Europe and the world. States and international institutions need to develop a proactive anti-trafficking strategy and to build up new regulations to compensate the weaknesses of current instruments.

This chapter locates the position of Turkey in the wider global environment. It portrays the trafficking of women from 1992 to today from a Turkish perspective. In brief, this chapter is an entrance point to the main research theme. The next chapter will provide theoretical and terminological debates and controversies over trafficking in women, to prepare the theoretical and subjective platform for the rest of the thesis.

3. Theoretical and Terminological Debates and Controversies over Trafficking in Women

3.1. Introduction

This chapter provides a framework for the rest of the thesis by reviewing the existing theoretical literature, with the aim of establishing a more holistic and relevant approach to the problem of trafficking in human beings. In doing so, I discuss and analyse three areas of definitional and theoretical-conceptual literature that have emerged through my research. These relate, first, to the clarification of definitional issues; second, to the shortcomings of the existing trafficking-related theories; and finally, to the necessity for a new model for a comprehensive and victim-oriented anti-trafficking strategy. These represent three stages in the preparation of a new model which I hope will provide the missing elements of the existing theoretical considerations, such as Haynes's Model and the human rights-based approach. This new model approach would be highly relevant for Turkey in particular because existing theoretical considerations related to human trafficking are clearly inadequate as a basis to understand, analyse, and ultimately prevent human trafficking in different regions.¹ Human trafficking differs significantly from region to region. In order to find an effective strategy to address specific regions' or countries' trafficking problems, we need to utilize all relevant perspectives and to distil these considerations into a workable formulation. Despite the high prevalence of trafficking in human beings, especially in women,

¹ Chapter 7 will focus on building up a comprehensive and victim-oriented approach for trafficked victims in Turkey.

in Turkey, I will argue that there is still no viable theoretical perspective which can be used to examine this problem in the region.

One of the reasons for this is that the Turkish government and many Turkish academics perceive the trafficking crime mainly as an outcome of organized crime activities, and consider that legal and policy changes can reduce or prevent this offence.² Looking from the normative perspective, it is not enough to approach the problem of slavery and human trafficking as if it were only a legal problem. In other words, single-focus research is not an appropriate mechanism to fully capture the institution of slavery and human trafficking. On the contrary, interdisciplinary research should be undertaken in order to provide a better and clearer understanding of the entire system of human trafficking. These issues not only relate to the legal structure, but also to almost all core areas of social science, such as law, sociology, politics, history, and international relations. Accordingly, it is important to evaluate the issues from different standpoints within the social sciences.³ Apart from the academic controversies, there are ongoing debates among governments, NGOs, and scholars regarding this phenomenon.⁴ These debates focus on migration, prostitution, transnational organized crime, and human rights issues, insofar as they relate to the human trafficking phenomenon.

² Hakan Erdal, 'Organize Bir Suç Türü Olarak İnsan Ticareti ve Türkiye Örneği- Human Trafficking as an Organised Crime and Case of Turkey' [2008] 10(2) Polis Bilimleri Dergisi 79; Özcan Karatay and Mehmet Kapusızoğlu, 'Mali ve Ekonomik Suçların Terörün Finansmanı Bağlamında Değerlendirilmesi-Evaluating Financial and Economic Crimes in Terms of Terrorism Financing' [2011] 3(1) Ekonomi Bilimleri Dergisi 115; Necmettin Özerkmen and Yavuz Kahya, 'Organize Suç Örgütlerinin Oluşumunda Hemşehrilik İlişkilerinin Rolü- The Role of Countrymanhood Relations in the Formation of Organized Crime Organizations' [2008] 10(4) Polis Bilimleri Dergisi 15

³ Maggy Lee, 'Introduction: Understanding human trafficking' in Maggy Lee (ed), *Human Trafficking* (Routledge 2007) 1-2

⁴ Denise Brennan, 'Methodological Challenges in Research with Trafficked Persons: Tales from the Field' in Frank Laczko and Elzbieta Gozdziak (eds) *Data and Research on Human Trafficking: A Global Survey* (IOM, 2005) 38-39

3.2. Defining Trafficking in Human Beings

The crime of trafficking may be carried out by individuals, families, or more organized groups of criminals, and it is facilitated by other indirect beneficiaries, such as advertising, distribution, or retail companies and consumers.⁵ Both women and men act as traffickers in labour and sex trafficking operations.⁶

Perpetrators tend to focus on the populations of developing countries, as pointed out in section 2.3, located in Asia, Africa, and South America, to find their victims. In addition, Hill observes that the amount of Eastern European victims is rising significantly because of changes in international relations, such as the disintegration of the Soviet Union and the increasing power of globalization.⁷

The definition of trafficking in human beings has considerable importance, because it demonstrates the evolution of legal expressions and directs the international community's attention to current demands. The current internationally recognised definition of human trafficking highlights the three elements of 'action', 'means', and 'purpose'.⁸ There was no commonly approved definition of human trafficking until the UN Trafficking Protocol in Palermo, in 2000. It will be suggested here that the absence of an approved definition was one of the main obstacles to the development of international efforts to combat human trafficking.

⁵ David A. Feingold, 'Human Trafficking' [2005] 150 Foreign Policy 26, 27-32; Polaris, 'Human Trafficking' <<http://www.polarisproject.org/human-trafficking/overview>> accessed 05 April 2014

⁶ U.S. Department of State, 'Office to Monitor and Combat Trafficking in Persons' <<http://www.state.gov/g/tip/>> accessed 05 April 2014

⁷ C. Hill, 'Measuring Transnational Crime' in Philip Reichel (ed), *Handbook of Transnational Crime and Justice* (Sage 2005) 58: women and girls represent 56 per cent of victims, while men and boys account for 44 per cent. International Labour Office, 'Report I (B) - Equality at work: The continuing challenge - Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work' (ILO, 27 April 2011) <http://www.ilo.org/ilc/ILCSessions/100thSession/reports/reports-submitted/WCMS_154779/lang--en/index.htm> accessed 11 April 2014

⁸ Jessica Elliot, *The Role of Consent in Human Trafficking* (Routledge 2014) 91

The 2000 United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, defined trafficking in human beings 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 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.*⁹

This commonly approved definition more or less constitutes a consensus definition as a basis for counter-trafficking efforts, such as those attempted by the European Union and the Council of Europe, as well as many international governmental and non-governmental organizations.¹⁰ In addition, this definition has been widely adopted in domestic penal codes due to the obligations imposed by the UN Trafficking Protocol and other international and European legal instruments to criminalise human trafficking.¹¹ Despite this definition, the application of criminal law provisions on trafficking in human beings varies among states. For instance, the nature of prostitution and the exploitation of the prostitution of others are often addressed in different parts of domestic penal provisions. This definition helps to provide states with different international

⁹ Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons General Assembly resolution 55/25 of 15 November 2000

¹⁰ Venla Roth, *Defining Human Trafficking and Identifying Its Victims* (Martinus Nijhoff 2011) 296

¹¹ Ibid

governmental or non-governmental tools, but trafficking in human beings is still one of the fastest-growing activities of transnational criminal organizations.¹²

3.2.1. Elements of Trafficking in Human Beings (Act, Means, and Purposes)

The aforementioned definition gives the three constituent elements of trafficking in human beings as: (1) the acts – recruitment, transportation, transfer, harbouring, or receipt of persons; (2) the means – threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim; and (3) the purposes – exploitation, which includes ‘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’.¹³ The acts and means constitute the *actus reus*¹⁴ of trafficking in human beings. The purposes of trafficking form the *mens rea*¹⁵ of this crime.

There are three main elements to the acts: economic, social, and criminal. Economic triggers can be summarised as the unequal distribution of wealth between countries of origin and countries of destination, relative economic deprivation and unemployment, expectations of employment and financial reward,

¹² Louise Shelley, *Human Trafficking: A Global Perspective* (Cambridge University Press 2010) 2

¹³ UNODC, ‘Human Trafficking’ <<http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>> accessed 07 July 2013

¹⁴ ‘The offence must include any one of the following: recruiting, transporting, transferring, harbouring, receiving a person. Some or all of these terms are likely to have a clearly defined meaning in your domestic legal system. It must also contain at least one of the following means: use of force, threat of force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, giving or receiving of benefits.’ UNODC, *Anti-human trafficking manual for criminal justice practitioners* ‘Module 1: Definitions of trafficking in persons and smuggling of migrants’ (United Nations, 2009) 4

¹⁵ Ibid, 5: ‘The requisite mental element required in a trafficking in persons case is that the person committed the material act(s) with the intention that the victim be “exploited” (as defined by a country’s domestic anti-trafficking legislation). The Trafficking Protocol does not define exploitation but gives a non-exhaustive list of forms 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.”’

and access to material benefits. Social triggers may incorporate abusive family environments, the corrosion of family, social fabrics and traditional support networks, gender discrimination, lack of education, and domestic violence.¹⁶ The growth and diversification of organized crime and legal deficiencies can be used to illustrate the criminal triggers of trafficking in human beings.¹⁷

The means of trafficking denotes the traffickers' methods for controlling victims, from the very beginning of the trafficking process to the targeted purposes. The purposes of trafficking have three different modes of description: exploitation, slavery or similar practices, and the removal of organs. In this respect, I would like to emphasize that the word 'exploitation' is not just about sexual exploitation. It covers forced or bonded labour, domestic servitude and forced marriage, and the exploitation of children for begging, the sex trade, and warfare.¹⁸

At this stage, the notion of 'consent' can be used to distinguish the relationships between these elements. This notion also provides a means of differentiating migrant smuggling from human trafficking. It is helpful that an emphasis on the importance of the notion of 'consent' provides the main point of differentiation. The Trafficking in Persons Protocol established a baseline, which underlines the point that the consent of an adult victim to the intended exploitation

¹⁶ UNODC, *Toolkit to Combat Trafficking in Persons Global Programme against Trafficking in Human Beings* (United Nations, 2008) 454-55

¹⁷ Nenette Motus, 'The Trafficking Process from the Perspective of Trafficked Persons' in Bárath and others (eds), *The Mental Health Aspects of Trafficking in Human Beings- Training Manual* (IOM, 2004); The European Forum for Urban Safety, 'Trafficking in Human Beings, International Knowledge and Local Practices' <<http://efus.eu/en/topics/risks-forms-of-crime/organised-crime-trafficking/efus/485/>> accessed 10 April 2014

¹⁸ UNODC, 'Human Trafficking FAQs' <http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What_is_the_most_commonly_identified_form_of_trafficking> accessed 04 August 2015

is irrelevant if any of the listed means are used.¹⁹ The consent of a child victim of trafficking is irrelevant regardless of whether or not means have been used.²⁰ The Trafficking in Persons Protocol does not say that the use of means must operate to invalidate or damage consent. In brief, the lack of consent is not an element of the crime of trafficking in persons.²¹

3.2.2. The Identification Problem: ‘Human Trafficking’ or ‘Migrant Smuggling’?

There is an ambiguity between ‘trafficking in human beings’ and ‘migrant smuggling’, as I indicated in the section above. Despite the definitions of international documents, local courts and law enforcement officials have trouble in distinguishing these two crimes.²² According to the UNODC, there are four main differences: consent, exploitation, transnationality, and source of profits. The definition of trafficking makes a distinction between trafficking in human beings and migrant smuggling. The Protocol against the Smuggling of Migrants defines this crime as the ‘procurement for financial or other material benefit of illegal entry of a person into a State of which that person is not a national or resident.’²³

These definitions provide the main differences between human trafficking and the smuggling of migrants:

¹⁹ Trafficking in Persons Protocol, Art. 3(b).

²⁰ United Nations, *The Role of ‘Consent’ in the Trafficking in Persons Protocol* (United Nations, 2014) 25 < https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf > accessed 11 August 2015

²¹ Ibid, 26

²² I will highlight the problems of Turkey in order to differentiate these two crimes in Chapter 6, section 6.2.

²³ The Protocol against the Smuggling of Migrants, Art. 3

	Trafficking in persons (adults)	Trafficking in persons (children)	Migrant smuggling
Victim's age	Over 18	Below 18	Intention
Mental element	Intention	Intention	Intention
Material element	Act Means Exploitative purpose	Act Exploitative purpose	Act: procurement of an illegal entry Purpose: for financial or other material benefit
Consent of the trafficked or smuggled person	Irrelevant once the means are established	Irrelevant; means do not need to be established	The smuggled person consents to the smuggling
Transnationality	Not required	Not required	Required
Involvement of an organized groups	Not required	Not required	Not required

Table 3: Difference between migrant smuggling and human trafficking²⁴

The UNODC table summarizes why it is difficult to distinguish these two different concepts. One of the main problems lies in identifying the beginning of the process. The UNODC states that ‘some trafficked persons might start their journey by agreeing to be smuggled into a country illegally, but find themselves deceived, coerced or forced into an exploitative situation later in the process.’²⁵ The second problem is the presentation of the crime. According to the UNODC, traffickers may present an ‘opportunity’ that sounds more like smuggling to potential victims. They could be asked to pay a fee in common with other people who are smuggled.²⁶ However, the intention of the traffickers from the outset may well be the exploitation of the victim. The ‘fee’ was part of the fraud and deception and a way to make a bit more money.²⁷ The third problem is ‘floating intention’. The UNODC mentions that ‘smuggling may be the planned intention at the outset but a “too good to miss” opportunity to traffic people presents itself to

²⁴ UNODC, *Toolkit* (n 16) 9-10

²⁵ UNODC, *Toolkit* (n 16) 271-83

²⁶ UNODC, ‘How Is Human Trafficking Different From Migrant Smuggling?’

<http://www.unodc.org/unodc/en/human-trafficking/faqs.html#How_is_human_trafficking_different_to_migrant_smuggling> accessed 11 July 2013

²⁷ Ibid

the smugglers/traffickers at some point in the process.’²⁸ To sum up, by using these words, the UNODC shows the close relationship between these two concepts: ‘smuggled migrants are particularly vulnerable to being trafficked – combating trafficking in persons requires that migrant smuggling be addressed as a priority.’²⁹

Anderson and O’Connell also underline the fact that there is an indistinguishable border between trafficking in human beings and smuggling. This ambiguous boundary is open to confusion.³⁰ In this respect, Buckland emphasises the uncertainty of this boundary, as ‘individuals, most often women and children, may start off as paying clients of human smugglers but end up as trafficking victims.’³¹ The main cause of this problem is the notion of ‘consent’, which is the most important and indistinguishable issue. There is a powerful opportunity to break the consent chain in this process, as individuals might volunteer to enter the process and then be unable to withdraw later.³²

As a solution to the ambiguity of this definitional boundary, the Palermo Protocols, which are three protocols that were adopted by the United Nations to supplement the 2000 Convention against Transnational Organized Crime (the

²⁸ UNODC *Toolkit* (n 16) Op.cit. p:271-83; The economic perspective will be evaluated in section 3.3.2.3.

²⁹ Anne Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 127

³⁰ Bridget Anderson and Julia O’Connell Davidson, ‘*Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study*’ (Save the Children, 2003) <http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/mrs15b.pdf> accessed 11 October 2014, 20-21

³¹ B.S. Bucland, ‘Human Trafficking & Smuggling: Crossover & Overlap’ in Cornelius Friesendorf (ed), *Strategies Against Human Trafficking: The Role of the Security Sector* (National Defence Academy and Austrian Ministry of Defence and Sports 2009) 146-151; Alexis A. Aronowitz, ‘Smuggling and Trafficking in Human Beings: The Phenomenon, The Markets that Drive It and the Organisations that Promote It’ [2001] 9(2) *European Journal on Criminal Policy and Research* 163, 164-177; Louise Shelley, *Human Smuggling and Trafficking into Europe: A Comparative Perspective* (Migration Policy Institute 2014) 4-5

³² Bridget Anderson and Ben Rogaly, *Forced labour and migration to the UK* (Trades Union Congress, 2005) <http://www.ituc-csi.org/IMG/pdf/Forced_labour_in_UK_12-2009.pdf> accessed 14 December 2012

Palermo Convention), suggest to states that they should distinguish ‘deserving’ victims of trafficking – who have not consented to engage in this business – from ‘undeserving’ partners in smuggling – who have consented, without providing any guidance on how trafficked persons and smuggled migrants are to be identified as belonging to either of those categories.³³ Because of this conceptual deficiency, prosecutorial bodies have to perform the difficult task of victim identification. This also leads to non-uniform results, because each prosecutor or investigator makes her interpretation on who is a ‘deserving’ trafficking victim or not.³⁴ Because of these definitional problems and differences, these crimes cause considerable confusion for international and national legal organs. Gallagher differentiates these crimes by using the terms ‘inherently exploitative’ for trafficking in human beings and ‘only incidentally exploitative’ for migrant smuggling.³⁵ International legal documents need to produce a wide range of definitional differences and publish case studies to clarify ambiguous points for relevant international and national law enforcement agencies. The lack of significant determinant factors, it is suggested, is one of the main reasons for domestic failures in counter trafficking efforts.

3.2.3. The Root Causes of Trafficking: ‘Push Factors’ and ‘Pull Factors’

The root causes of trafficking are influenced by social, economic, cultural, and other factors, which differ from one country to another.³⁶ Aronowitz refers to numerous root causes for the existence of human trafficking. These are a lack of employment opportunities, poverty, economic imbalances among world regions,

³³ Anne Gallagher, ‘Trafficking, smuggling and human rights: tricks and treaties’ [2002] 12 *Forced Migration Review* 25, 25-28

³⁴ Jayashri Srikantiah, ‘Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law’ [2007] 87 *Boston University Law Review* 157, 160

³⁵ Gallagher, *International Law of Human Trafficking* (n 29) 52

³⁶ UNODC, *Toolkit* (n 16) 423

corruption, decline of border controls, gender and ethnic discrimination, political instability, and conflict.³⁷ All these factors can be included under the title of ‘push factors of trafficking’.

These factors ‘push’ potential victims into migration and trafficking businesses, and hence into the control of traffickers. They are tempted by the ‘pull factors’, which are promises of steady employment, the possibilities of higher standards of living, and the better opportunities that exist in larger cities or abroad.³⁸

The interaction between these two factors reflects one of the main reasons for the trafficking in human beings, especially in women from many source countries such as Thailand or Nigeria, and especially from the former Soviet states, to Turkey. Despite the various classifications of root causes and triggers that negatively affect living standards, it is important to understand root causes in order to build a general cause-and-effect relationship.

Declining border controls were listed amongst the pull factors. At this point, a new question may arise: to what extent can tighter border control help Turkey to reduce the numbers of trafficked victims from the CIS? In the latter parts of the thesis, I emphasise that the main focus of this research is on human beings rather than states. I believe that, contrary to the traditional security approach, victims of trafficking and undocumented migrants are not threats to states’ security.³⁹ They are human beings who deserve better life conditions in their home countries and who are trying to find a better life space for themselves and their families. In this

³⁷ Alexis A. Aronowitz, *Human Trafficking, Human Misery: The global Trade in Human Beings* (Praeger 2009) 11-12

³⁸ Shelley, *Human Trafficking: A Global Perspective* (n 12) 37

³⁹ Jennifer K. Lobasz, ‘Beyond Border Security: Feminist Approaches to Human Trafficking’ [2009] 18 *Security Studies* 319, 321

regard, trafficked people are seen as criminals rather than victims, and the human rights of the trafficking victims are threatened as a result of the tightening of border controls.⁴⁰ One of the main aims of my research is to find a human rights-based (victim-oriented) approach for Turkey. In this matter, tightening border controls and prosecuting victims are not overlapping purposes either for my aims or as part of a victim-oriented approach more generally.

It is important to acknowledge that tighter border control may also cause victims to be re-trafficked when they are deported after being seen as threats and when they return to their countries.⁴¹ Feingold suggests that it is a mistaken assumption to expect that tightening borders will end trafficking. He emphasizes that global tightening of asylum admissions has caused increased levels of trafficking, as many people turn to smugglers.⁴² In support of Feingold, Bort notes that ‘if there is a connection between illegal migration and organized crime, it is human trafficking. And human trafficking is a consequence not of open borders, but of closed borders. By tightening border control, would-be refugees are driven into the arms of organized human smugglers.’⁴³ Tighter border controls do not reduce the number of victims. Perpetrators use both legal means, such as the issuance of tourist and student visas, and illegal methods, such as forged documents, to move female victims into the countries of transit and destination.

⁴⁰ Ceren Baykötan, ‘Human trafficking in Turkey: A feminist analysis’[2014] 6(2) *Fe Dergi* 14, 17

⁴¹ Lobasz, (n39)343

⁴² David A. Feingold, ‘Human Trafficking’ [2005] 150 *Foreign Policy* 26, 27.

⁴³ Eberhard Bort, “Illegal migration and cross-border crime: Challenges at the eastern frontier of the European Union,” *Europe Unbound: Enlarging and Reshaping the Boundaries of the European Union* ed. Jan Zielonka (London and New York, Routledge, 2002), 202.

Regarding the tightening of borders in Turkey, Özer highlights the side effects of migration-related practices on female migrants.⁴⁴ Baykotan exemplifies Özer's findings.⁴⁵ For example, Uzbek citizens require a special visa to leave the country. Most of the trafficked women from Uzbekistan arrive in Turkey without legitimate documentation. As a result of this, even if these women are identified as victims of trafficking, after deportation, they know that they will be punished for leaving the country illegally when they arrive back in Uzbekistan. It is hard to obtain a residence and work permit for foreigners coming from non-Western countries to Turkey. This pushes the legitimate migration process underground.⁴⁶ As a consequence of this, trafficked women hesitate to go to the authorities to escape their vulnerable status. It demonstrates that the tightening of borders without considering social factors and taking precautions against them does not prevent human trafficking. On the contrary, it may increase it.⁴⁷

3.2.4. Country Classification: 'Source', 'Transit', and 'Destination' Countries

Virtually every region or country globally may suffer from the impacts of trafficking on account of the transnational nature of the problem. Countries are nevertheless classified as 'source', 'transit', or 'destination' by organizations that work in trafficking.⁴⁸ These classifications are useful to identify countries, but do not necessarily indicate the responsibilities of countries. These classifications are enough to determine countries' positions in the trafficking business. Source countries are responsible for their nationals' welfare in order to protect them from

⁴⁴ Elif Özer, *Kimse Duymaz: Türkiye'de İnsan Ticareti Mağdurları Üzerine Bir Araştırma*. (Ankara, Ayizi Yayınları, 2012), 81.

⁴⁵ Baykotan, (n40) 19

⁴⁶ Özer (n44) 81-149; Baykotan (n40) 19

⁴⁷ IKGv, "*Seks İşçileri ve Yasalar: Türkiye'de Yasaların Seks İşçilerine Etkileri ve Öneriler*," Ed. Muhtar Çokar and Habibe Yılmaz Kayar, (Istanbul, 2011), 55.

⁴⁸ Andrea Marie Bertone, 'Sexual Trafficking in Women: International Political Economy and the Politics of Sex' [2000] 18(1) Gender Issues 4, 7

this kind of dirty business. Transit countries regulate their border security and utilize carefully trained officials to detect potential victims. Destination countries need to try to prevent this crime, prosecuting offenders and protecting victims. If these countries do not fulfil their responsibilities in their sovereign territories, the system of classification remains limited in its capacity to help resolve the problems of trafficking.

The ‘source country’ is also known as the country of origin of a trafficking victim which has the ‘push factors’. These countries often suffer from political, social, and economic instability, offering a lack of reasonable and realistic life prospects, such as access to education. They may also struggle with armed conflict and oppression, domestic violence and disintegration of the family structure, as well as gender discrimination.⁴⁹

Some countries are used as a bridge for passing victims through to target countries. These are known as transit countries. Traffickers select transit countries based on their geographical location, weak border controls, corruption potential, and their relationship with crime networks involved in trafficking.⁵⁰ Generally, these networks provide access to the destination countries (those that receive the trafficking victims and are the final target for traffickers and the final destination for victims).⁵¹ Destination countries are generally economically prosperous because they must be able to support the commercial sex industry and to meet

⁴⁹ UNODC, ‘Global Report on Trafficking in Persons Executive Summary’ (2009) <https://www.unodc.org/documents/human-trafficking/Executive_summary_english.pdf> accessed 17 July 2014; UNODC, *Toolkit* (n 18) 425-426

⁵⁰ Benjamin Perrin, ‘Trafficking in Persons & Transit Countries: A Canada-U.S. Case Study in Global Perspective’ (2010) Metropolis British Columbia Centre of Excellence for Research on Immigration and Diversity Working Paper Series No.10-05 <<http://mbc.metropolis.net/assets/uploads/files/wp/2010/WP10-05.pdf>> accessed 19 November 2014, 13

⁵¹ The Advocates for Human Rights, ‘Trafficking Routes’ (July 2015) <http://www.stopvaw.org/Trafficking_Routes> accessed 03 August 2015

labour demands. Both origin and destination countries often have a strong presence of organized crime.⁵²

With regard to the case of Turkey, I have highlighted the consequences of being both a destination and a transit country and outlined the social and political problems associated with female trafficking victims. In short, Turkey, with its unique geopolitical location and its geographical location, ranks very highly in the UNODC index as a destination country, along with nine other countries.⁵³

3.3. Theoretical Consideration of Trafficking in Human Beings: ‘Migration Approaches’, Human Trafficking Approaches and Other Related Theories

Trafficking in human beings is a multi-faceted problem involving various social phenomena such as migration, prostitution, slavery, and labour exploitation, in which force, coercion, and violence have become central elements.⁵⁴ In this section, various theoretical frameworks regarding the repression of trafficking will be assessed to understand and analyse their attitudes. The aim of this effort is to show the deficiencies of theoretical approaches which have been used to evaluate and analyse the human trafficking phenomenon, and also to develop my own approach, which I will use in my analysis in later chapters.

3.3.1. Migration Approaches

Migration is one of the most mysterious phenomena in human history, from antiquity to the present, because there are no clear-cut and universal motivations

⁵² Kristiina Kangaspunta, ‘Trafficking in Persons: Global Patterns’ (International Symposium on International Migration and Development, Turin, June 2006)

⁵³ UNODC, ‘Trafficking in Persons: Global Patterns’ (2006)
<<http://www.unodc.org/documents/human-trafficking/HT-globalpatterns-en.pdf>> accessed 24 November 2015, 20

⁵⁴ Kuanruthai Siripatthanakosol, ‘Human Trafficking for Sexual Exploitation: The Framework of Human Rights Protection’ (PhD Dissertation, Newcastle University 2010) 29

which lead people into migration.⁵⁵ Because of demographic growth, climatic change, warfare, conquest, the formation of nations, the emergence of states and empires, and the development of production and trade, people migrate not only voluntarily, but involuntarily.⁵⁶ Due to the impact of globalisation,⁵⁷ patterns of population migration have changed significantly,⁵⁸ leading to transformations of political and economic systems and the development of transport, technology, and communication infrastructures. In order to explore these patterns of migration and their relationships with different human trafficking approaches, I evaluate these approaches to demonstrate their failures. Further, I will critically examine the deficiencies and failures of ‘migration approaches’ to describing and solving the trafficking phenomenon. In other words, I assess these different approaches in order to establish their relevance or otherwise to the problem of the trafficking of women to Turkey from the former Soviet Union.

3.3.1.1. The Neo-Classical Equilibrium Perspective

The first theoretical contribution to be considered here is the neo-classical approach developed in the nineteenth century by geographer Ravenstein.⁵⁹ He described this conceptualisation as ‘laws of migration’.⁶⁰ His theory suggested

⁵⁵ Sarah Spencer, *The Politics of Migration: Managing Opportunity, Conflict and Change* (Blackwell Publishing 2003) 39

⁵⁶ Stephen Castles and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World* (The Guildford Press 2003) 48

⁵⁷ Peter Stalker, *Workers without Frontiers: The Impact of Globalization on International Migration* (Lynne Rienner Publishers 2000) 2-10

⁵⁸ Douglas S. Massey, *Worlds in Motion: Understanding International Migration at the End of the Millennium* (Oxford University Press 2005) 2-16

⁵⁹ Ernest George Ravenstein, ‘The Laws of Migration’ [1885] 48(2) *Journal of the Statistical Society of London* 167, 174-189

⁶⁰ Hein de Haas, ‘Migration and development: A theoretical perspective’ (2008) *International Migration Institute James Martin 21st Century School*, 9
<<http://www.imi.ox.ac.uk/pdfs/wp/WP9%20Migration%20and%20development%20theory%20HdH.pdf>> accessed 10 November 2014, 4-5

that the main triggers of migration were economic.⁶¹ Castles and Miller describe this approach as based on ‘individualistic human capital’.⁶² They define the migration process as a move from low-income to high-income areas or from densely to sparsely populated areas.⁶³

At the microeconomic level, the neo-classical approach views migrants as individual, rational actors, who decide to move on the basis of a cost-benefit calculation. At the macro-level, neo-classical economic theory explains migration by geographical differences in the supply and demand for labour. This theory is discussed above as the push-pull theory.⁶⁴

This theory uses the concept of the ‘economy’ uncritically in its analysis of migration flows. It looks at the economy and omits the consideration of other elements such as corruption, the decline of border controls, gender and ethnic discrimination, political instability, and conflict. It is obviously useful to take account of the impact of economic factors on migration, but the theory is inadequate as an explanation for the entire phenomenon. As I argue above, the economy and income are merely elements among other triggers. In the case of Turkey, economic push factors are significant, but as I highlighted above, social and political triggers also have important roles for trafficking flows to Turkey. In this regard, this approach does not provide a holistic and comprehensive basis to analyse Turkey’s situation.

⁶¹ D. B. Grigg, ‘E. G. Ravenstein and the “laws of migration”’ [1977] 3(1) *Journal of Historical Geography* 41, 53

⁶² Castles and Miller (n 56) 21-22

⁶³ Ibid

⁶⁴ Ronal Skeldon, *Migration and Development: A Global Perspective* (Longman 1997) 20-22

3.3.1.2. Historical-Structural Theory

This theory refers to a family of loosely related theoretical models inspired by the Marxist interpretation of capitalism, underdevelopment, and the structuring of the world economy.⁶⁵ According to Morawska, the causes of international migration lie within the realm of historically formed macro-structural forces which highlight the inherently exploitative and disruptive nature of the economic power-shaping role of global capitalism.⁶⁶

Historical-structural theory emerges in response to functionalist (neo-classical) and developmentalist approaches to development.⁶⁷ Behind this theory, there are a variety of critical political theories, for instance dependency theory, which hypothesizes that global capitalism (and migration as one of its manifestations) has contributed to the 'development of underdevelopment',⁶⁸ colonialism, and a centre-periphery framework.

Proponents of this approach argue that an unequal distribution of economic and political power in the global capitalist society is a result of the existing structure of exploitation between different classes and groups.⁶⁹ This approach radically denies the freedom and the free choices of individual and group movement,⁷⁰ and ignores what is probably the most significant element of the migration process: the choice of the individual. As a result of its limited and narrow approach, this

⁶⁵ Russell King, 'Theories and Typologies of Migration: an Overview and a Primer' (2012) Willy Brant Series of Working Papers in International Migration and Ethnic Relations 3/12 <<http://www.mah.se/upload/Forskningscentrum/MIM/WB/WB%203.12.pdf>> accessed 15 June 2014, 16

⁶⁶ E. Morawska, 'Historical-Structural Models of International Migration' in Jan Rath and Marco Martiniello (eds), *An Introduction to International Migration Studies* (Amsterdam University Press 2012) 55-75

⁶⁷ de Haas (n 60) 7

⁶⁸ Ibid

⁶⁹ Saskia Sassen, *The Mobility of the Labour Capital: A Study in International Investment and Labour Flow* (Cambridge University Press 1990) 1-12

⁷⁰ Castles and Miller (n 56) 26

theory fails to explain the complexity of the migration process and therefore provides only a partial explanation for current migration trends. Historical-structural theory and the neo-classical equilibrium approach provide limited analytical elements, confining themselves merely to single factors such as the economy or income, and the economy and politics, and ignore the choices of the rational free-will actor.

3.3.1.3. The World Migration System Approach

Migration system theory, also known as world systems theory, is an integration of existing approaches, such as the neo-classical equilibrium perspective and historical-structural theory. According to world systems theory, migration is a natural outgrowth of disruptions and dislocations that inevitably occur in the process of capitalist development.⁷¹ It argues that international migration follows the political and economic organization of an expanding global market.⁷²

According to Massey et al., this theory has six distinct hypotheses on the subject of global migration. The first of these is that international migration is a natural consequence of capitalist market formation in the developing world. Secondly, the international flow of labour follows the international flow of goods and capital, but in the opposite direction. Thirdly, it is suggested that international migration is especially likely between past colonial powers and their former colonies, because cultural, linguistic, administrative, investment, transportation, and communication links were established early and were allowed to develop free from outside competition during the colonial era, leading to the formation of

⁷¹ Douglas S. Massey, 'International migration and economic development in comparative perspective' [1988] 14(3) Population and Development Review 383, 386-89

⁷² Douglas S. Massey and others, 'Theories of International Migration: A Review and Appraisal' [1993] 19(3) Population and Development Review 431, 447

specific transnational markets and cultural systems. The fourth hypothesis is that despite the role of wage rates or employment differentials between countries as a reason for migration, international migration ultimately has little to do with these. The fifth is that, since international migration stems from the globalization of the market economy, the way for governments to influence immigration rates is by regulating the overseas investment activities of corporations and controlling international flows of capital and goods. Finally, the sixth hypothesis suggests that political and military interventions by governments of capitalist countries (to protect investments abroad and to support foreign governments sympathetic to the expansion of the global market) result in failure, produce refugee movements directed to particular core countries, constituting another form of international migration.⁷³

The world migration system approach has been criticised in a number of ways. Although it seeks to explain the migration issue at the global level⁷⁴ it cannot be applicable as an analysis of the entire migration system, because it ignores some important points of migration, such as: domestic migration; personal choice; non-economic and political factors like the historical-structural theory; as well as the neo-classical equilibrium migration approaches. In addition to this, the world migration system approach cannot be empirically tested, seeing that its explanation is formulated *ex ante*,⁷⁵ and thus offers a limited means of evaluation.

These three approaches rely on economic factors to explain the migration system. They are therefore useful to underpin the methodology of the business

⁷³ Ibid, 447-48

⁷⁴ de Haas (n 60) 30-36

⁷⁵ Lucia Kurekova, 'Theories of migration: Conceptual review and empirical testing in the context of the EU East-West Flows' (Interdisciplinary conference on Migration, Economic Change, and Social Challenge, London, April 2011) 14

model approach, which is described below. ‘Migration’ theories are used to conceptualize the trafficking issue. The essential problem is that: ‘under the migration approach, the victim in the process is the state, as illegal migrants in fact are seen as violating the laws of the country in which they reside.’⁷⁶ This is why core migration theories are ineffective at assessing the human trafficking phenomenon. For example, in the case of Turkey, human trafficking relies on various factors such as policy, security, social changes, and economic factors. As we can see, economic triggers of human trafficking are only one of several triggers. In this regard, migration-related approaches provide only a limited perspective on the very diverse aspects of trafficking in humans, especially women, in Turkey.

3.3.2. Human Trafficking: Theoretical Approaches

In contrast to migration theories, there are some specific theories relating to trafficking in human beings. It is important to assess why the human trafficking issue is in need of specific theories to analyse it. This is because it has its own trends, elements, scopes, and approaches, which are different from smuggling and migration. I will outline five approaches in this section. Three of these five are the most commonly used theoretical approaches to evaluate human trafficking, but it will be argued here that they are inadequate in a number of respects. These include their focal points (e.g. their failure to prioritise victims or crime), the issue of consent (voluntarily or forced), and in respect of the criminological dimension (legality or illegality). These controversies help to show the elements of human trafficking but they do not provide a holistic victim-oriented solution to

⁷⁶ Nadejda K. Marinova and Patrick James, ‘The Tragedy of Human Trafficking: Competing Theories and European Evidence’ [2012] 8(3) Foreign Policy Analysis 231, 234

trafficking. The fourth and fifth approaches are the human rights-based (victim-oriented) approach and Haynes's Model. The final two theoretical considerations have a significant role. This thesis, as a next step, will modify them and produce a new model for Turkey.

3.3.2.1. Prostitution and Trafficking: Feminist Debates Regarding 'Sex Work'

Feminists disagree on who should be considered a victim of trafficking and what precisely should be done to protect victims' rights, although they agree on the necessity to protect the human rights of trafficked persons.⁷⁷ Feminist abolitionists concentrate mainly on women trafficked for sexual exploitation, advocating the abolition of prostitution and enhanced protections for sex trafficking victims. In this regard, Barry summarises that the fight against trafficking as a fight against all prostitution.⁷⁸ In contrast, feminist critics of the abolitionist approach emphasise that prostitution is not inherently harmful. They support the decriminalization or legalization of prostitution and argue that current anti-trafficking activities rely upon and contribute to counterproductive, if not harmful, stereotypes of trafficking victims.⁷⁹ Doezenia describes the debate among feminists regarding prostitution as, '(i)n effect, the lobby [is] split into two "camps": both framing their approaches to trafficking in feminist terms, in agreement about the size and scope of the problem, and univocal in demanding an

⁷⁷ Jennifer K. Lobasz, 'Beyond Border Security: Feminist Approaches to Human Trafficking' [2009] 18 Security Studies 319, 334

⁷⁸ Kathleen Barry, *Female Sexual Slavery* (NYU Press 1979) 7

⁷⁹ Lobasz (n 77) 334

international response. Both groups were made up of feminists and human rights activists from the developing world and the developed world.’⁸⁰

In this regard, I focus on three theoretical considerations which stem from feminist theory: (1) the ‘radical feminist’/‘prohibitionist’; (2) the sex worker or ‘labourist’; (3) the ‘repressive’ approach.

The ‘radical feminist’/‘prohibitionist’ perspective is outlined by Barry. According to her, both sexual exploitation and prostitution are violations of a woman’s body and spirit and therefore constitute subjects of feminist concern.⁸¹ She proposes a convention outlawing anything that violates the rights of a woman, from female genital mutilation to prostitution and female infanticide.⁸² She advocates an international document outlawing trafficking, with the women involved being spared punishment, and the traffickers and their business partners in the developed world held responsible instead.⁸³

A number of the measures that Barry proposes are now in place, as the combating of violence against women was developed as an issue on the international agenda in subsequent decades. The UN General Assembly passed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979. Article 6 of CEDAW relates to the suppression of trafficking and prostitution. The UN Fourth World Conference (that is, the Beijing Conference) raised awareness and generated further discussions over trafficking in 1995, designating it as another form of violence against women. Strategic

⁸⁰ Jo Doezeema, ‘Now You See Her, Now You Don’t: Sex Workers at the UN Trafficking Protocol Negotiation’ [2005] 14(1) Social & Legal Studies 61, 67

⁸¹ Kathleen Barry, *The Prostitution of Sexuality: The Global Exploitation of Women* (NYU Press, 1995) 20-48

⁸² Marinova and James (n 76) 234

⁸³ Kathleen Barry (n 81), 20-48

objective D3 of the Beijing platform deals with eliminating trafficking and assisting victims of prostitution and trafficking.⁸⁴

In this crime, female subjects are generally disparaged because of a woman's role and exploitation in sexual businesses throughout history. In other words, in sexual assault and trafficking cases, the credibility of female victims and complainants has traditionally been denigrated.⁸⁵ According to Miers, early victimologists attributed the moral responsibility for a crime – particularly those of a sexual nature – to the victim.⁸⁶ This approach is currently known as victim blaming.

Feminists have reacted against victim blaming, while also seeking to dismantle some of the broad myths concerning the alleged infrequency of sexual violence and trafficking.⁸⁷ As a result of this activism, policy and criminal justice practices began to escape the influences of conservative and gendered assumptions around rape and trafficking.⁸⁸ In this respect, Kapur emphasizes that female victimisation and the 'hegemonic victim subject' were presented as the centrepiece of the international human rights framework in the early 1990s.⁸⁹ On the other hand, Kapur argues that such constructions 'cannot accommodate [the] multi-layered experience' of female victimisation, leading to the simplified, stereotypical

⁸⁴ Emek Ucarer, 'Trafficking in Women: Alternate Migration or Modern Slave Trade?' in Mary K. Meyer and Elisabeth Prugl (eds), *Gender Politics in Global Governance* (Rowman & Littlefield Publishers 1999) 240

⁸⁵ Selda Dagistanli and Sanja Milivojevic, 'Appropriating the rights of women: Moral panics, victims and exclusionary agendas in domestic and cross-borders sex crimes' [2013] 40 *Women's Studies International Forum* 230, 231

⁸⁶ David Miers, 'Positivist victimology: A critique' [1990] 1(3) *International Review of Victimology* 219, 222-28

⁸⁷ Liz Kelly, 'Paradoxical progress: Responding to sexual violence' [2008] 39 *Soundings* 128, 129-135

⁸⁸ Susan Ehrlich, *Representing rape: Language and sexual consent* (Taylor & Francis 2002)

⁸⁹ Ratna Kapur, 'The tragedy of victimization rhetoric: Resurrecting the "native" subject in international/post-colonial feminist legal politics' [2002] 15(1) *Harvard Human Rights Journal* 1, 13-18

narratives that are exemplified in public dialogue around sexual violence and sex trafficking.⁹⁰

In this context, Weitzer and Ditmore indicate that sex trafficking has been exploited in a ‘moral crusade’, ‘a type of social movement that defines a particular condition or activity as an unqualified evil and sees its mission as a righteous enterprise with both symbolic goals (attempting to redraw or bolster normative boundaries and moral standards) and instrumental ones (providing relief to victims, punishing evildoers).’⁹¹

Dagistanli and Milivojevic emphasize the significance of moral judgements made against women who are sexually victimised, and who are also subject to a number of contextual and structural variables.⁹² According to them, in determining attitudes towards victims from certain social positions, which are often reflected within criminal justice outcomes and support services, intersecting factors of gender, class, culture/ethnicity, and age play a significant role.⁹³

Moral outrage regarding violated women’s bodies has also been triggered when such violations coincide with broader social issues – nationalism, multiculturalism, racism, immigration, and the sex industry.⁹⁴ Powerful social actors such as unlikely coalitions of left and right, progressives and conservatives, feminists and patriarchal political voices, create amorphous power blocs which selectively colonise the women’s rights cause to protect and rescue vulnerable victims of sexual abuse and exploitation. Yet they appropriate a women’s rights

⁹⁰ Ibid, 2; Dagistanli and Milivojevic (n 85) 231

⁹¹ R. Weitzer and M. Ditmore, ‘Sex trafficking: Facts and fictions’ in Ronald Weitzer (ed), *Sex for sale: Prostitution, pornography and the sex industry* (Routledge 2010) 325-6; Dagistanli and Milivojevic (n 85) 237

⁹² Dagistanli and Milivojevic (n 85) 232

⁹³ Ibid

⁹⁴ Ibid, 239

agenda for furthering punitive and exclusionary agendas, and not for the benefit of those they ought to protect.⁹⁵ Bindman and Doezema discuss the international strategy on prostitution as sex work.⁹⁶ I will consider this discussion in further detail below and in section 4.6.

The sex worker or ‘labourist’ approach treats the activity of trafficked women in prostitution in the same way as the voluntary labour of prostitutes and sees trafficked women as sex workers who deserve human rights protection.⁹⁷ According to this approach, women who have chosen to become sex workers do not attract the same kind of support and understanding as trafficked women, and those trafficked for non-sex-related labour easily become considered ‘illegal immigrants’.⁹⁸ Contrary to the prohibitionist view, women have less independent agency when prostitution is illegal. When adopted as state policy, the sex worker approach is labelled as ‘regulationist’, as prostitution is regarded as work, and the state regulates brothels.⁹⁹

The ‘repressive’ approach is also a part of feminist literature. This approach opposes legalized prostitution but its proponents do not put forward any supportive or critical assessments for better or more comprehensive international regulation. Aghatise suggests that ‘the view that legalization of prostitution curbs

⁹⁵ Ibid

⁹⁶ Joe Bindman and Jo Doezema, *Redefining Prostitution as Sex Work on the International Agenda* (Anti-Slavery International, 1997) <<http://www.walnet.org/csis/papers/redefining.html#appendix>> accessed 17 September 2013

⁹⁷ Barbara Sullivan, ‘Trafficking in Women: Feminism and New International Law’ [2003] 5(1) *International Feminist Journal of Politics* 67, 71-73

⁹⁸ Lobasz (n 77) 323

⁹⁹ Donna M. Hughes, ‘The Demand for Victims of Sex Trafficking’ (2005) *Women’s Studies Program of University of Rhode Island* <http://www.uri.edu/artsci/wms/hughes/demand_for_victims.pdf> accessed 13 September 2014, 37

the problem is deceptive.¹⁰⁰ According to the opponents of legalized prostitution, such as Agustin and Hughes, it cannot be regarded as work.¹⁰¹ The legalization of prostitution is also criticized because becoming entrapped in prostitution involves a complex interaction of coercion, deception, dependence, and choice.¹⁰² Opponents of legalized prostitution argue that the suppression of prostitution will discourage trafficking. The proponents of all those three approaches have different views on prostitution and trafficking:¹⁰³

	Prostitution	Trafficking
The sex worker or 'labourist' approach	Oppose criminalization of prostitution Labourists believe that if prostitution is illegal, the main result of this will be the exploitation	Condemn trafficking
The 'repressive' approach	Illegal	Measures against prostitution also target trafficking
'Radical feminist'/'prohibitionist' approach		

Table 4: Legalization of prostitution from labourist, repressive and prohibitionist approaches

At this point, it will be helpful to clarify the relationship between women's rights, morality, and the feminist agenda. In contrast to early examples of victimization, feminists have confronted victim blaming, while also seeking to dismantle some of the broad myths referring to the alleged infrequency of sexual violence.¹⁰⁴ These three approaches examine the problem from the viewpoint of

¹⁰⁰ Esohe Aghatise, 'Trafficking for Prostitution in Italy: Possible Effects of Government Proposals for Legalization of Brothels' [2004] 10 *Violence against Women* 1126, 1149

¹⁰¹ Laura M Agustin, 'Sex Workers and Violence against Women: Utopic Visions or Battle of the Sexes?' [2001] 44(3) *Development, Society for International Development* 107, 108-110; Hughes, *The Demand for Victims* (n 228) 37

¹⁰² Linda Reagan and Liz Kelly, *Rhetorics and Realities: Sexual Exploitation of Children in Europe* (CWASU 2000) 19

¹⁰³ Niklas Jakobsson and Andreas Kotsadam, 'The Law and Economics of International Sex Slavery: Prostitution Laws and Trafficking for Sexual Exploitation' (2010) *Working Papers in Economics*, 458 <<https://andreaskotsadam.files.wordpress.com/2010/06/trafficking.pdf>> accessed 11 October 2014, 5-6

¹⁰⁴ Kelly (n 87) 128-135

the ‘prostitution’ issue. This narrow aspect is not enough to explain the trafficking phenomenon. Prostitution is just one of the purposes of traffickers. In this context, these approaches are important, but with their reliance on victim blaming and political and legal ignorance, they are ill-equipped to explain the entirety of the women trafficking issue. In their account of sexual exploitation (prostitution), the criminalization of prostitution is treated as a solution for human trafficking. However, the purposes of forced labour/slavery or similar practices, and the removal of organs, are not related to prostitution. In particular, from the beginning of the Natasha trade, Turkey interpreted the crisis in conformity with these three approaches. Prostitution was the main focal point and victim-blaming was the main combat method. However, Turkey ignored the violated human rights of victims and tried to combat prostitution. After 2002, trafficking in human beings, especially in women, has been treated as a violation of human rights, and different from prostitution.¹⁰⁵

These approaches all emphasise their focal point, which is the victim. Voluntary or not, prostitution is a violation of human rights. In terms of their victim-oriented approaches, these theoretical perspectives will be utilized as part of a holistic approach in order to propose strategies to prevent trafficking, to prosecute offenders, and to protect victims’ rights.

3.3.2.2. The Business Model Approach to Women Trafficking

There are almost no original studies concerning the business practices of the transnational crime groups that traffic women, apart from the work of Shelley.¹⁰⁶

¹⁰⁵ In Chapter 6, I will highlight the legal and political evolution of Turkey’s approaches against this crime

¹⁰⁶ Louise Shelley, ‘Trafficking in Women: The Business Model Approach’ [2003] 10(1) The Brown Journal of World Affairs 119

For example, Bales highlights trafficking – or modern-day slavery – as a booming business, and notes that the number of slaves is increasing.¹⁰⁷ Furthermore, in *Disposable People*, Bales discusses the business characteristics of trafficking, and the relationship between the global economy and trafficking. Nevertheless, Bales has not constructed models for different regions and their characteristics, when assessing acts associated with trafficking. National data regarding actual cases show that there are significant regional and cultural variations in trafficking organizations.¹⁰⁸ Due to the high profits, low risk of detection, and minor penalties, human trafficking has become more attractive to groups that previously trafficked in other commodities, such as drug and arms, and to new groups which have developed recently.¹⁰⁹

I highlighted above that trafficking in human beings is not a uniform business. It differs from one region or culture to another. For instance, Albania, Russia, and China all have a socialist background, but their business models are different.¹¹⁰ Shelley refers to the root causes of trafficking to show the differences between Western Europe and the countries of Eastern Europe, Asia, and Africa:

*The demographic and capital imbalance between them has placed enormous pressure on individuals to leave their home countries, and restrictive migration policies in Western Europe limit entrance.*¹¹¹

Ruggiero follows a different route in order to reach the same inference as the other scholars mentioned above. He begins his analysis by underlining the relationship between modern trafficking and the historical concept of slavery. As

¹⁰⁷ Kevin Bales, *Disposable People: New Slavery in the Global Economy* (University of California Press 2012) 4

¹⁰⁸ UNODC, *Trafficking in Persons* (UNODC, 2014) 59-86

¹⁰⁹ Shelley, 'The Business Model Approach' (n 106) 121

¹¹⁰ Ibid, 122.

¹¹¹ Ibid

a consequence of his analyses, trafficking is viewed within the realms of both business and criminal activities. He argues that the growth of hidden sectors within European economies is based on a variety of legal, semi-legal, and illegal activities. That is why he considers the trafficking issue an element of criminal activity.¹¹² In addition to these, Albanese points out that market variables (supply, demand, regulators, and competition) are crucial to determining the markets at risk of infiltration by (organized) criminal groups.¹¹³

In this regard, some scholars use economic models at the micro and macro levels, such as the supply and demand of markets.¹¹⁴ Salt and Hogarth describe trafficking as a merchant activity.¹¹⁵ On this point, most of the female trafficking victims could be evaluated by Hughes' 'analysis of sex demand'.¹¹⁶ According to her, this demand can be categorized into three types: the demand of purchasers or users who pay prostitutes for a sexual service; the demand of profiteers like traffickers, pimps, and brothel owners who sell sex or profit from it; and the demand of academics and journalists who write about and report on prostitution and female trafficking as a part of socio-cultural attitudes.¹¹⁷ According to Picarelli, three main elements are employed to explain the trafficking issue: socioeconomic conditions, the presence of conflict, and environmental

¹¹² Vincenzo Ruggiero, 'Trafficking in human beings: slaves in contemporary Europe' [1997] 25(3) *International Journal of the Sociology of Law* 231, 236-238

¹¹³ Jay S. Albanese, 'Risk Assessment in Organized Crime: Developing a Market and Product-Based Model to Determine Threat Levels' [2008] 24(3) *Journal of Contemporary Criminal Justice* 263, 269

¹¹⁴ Ucarer (n 84) 241-42

¹¹⁵ John Salt and J. Hogarth, 'Migrant Trafficking and Human Smuggling in Europe: A Review of the Evidence' in Frank Laczko and David Thompson (eds), *Migrant Trafficking and Human Smuggling in Europe: A Review of the Evidence with Case Studies from Hungary, Poland and Ukraine* (International Organization for Migration 2000) 19-21

¹¹⁶ Donna M. Hughes, *Best practices to address the demand side of sex trafficking* (University of Rhode Island Press, 2004) 2-4

¹¹⁷ *Ibid*

degradation.¹¹⁸ On this point, as a business model, human trafficking activities have their own supply chain, from recruiting the victims to meeting the demand. Human trafficking supply chains, like other business supply chains, contain four elements: the supplier, assembly/manufacturing, the retailer/service provider, and the customer.¹¹⁹

Supplier	Assembly/Manufacturing	Retailer/Service Provider	Customer
<ul style="list-style-type: none"> • At this stage victims are 'sourced' by various means <ul style="list-style-type: none"> - travel agencies; - employment agencies; - 'lover boys'; - peers and family; - etc. • Transport of Victims to point of exploitation • Provision of travel documents, if necessary • Collection and use/re-investment of revenues 	<ul style="list-style-type: none"> • In case of labour exploitation: goods are being produced (actual point of exploitation) • In all cases: victims are manipulated to achieve: <ul style="list-style-type: none"> - training victims in necessary skills - compliance/ obedience according to the will of traffickers through coercion, use of force, or alternative means of creating vulnerability • Quality controls => Traffickers need to ensure satisfaction of their clients 	<ul style="list-style-type: none"> • Choice of Marketing Channel (= means of communicating their offers to customers) • Choice of customer type: <ol style="list-style-type: none"> 1. Businesses 2. Private customers • Mode of Sale (where and how to offer goods/services for purchase) • Collection and use/re-investment of revenues • Choice of Competitive Strategy: <ol style="list-style-type: none"> 1. Differentiation 2. Price 3. Quality 	<ul style="list-style-type: none"> • Customers choose products and services based on: <ol style="list-style-type: none"> 1. Price 2. Quality 3. Variety of functions 4. Ease of consumption 5. Presentation of goods and services • Purchase (goods and services) • Level of awareness in terms of involvement in the trafficking process varies

Table 5: A Basic Supply Chain Model of Trafficking in Human Beings¹²⁰

To show the different tendencies and strategies of transnational crime groups within this business, Shelley identifies six business models operating in the area of trafficking. The business models of Chinese, post-Soviet, Balkan, American, Hispanic, and Nigerian groups are analysed and assessed.¹²¹

¹¹⁸ John T. Picarelli, 'The "Modern Day" Trade in Human Beings: How Historical Experience Influences the Contemporary Trafficking in Persons' (DPhil thesis, American University 2007) 28

¹¹⁹ Tage Skjøtt Larsen and others, *Managing the Global Supply Chain* (3rd edn Copenhagen Business School Press 2007) 11-48

¹²⁰ Alexis Aronowitz, Gerda Theuermann and Elena Tyurykanova, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (The OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking, 2010) 34

¹²¹ Shelley, *Human Trafficking: A Global Perspective* (n 2) 114

Because of Turkey's geographical location, high level of demand, and the traffickers' methods, this approach – it is suggested – is the most relevant, since it can analyse most of the elements of the trafficking business in Turkey. Apart from Shelley's Business Model Approach, there is no significant profit-related theoretical approach. This approach elaborates on the methods and purposes of specific international and regional crime groups in order to evaluate their operations and assess the relation between supply and demand in these regions. Despite the deep evaluations of traffickers' purposes and methods, the Business Model Approach carries some limitations in respect of assessing the victims' interests and sociological push and pull factors. Its lack of concern with regard to push and pull factors makes this model narrow. Whilst this model focuses on the main elements of trafficking, it is ill-equipped to examine the social, cultural and political triggers that push people into the trafficking business, and to analyse the pull factors of the destination countries. This model is well-equipped to evaluate the primary regions subjected to trafficking, but it is poorly-equipped to recognise and critique regions' weaknesses and failures to combat trafficking.

These six models have different levels of analysis, assessing factors such as the traffickers' purposes, the recruitment of victims, transfer procedures, and methods of exploitation. In this respect, I will critically examine Shelley's six models in order to identify the most relevant model(s) for describing the characteristic features of human trafficking in/to Turkey. These models provide a comprehensive perspective for understanding the international trafficking business.

The Trade and Development Model: Chinese Traffickers

The trade and development model is most applicable to the smuggling of men for labour exploitation, but is also common in the trafficking of women. This model comprises ten per cent of the total human trafficking trade. Crime groups control victims through debt bondage.¹²² Male victims are required to work long hours in restaurants, sweatshops, and other businesses controlled by the Chinese diaspora community. Female victims are required to work in sweatshops or brothels.¹²³

The Natural Resource Model: Post-Soviet Organized Crime

Post-Soviet trafficking groups are active in the Slavic region.¹²⁴ The major targets of this model are women and girls, who will be sold into sexual exploitation.¹²⁵

The traffickers use advertisements and fake employment agencies to recruit girls. They also adopt infants from hospitals and children's homes. Sometimes alcoholic parents sell their children into the trafficking business. Children who are later forced to become beggars are found in institutions, on the street, or in railway stations where abandoned and street children gather.¹²⁶ According to Shelley, the natural resource model used by the post-Soviet traffickers results in

¹²² Shelley, 'The Business Model Approach' (n106) 124

¹²³ Jenny W. Hsu, 'Dozens of Smugglers Captured' *Taipei Times* (Singapore, 19 June 2009) <<http://www.taipeitimes.com/News/front/archives/2009/06/19/2003446547>> accessed 11 November 2014

¹²⁴ Shelley, 'The Business Model Approach' (n 106) 119

¹²⁵ *Ibid*, 123

¹²⁶ Sally Stoecker, 'The Rise in Human Trafficking and the Role of Organized Crime' [2000] 8(1) *Demokratizatsiya* 129, 139

very significant violations of human rights because the traffickers have no interest in obtaining long-term profits from the women.¹²⁷

The Violent Entrepreneur Model: Balkan Crime Groups

The violent entrepreneur model relates specifically to trafficking in women. It results in very significant violations of human rights and considerable violence against trafficked women. Balkan traders buy large numbers of women from the region. The suppliers are crime groups from the former Soviet Union and Eastern Europe. Balkan traders in women run an integrated business and are middlemen for the groups from Eastern Europe.¹²⁸

Traffickers use the instabilities and/or civil conflicts occurring in victims' home regions as push factors to provide a large number of women. By using force against established organized crime groups, such Balkan traders have been able to take over the sex markets in continental Europe and Great Britain.¹²⁹

The Supermarket Model: Low Cost and High Volume US-Mexican trade

The supermarket model is applicable to the smuggling of both men and women. The trade in women is part of a much larger trade. In most cases, the smugglers only facilitate cross-border trade, a feat that may require multiple attempts.¹³⁰

Local Mexican border officials share in the profits of traders in order to permit cross-border trade. The Cadena case of young women trafficked to the south-

¹²⁷ Ibid, 123; Shelley, *Human Trafficking: A Global Perspective* (n 12) 121

¹²⁸ Shelley, 'The Business Model Approach' (n 106) 126

¹²⁹ United States Institute of Peace, 'Lawless Rule Versus Rule of Law in the Balkans' (December 2002) <<http://www.usip.org/sites/default/files/sr97.pdf>> accessed 10 November 2014

¹³⁰ Shelley, 'The Business Model Approach' (n 106) 125

eastern United States gave insight into patterns of money laundering.¹³¹ Millions of dollars in profits were returned to Mexico and invested in land and farms.

The American Pimp Model: High Consumption and Small Savings

The American pimp model is applicable to female victims of sexual exploitation within the United States. By trafficking small numbers of American girls and women who remain under the control of traffickers, pimps earn profit over extended periods.¹³²

Pimps use both psychological manipulation and drugs to keep victims under control. They also force the women to be totally obedient and renounce all of their earnings to their pimps. They also use physical violence against the women. Shelley gives a significant example of how pimps use violence against victims, citing the case *U.S. of America vs. Charles Floyd Pipkins a.k.a. Sir Charles, Andrew Moore, Jr. a.k.a. Batman*.¹³³ She notes that ‘[p]rostitutes endured beatings with belts, baseball bats, or “pimp sticks” (two coat hangers wrapped together). The pimps also punished their prostitutes by kicking them, punching them, forcing them to lie naked on the floor and then have sex with another prostitute while others watched, or “trunking” them by locking them in the trunk of a car to teach them a lesson.’¹³⁴

Shelley suggests that this model represents the tendencies of contemporary American life, through its emphasis on high consumption and the absence of

¹³¹ Louise Shelley, ‘Corruption and Organized Crime in Mexico in the Post-PRI Transition’ [2001] 17(3) *Journal of Contemporary Criminal Justice* 213, 226

¹³² Shelley, *Human Trafficking: A Global Perspective* (n 12) 123

¹³³ *Ibid*, 124; *U.S. of America vs. Charles Floyd Pipkins a.k.a. Sir Charles, Andrew Moore, Jr. a.k.a. Batman* (cited by Shelley, *ibid* at 132)

¹³⁴ Shelley (n 12) 123

savings.¹³⁵ Vulnerable humans are a source of easy profits for the traffickers, as in every model. Shelley states that the commodification of women for traffickers' profit forms a part of the materialism of American daily life.¹³⁶

The Traditional Slavery with Modern Technology Model: Trafficking out of Nigeria and West Africa

Nigerian organized crime groups are involved in many different criminal activities. The trade of women forms only one part of their multi-faceted criminal undertakings. Traffickers force the women's compliance through psychological as well as physical pressure.¹³⁷

Shelley states that Nigerian traffickers are very effective because they 'combine the best of both modern and older worlds by allying sophisticated forms of modern technology to tribal customs.'¹³⁸

These crime groups traffic the victims, mostly women, to obtain profit. From the recruitment for sale into the exploitation industry, traffickers and the victims' customers treat victims like a commodity in a normal business process. These six models can be analysed to identify the profit rates of the high ranking organized criminal groups involved in this brutal business.¹³⁹

¹³⁵ Ibid, 125

¹³⁶ Ibid

¹³⁷ Shelley, 'The Business Model Approach' (n 106) 127

¹³⁸ Shelley, *Human Trafficking: A Global Perspective* (n 12) 129

¹³⁹ Shelley, (n 106) 128; Shelly (n 12) 131

Profits	High	Medium	Low
Model 1: Chinese Groups	X		
Model 2: post-Soviet Groups	X		
Model 3: Balkan Groups		X	
Model 4: Mexican Groups			X
Model 5: American Pimp			X
Model 6: Nigerian Groups		X	

Table 6: Shelley's trafficking business models by rate of profit

The Business Model Approach evaluates human trafficking as a criminal business that shows regional differences from recruitment to profit. As I noted earlier, Turkey's geographical location is unique. Because of this, the trafficking business to Turkey has different characteristic features. In this respect, Shelley's Natural Source and Violent Entrepreneur Models explain the most relevant characteristic features of the trafficking business to Turkey. These can be listed as the characteristic features of traffickers, their methods, and the final outcomes of their businesses. Both these models and the main characteristics of trafficking to Turkey build their businesses for the purpose of sexual exploitation, targeting women and girls, and benefiting from the source countries' unstable economic, social, and political situations. Almost 98% of identified victims came from the CIS, and 88% of the 522 identified victims were trafficked for the purpose of sexual exploitation.¹⁴⁰ However, these models are inadequate, to some degree, for a critical examination of the extent of trafficking to Turkey. They assess trafficking in terms of primary push factors, such as source countries' political or

¹⁴⁰ Statistical data for Turkey's trafficking issue <www.countertrafficking.com> accessed 11 October 2014

security troubles, but are ill-equipped to assess the pull factors, and other weaknesses, of destination countries.

In our case, these models are important in helping us to understand the main reasons for trafficking to Turkey, especially push factors (such as the domestic insecurities of source countries) alongside the wider business agenda of traffickers. However, they do not recognise Turkey's weaknesses or failures to prevent this criminal business. In other words, these models ignore Turkey's responsibilities to prevent human trafficking and to protect victims. Under these models, the assessment of Turkey is limited, as traffickers recruit female victims from the former Soviet states for the purpose of sexual exploitation, and transfer them into Turkey as victims of trafficking. In addition to this assessment, a better evaluation should be that traffickers recruit female victims from the former Soviet states for the purpose of sexual exploitation by exploiting the vulnerable situations (push factors) in their home countries. Then, they transfer them into Turkey as victims of trafficking, benefiting from the lack of concern by Turkey's border authorities, inexperienced officials, inadequate legal and political measures, and gender discrimination (pull factors). In this regard, I suggest that the Business Model Approach is the only one that provides me with a comprehensive perspective in order to analyse the flows of victims to Turkey, though it does not emphasize why Turkey is a destination country and why it cannot stop this human rights violation for the victims. In addition to this weak point, this approach is inadequate to offer any reliable solution for victims whose rights have been violated. These models are ill-equipped to identify, understand, and analyse the entire picture. Indeed, they themselves have a significant role in supporting my argument. Trafficking in human beings is a multi-purpose and multi-dimensional

crime, and needs a comprehensive and multi-disciplinary theoretical approach that focuses on victims' rights rather than trafficking purposes or means. Contrary to these requirements, these models evaluate human trafficking solely as an economic relationship from seller to customer.

3.3.2.3. Trafficking in Women for Involuntary Prostitution: Theories Related to Criminology

Lanier and Henry underline the importance of an integrated theoretical framework: 'when a crime is an outcome of several different causes, an integrated framework or a conceptual absorption approach [...] is required to analyse the sequential chain of events.'¹⁴¹ The main purpose of this approach is to combine the best elements of existing theories to better explain the causes of criminal behaviour.¹⁴²

In this regard, according to Lanier and Henry, rational choice theory, demand theory, constitutive theory, and economic theory are significant to describe the effects of events exercised in the course of human trafficking for involuntary prostitution.¹⁴³

These approaches will be utilized here to determine their value in the context of human trafficking, and to build up an integrated framework. In the later parts of this section, I will discuss a synthesis of these theories, in order to provide a more effective means of analysis for the problem of trafficking in women for involuntary prostitution/sexual exploitation. These theories are important in the

¹⁴¹ Mark M. Lanier and Stuart Henry, *Essential Criminology* (Westview Publishers 2004) 343

¹⁴² Ibid,343; Thozama Mandisa Luty and Mark Lanier, 'An Integrated Theoretical Framework to Describe Human Trafficking of Young Women and Girls for Involuntary Prostitution' in Jay Maddock (ed), *Public Health – Social and Behavioural Health* (In Tech 2012)

¹⁴³ Ibid, 557

context of an examination of perpetrators' motivations viewed from a cost and benefit analysis.

Rational choice theory employs a 'costs' and 'benefits' analysis to show the decision-making process of criminals.¹⁴⁴ They make their decisions after an analytical evaluation of both the costs of their actions and the benefits of their actions.¹⁴⁵ This process is based on free will, which necessitates the observation of opportunities, circumstances, and situations that could affect the successful perpetration of the planned crime.¹⁴⁶

This theory has three variables: rational decision making, costs and benefits, and free will. The application of this theory to the crime of women trafficking involves three stages. The first stage is that criminals make an initial decision to perpetrate a trafficking crime. Secondly, they choose the potential victims after a cost and benefit analysis process. This includes observation of the accessibility of potential victims; the location and the time at which they are most vulnerable; the appropriate methods that could provide easy entry; and how to safeguard their criminal activities from criminal justice authorities and other capable guardians.¹⁴⁷ Finally, after this analysis, if the possibilities of success and the benefits are high, the crime will occur.¹⁴⁸

Rational choice theory reflects an anti-humanitarian view of the issue, which focuses on the logic of traffickers rather than the victims' problems. This provides

¹⁴⁴ Halil Ibrahim Dogan and Bilal Sevinc, 'Suç Teorileri ve Şehir Güvenliği: Bitlis İliyle İlgili Genel Bir Değerlendirme- Crime Theories and City Safety: A General Evaluation of the City of Bitlis' [2011] 13(4) Polis Bilimleri Dergisi 27, 31

¹⁴⁵ Ronal L. Akers and Christine S. Sellers, *Criminological Theories: Introduction, Evaluation, and Application* (Roxbury Publishing Company, 2000) 23-24

¹⁴⁶ Lanier and Henry (n 141) 90

¹⁴⁷ Luty and Lanier (n 142) 557

¹⁴⁸ Francis T. Cullen and Robert Agnew, *Criminological Theory: Past to Present* (Roxbury Publishing Company, 1999) 254. In this book, the costs and benefits analysis was made to show the burglary crime.

a limited view for preparing comprehensive and victim-oriented combat tactics. Understanding the logical triggers of traffickers provides only a narrow viewpoint from which to see the entire picture, which includes the brutal elements of trafficking, from recruitment to the sale of victims into different cruel practices. In terms of trafficking crime to Turkey, traffickers make their decision to commit crime. Because of the inadequate detection, identification, investigation, and prosecution features in Turkey, together with a high level of demand, traffickers take the risk and transport women and girls as victims. Rational choice theory fails to evaluate the later steps of trafficking. Working on the phenomenon of human trafficking should be focused not only on preventing this crime, prosecuting the offenders, and protecting victims' rights, but also on understanding the traffickers' choices. The main weakness of rational choice theory is its aspiration, which is the 'fight against crime'.¹⁴⁹ However, in crimes such as human trafficking, theoretical approaches should have preventative applications to protect victims, build public awareness, and train officials for effective detection, identification, investigation, and prosecution processes. Although rational choice theory offers preventative practices against crime, these focus on the nature of crime and the choices of criminals, rather than on the victims.

The demand theory of prostitution has three variables: users, profiteers, and publicity. Lutya and Lanier use these variables to point to the situational context of crime. This context signifies the meanings of these three variables: prostitutes for victims; users and profiteers for the offenders; publicity for the opportunities

¹⁴⁹ Ronald V. Clarke, 'Situational Crime Prevention: Successful Case Studies' (Harrow and Heston, 1997) 9

available for prostitutes to exist in the public domain.¹⁵⁰ This theory provides wider dimensions than rational choice theory. In terms of variables, it focuses on different subjects of this business. Yet it is still ill-equipped to provide a victim-oriented approach. With this theoretical perspective we can easily identify all the persons related to the trafficking business. But we cannot produce a victim-oriented protection mechanism or a preventative combat strategy.

Hughes classifies the demand for prostitutes into three categories: users or purchasers of sex, profiteers from selling sex, and socio-cultural attitudes towards sex.¹⁵¹ According to Hughes, users or purchasers of sex refer to persons who pay prostitutes; profiteers from selling sex refer to brothel owners and pimps; whilst academic and media reporting and writing about prostitutes represent socio-cultural attitudes towards sex.¹⁵²

Henry and Milovanovic suggest that ‘constitutive theory examines the discursive co-production of crime by human agents in their interrelation with cultural products, social institutions, and the wider societal structure. It seeks to examine the relations that co-produce crime, as well as ways to intervene in that co-production to reduce the harms that are its ongoing outcome.’¹⁵³

According to constitutive criminologists, criminals invest a large amount of their time and budget in crime. To reach their desired outcomes, they can use a number of tools. On the other hand, victims are mostly the disabled party, experiencing pain and loss whilst being denied humanity.¹⁵⁴ Inter-continental trade becomes more profitable to carry out as a large-scale business.

¹⁵⁰ Luty and Lanier (n 142) 560

¹⁵¹ Hughes, *Best practices* (n 116) 10-13

¹⁵² Ibid

¹⁵³ Stuart Henry and Dragan Milovanovic, ‘Constitutive Criminology: Origins, Core Concepts, and Evaluation’ [2000] 27(2) *Social Justice* 268, 270

¹⁵⁴ Lanier and Henry (n 141) 323

Consequently, inter- and intra-continental transit becomes more frequent. The final, main result of increasing trade is immigration, as traveling and tourism become more accessible and more global. The variables of this theory are: inequality, investment in crime, and loss and pain experienced by victims during the perpetration of human trafficking.¹⁵⁵

This theory explains the tools used by traffickers in order to carry out this criminal business. A principal tool is inequality, which pushes victims into trafficking and exposes them to the negative capabilities of the business. It also provides traffickers' investments for the trafficking business. However, like the previous two theoretical perspectives, I argue that it cannot produce humanitarian solutions against the traffickers' purposes, nor heal the victims' wounds.

The economic theory of criminology involves a standard model of decision-making. Accordingly, individuals make decisions between criminal activity and legal activity on the basis of the expected utility deriving from those acts.¹⁵⁶ Witt and Witte demonstrate the theory as, probably, deriving from the fact that the criminals will commit crime if the expected gains from legal work are less than the ones that arise from illegal work.¹⁵⁷ In this regard, Eagle and Betters highlight the essential principle of the theory. The criminals have perceived that they can compensate the possibility of being prosecuted and incurring costs with the benefits from the crime.¹⁵⁸ I consider that the main difference between economic theory and rational choice theory is the element of assessment. In rational choice

¹⁵⁵ Luty and Lanier (n 142) 562

¹⁵⁶ Ibid, 563

¹⁵⁷ A.D. Witte and R. Witt, 'Crime Causation: Economic Theories' in Joshua Dressler (ed) *Encyclopaedia of Crime and Justice*, vol 1 (Macmillan 2002) 304

¹⁵⁸ Joshua G. Eagle and David R. Betters, 'The endangered species act and economic values: A comparison of fines and contingent valuation studies' [1998] 26(2) *Ecological Economics* 165, 166

theory, perpetrators choose their way after a significant analysis of the distance between potential profit and cost. However, in economic theory, offenders decide their actions after an evaluation between criminal activities and legal activities.

The decisions of the criminals, which direct them to commit a crime, are revealed as a result of the prosecution and punishment process. Within the context of human trafficking, the lesser the punishment, the more human trafficking progresses.¹⁵⁹ McCray argues that the certainty of punishment is more important than the severity of the punishment. In this regard, Eser and many other scholars state that there are four main purposes under which the nature of punishment in criminal law is pursued in most common law systems, such as the UK and the US: retribution, incapacitation, rehabilitation, and deterrence.¹⁶⁰ Retribution seeks to provide punishment because this is what the offender deserves for committing the crime.¹⁶¹ Incapacitation seeks to protect society from additional offences committed by the offender by incarcerating the individual.¹⁶² Rehabilitation aims to provide encouragement and assistance to the criminal to lead a good, productive, and socially acceptable life upon release from prison or other sentence.¹⁶³ Deterrence-based punishments fall into two broad categories: special deterrence (dissuading a specific criminal from committing future crimes) and general deterrence (dissuading other individuals from offending by making an example of particular offenders).¹⁶⁴ Scholars and practitioners disagree as to the

¹⁵⁹ Luty and Lanier (n 142) 562

¹⁶⁰ Albin Eser, 'The Nature and Rationale of Punishment' [2007] 28 Cordoza Law Review 2427; Albert Alschuler, 'The Changing Purposes of Criminal Punishment: A Retrospective on the Last Century and Some Thoughts about the Next' [2003] 70(1) University of Chicago Law Review 1; Mike C. Materni, 'Criminal Punishment and the Pursuit of Justice' [2013] 2 British Journal of American Legal Studies 263

¹⁶¹ Bryan A. Garner, *Black's Law Dictionary* (Thomson West; Aspatore Books, 2014) (defining "retribution")

¹⁶² Ibid. 346 (defining "incapacitation").

¹⁶³ Ibid. 604 (defining "rehabilitation")

¹⁶⁴ Ibid. 206 (defining "special deterrence" and "general deterrence").

effectiveness of both forms of deterrence.¹⁶⁵ However, one generally accepted point is that an offender's perception of the likelihood of punishment serves as a tangible deterrent.¹⁶⁶ This means that if an offender perceives that there is a sufficiently real possibility that he will be arrested and convicted of a crime (and the punishment is sufficiently severe), he is less likely to commit that crime.

Criminals act like economists to maximize their gains and to calculate advantages.¹⁶⁷ The variables of this theoretical framework are certainty and severity of punishment. This theoretical approach, like rational choice theory, focuses on traffickers' tendencies and choices. It provides different analyses of the levels between being prosecuted and being advantaged. An anti-humanitarian perspective does not solve the problem. It simply helps in reaching an understanding of the main tendencies of traffickers when they commit their crimes.

Theories	Variables
Rational Choice Theory	rational decision making costs and benefits free will
Demand Theory	users profiteers publicity
Constitutive Theory	inequality investment in crime loss and pain experienced by victims
Economic Theory	certainty of punishment severity of punishment

Table 7: Integration of theories

The traffickers consider economic profits in carrying out the trafficking process. In other words, human traffickers and demand each play an instrumental

¹⁶⁵ Siddharth Kara, 'Designing More Effective Laws Against Human Trafficking' [2011] 9(2) Northwestern Journal of International Human Rights 123, 130

¹⁶⁶ John Bronsteen, 'Retribution's Role' [2009] 84 Indiana Law Journal 1129, 1132-33

¹⁶⁷ Luty and Lanier (n 142) 562

role in the victimization of trafficked people.¹⁶⁸ I suggest that three main elements direct criminals into the trafficking business. The first is where the economic benefits of trafficking are higher than the risks of the process, due to the demand for sexual services in receiving countries. The second is that traffickers treat trafficking as a business that involves costs from beginning to end. For this business, the most profitable agent is a woman, because it is easy to find those who suffer from poverty, gender and ethnic discrimination, and conflict. The third is that criminals are rational beings, so they can make a cost-benefit analysis. The benefits of trafficking outweigh the costs of punishment.

In this regard, trafficking in human beings, especially in women, is a criminal business process that includes investment in crime, cost-benefit analysis, and supply-demand relations. Furthermore, under both national and international law, trafficking in human beings is a crime. In addition to such explanations, trafficking in human beings can also be addressed at a sociological level. There are many sociological triggers mentioned in the sections above that push victims into the trafficking business.

These theoretical approaches are important in reaching an understanding of the crime of human trafficking and the traffickers' profit-oriented choices, but they are inadequate mechanisms for evaluating the entire trafficking system. This criminal business is not just about the traffickers' choices and assessments of cost and benefit. The main weakness of these theories is their failure to address the violated rights of the victims. Furthermore, they do not produce any humanitarian solutions to counter the trafficking business. In a holistic approach to understanding the entire business, we must look at and evaluate all the variables

¹⁶⁸ Ibid, 567

which are examined under push and pull factors, and also produce humanitarian solutions to protect victims' rights and re-victimization, to prosecute traffickers, and to prevent this crime. In other words, these theories could constitute major approaches, and even provide the most efficient and cost-effective approach to contemporary crime reduction practice.¹⁶⁹ But despite considerable success in combating certain forms of economic/acquisitive criminality, they lack reflexivity.¹⁷⁰ According to Hayward, they failed to pay sufficient attention to the array of criticisms of rational choice theory that have emerged from disciplines such as behavioural psychology, political science, and sociology. All centre on the simple alternative hypothesis that 'not all actors are economically self-interested'.¹⁷¹ To stop the cycle of violence and respond to all the variables mentioned above, epidemiological criminology might be a useful means of building an effective strategy against the trafficking of women.¹⁷² It highlights the need for and importance of providing public health, justice, victim support, and investigation for the victims of human trafficking. Another focus of concern for this theoretical typology is public awareness of human trafficking for potential victims.¹⁷³ I have argued that theories and practices should direct us towards the human rights of the victims. In this context, theoretical and political responses to trafficking should be located within the dichotomy of 'traffickers' and 'trafficked victims'. The principal aim underlying this approach needs to focus on bringing

¹⁶⁹ Keith Hayward, 'Situational Crime Prevention and its Discontents: Rational Choice Theory versus the 'Culture of Now' [2007] 41(3) *Social Policy & Administration* 232

¹⁷⁰ Ken Pease, 'Rational choice theory' In E. McLaughlin and J. Muncie, *The Sage Dictionary of Criminology* (Sage 2006) 253

¹⁷¹ Hayward (n 169) 233

¹⁷² Mark M. Lanier, Robert P. Pack and Timothy A. Akers, 'Epidemiological Criminology: Drug Use among African American Gang Members' [2010] 16(6) *Journal of Correctional Health Care* 6

¹⁷³ Timothy A. Akers and Mark M. Lanier, 'Epidemiological Criminology: Coming Full Circle' [2009] 99(3) *American Journal of Public Health* 397, 399-400

perpetrators to justice, and developing services to protect vulnerable victims and prevent violations of their human rights.¹⁷⁴

In the case of the trafficking of human beings to Turkey, traffickers decide upon committing this crime through a free choice that is shaped by their cost and benefit analysis and the respective profitability of legal and illegal work. They use sociological triggers such as poverty and gender inequality as an opportunity to find victims. Women are the main victims because of their situation in their home countries. Turkey either has land and sea borders with most of the source countries, or close historical and cultural relationships with the rest of the source countries. This leads to lower harbouring or transportation costs. In particular, Turkey uses a visa-free policy for nationals of Turkic republics. This means lower detection and identification risks. According to the Turkish Statistical Institute, Turkey's population was 78,741,053 in 2015.¹⁷⁵ This means that there is an adequate number of people in order to not only establish the demand but also keep it stable and increase it. This provides for the fact that the trafficking business to Turkey adopts parts of those theories such as traffickers' cost and benefit analysis, demand, and gender-based problems in both source countries and Turkey.

3.3.2.4. A Human Rights-Based (Victim-Oriented) Approach to Trafficking in Human Beings

A human rights approach to [countering] trafficking means that all those involved in anti-trafficking efforts should integrate human rights into their analysis of the problem and into their responses. This approach requires us to consider, at each and every stage, the impact that a law, policy, practice or measure may have on persons who have

¹⁷⁴ David Gadd and others, 'Preliminary steps towards a more preventative approach to eliminating violence against women in Europe' [2014] 4(11) European Journal of Criminology 464

¹⁷⁵ Turkish Statistical Institute, 'Population and Demography'

<<http://www.turkstat.gov.tr/UstMenu.do?metod=temelist>> accessed 11 January 2016

*been trafficked and persons who are vulnerable to being trafficked. It means rejecting responses that compromise rights and freedoms.*¹⁷⁶

This approach is one of the main elements of Haynes's anti-trafficking model, and also supports my analysis in later chapters, in which I consider the proposed anti-trafficking strategies for Turkey. In different parts of my thesis, I sometimes use the term 'victim-oriented approach' instead of 'human rights-based approach'. This refers to the various usages in academic literature, rather than an attempt to elide terms. Some scholars, such as Lenzerini, Rijken, and Koster, utilize these term as substitutes for each other.¹⁷⁷ In this approach, the position of the victims, the violations of their human rights, and their vulnerable position are the starting points for taking countermeasures against human trafficking. This may explain why the human rights-based approach is also called the victim-centred approach.¹⁷⁸

Distinct from current practices against trafficking in human beings, the policy approach to human trafficking is mainly focused on the crime side of the problem. This one-sided approach has begun to lose its position as a focal point. To overcome this problem, the necessity of shifting the focal point of anti-trafficking policies from the crime to the victim arises.¹⁷⁹ In this respect, a human rights-based approach provides a direction for this shifting process. As I highlighted in

¹⁷⁶ Navanethem Pillay (United Nations High Commissioner for Human Rights) in 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' (2002) Text presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1)
<<http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>> accessed 01 December 2013

¹⁷⁷ Federico Lenzerini, 'International Legal Instruments on Human Trafficking and A Victim-Oriented Approach: Which Gaps Are To Be Filled?' [2009] 4 Intercultural Human Rights Law Review 205, 236; Conny Rijken and Dagmar Koster, 'A Human Rights Based Approach to Trafficking in Human Beings in Theory and Practice' <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1135108> accessed 01 October 2016 p.7.

¹⁷⁸ Office of the High Commissioner for Human Rights, (n161) point 1 and guideline 1

¹⁷⁹ Conny Rijken, *Trafficking in Persons. Prosecution from a European Perspective* (Asser Press 2003) 92-102

previous parts of the thesis, human trafficking is a multi-faceted problem. In contrast to one-dimensional theoretical approaches, a human rights approach requires a multi-disciplinary and coordinated policy between all actors involved, including governments, NGOs, judicial and law enforcement personnel, civil society groups, and labour organizations.¹⁸⁰

The UN defines this human rights approach as: ‘a methodology that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.’¹⁸¹ It puts the human rights of victims at the centre of all efforts to prevent and combat trafficking and to protect, assist, and provide redress to victims. In short, this approach is anchored in the principles of non-discrimination, participation, and accountability, with particular focus on the gender implications and the implications for the child victim.¹⁸² To paraphrase it differently, putting victims at the centre of anti-trafficking policies makes it irrelevant whether the person is trafficked for sex work or another form of forced labour, because the victim’s rights are protected regardless of why they have been trafficked.¹⁸³ Trafficking in human beings violates some of these basic human rights. As a result of this interdependent relation, it is important, when seeking to combat trafficking, to operationalise a human rights-based approach against human trafficking. Amiel also emphasizes that trafficking in human beings

¹⁸⁰ Alexandra Amiel, ‘Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation’ [2006] 12 Buffalo Human Rights Law Review 5, 38

¹⁸¹ UN, ‘Joint UN Commentary on the EU Directive – A Human Rights-Based Approach’ <https://www.unodc.org/documents/human-trafficking/2011/UN_Commentary_EU_Trafficking_Directive_2011.pdf> accessed 01 October 2016 p.26

¹⁸² Ibid.

¹⁸³ Janina Pescinski, ‘A Human Rights Approach to Human Trafficking’ <<https://ourworld.unu.edu/en/a-human-rights-approach-to-human-trafficking>> accessed 02 October 2016

is a matter of human rights, because it violates all rights protected by international human rights law.¹⁸⁴

The links between human rights and human trafficking are well-established. According to the United Nations Human Rights Office of the High Commissioner (UNHROHC), human rights law has prohibited discrimination on the basis of race and sex; it has demanded equal or at least certain key rights for non-citizens; it has decried and outlawed arbitrary detention, forced labour, debt bondage, forced marriage, and the sexual exploitation of children and women; and it has championed freedom of movement and the right to leave and return to one's own country.¹⁸⁵ It is important to utilize a human rights-based approach in respect of human rights violations. According to the OHCHR, 'a human rights approach to trafficking requires an acknowledgement that trafficking is, first and foremost, a violation of human rights.'¹⁸⁶ Article 4 of the European Human Rights Convention, which is related to the prohibition of slavery and forced labour, requires that member states penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude, or forced or compulsory labour.¹⁸⁷

This approach seeks to minimize the re-traumatization associated with the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process, and

¹⁸⁴ Amiel, (n180) 6

¹⁸⁵ UNHR Office of the High Commissioner, 'Human Rights and Human Trafficking' (Fact sheet no.36) <http://www.ohchr.org/Documents/Publications/FS36_en.pdf> accessed 11 January 2016 8: The Universal Declaration of Human Rights (UDHR) Article 2.

¹⁸⁶ UHCHR, 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' (2002) Text presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1) <<http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>> accessed 01 December 2013

¹⁸⁷ *C.N. v. the United Kingdom*, Application no 4239/08 (ECHR, 13 November 2012) para.66: *C.N. and V. v. France*, Application no.67724/09, (ECHR, 11 October 2012) para 112

providing survivors an opportunity to play a role in seeing their traffickers brought to justice. In this regard, the victim-oriented approach plays a critical role in supporting the victim's rights, dignity, and autonomy, while simultaneously advancing the government's and society's interest in prosecuting traffickers to condemn and deter this reprehensible crime.¹⁸⁸

In theoretical terms, a victim-oriented approach is a conceptual framework for dealing with a phenomenon such as trafficking that is normatively based on international human rights standards and that is operationally directed to promoting and protecting human rights. Such an approach requires an analysis of the ways in which human rights violations arise throughout the trafficking cycle, as well as of states' obligations under international human rights law. It seeks both to identify and to redress the discriminatory practices and unjust distribution of power that underlie trafficking, that maintain impunity for traffickers, and that deny justice to their victims.¹⁸⁹

In practical terms, a human rights-based (victim-oriented) approach has, in common with the others, some problematic points. Two main issues can be classified as problems. First, victim protection and support policy measures should be available to all identified trafficked persons on an unconditional basis and should be specifically designed to meet their needs.¹⁹⁰ However, in national practices, some specific groups are treated with different legal and administrative tools. For instance, in Turkey, there are three victim shelters and all of them have

¹⁸⁸ President's Interagency Task Force to Monitor and Combat Trafficking in Persons, 'Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017' (Interagency Task Force 2012) 10; Joint UN Commentary(n165) 27.

¹⁸⁹ UNHR (n185) 8

¹⁹⁰ UNGIFT, 'From Protection to Prosecution – A Strategic Approach' <<https://www.unodc.org/documents/human-trafficking/2008/BP007FromProtectionToProsecution.pdf>> accessed 29 September 2016 p 5

been established for female victims. Male and minor victims are ignored most of the time.¹⁹¹ Second, as I highlighted above, a victim-oriented approach requires that human rights should be the main concern for anti-trafficking strategies. However, states use this approach to fulfil the requirements of their other political aspirations. In the case of Turkey, it has indeed taken steps which focus on victims and their violated rights, but these steps serve Turkey's political aspirations, such as EU membership and the avoidance of political pressure from the international community.

In addition to a human rights-based (victim-oriented) approach, in later chapters, I often use the term 'comprehensive' with regard to the victim-oriented approach. The US Department of Justice Office of Justice Programs has defined the elements of comprehensive anti-trafficking efforts. According to the Office, a comprehensive effort should include organizations with expertise in reaching targeted populations in culturally sensitive and linguistically correct ways, as well as those with expertise in trauma, emotional bonding, a climate of fear, and other circumstances.¹⁹² In this regard, to produce a comprehensive anti-trafficking strategy, states need to establish powerful links with all possible governmental and non-governmental agencies. Their experiences provide protection for trafficked victims in every part of the process, from identification to victims' contributions in prosecution. Parallel with the Office's perspective, Budiani-Saberi and Columb emphasize that prioritising human rights, however, affords a comprehensive response, with the capacity to protect vulnerable persons, and to

¹⁹¹ Chapter 6, section 6.5. I highlight the shelter issue and give numbers about victims.

¹⁹² Office of Justice Programs, 'Human Trafficking Task Force e-Guide: Strengthening Collaborative Responses' < <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/> > accessed 03 October 2016

prevent and suppress trafficking.¹⁹³ This means that this kind of approach takes into consideration the complex causes and consequences of human trafficking, seeking not only legal, but also political, economic and social solutions accordingly.

In short, a human rights-based (victim-oriented) approach would not only identify and prosecute offenders, but would ensure that comprehensive measures are in place to adequately prevent and protect victims and potential victims against trafficking in human beings.¹⁹⁴ At this point, a question related to one of my methodological accounts, which is the socio-legal approach, may become relevant. Although I adopt a victim-oriented approach in my study, it might be asked why I did not conduct interviews with victims. The answer is that I do not want to re-victimise them, and that I do not have the skills necessary to conduct such sensitive and potentially damaging interviews. In social science research, harm is generally more likely to involve psychological distress, discomfort, and social disadvantage, invasion of privacy or infringement of rights, than physical injury.¹⁹⁵ In this regard, as a researcher, it is one of my duties to protect my interviewees from psychological harm (re-traumatization and post-traumatic stress disorder).

This part of the thesis demonstrates the importance of a human rights-based approach in human trafficking cases by showing its benefits for victims. In the next section I will utilize this approach to evaluate its potential outcomes in relation to Haynes's anti-trafficking model. This part also provides a

¹⁹³ Debra Budiani-Saberi and Sean Columb, 'A human rights approach to Human Trafficking for Organ Removal' [2013] 16 *Medicine, Health Care and Philosophy* 897, 905-906.

¹⁹⁴ *Ibid.* p.906.

¹⁹⁵ Mark Israel and Iain Hay, *Research Ethics for Social Scientists* (Sage: London, 2006) 96

terminological definition for a conceptual tool, which is utilized in a proposed anti-trafficking model.

3.3.2.5. Haynes's Model to Combat Trafficking in Human Beings

Haynes recommends a combined model to diminish the prevalence of trafficking. This recommended anti-trafficking model contains five main elements. The first is to alter the perception of what constitutes a 'trafficking victim'; the second is to start from a human rights perspective; the third is to prosecute traffickers and those who aid and abet traffickers; the fourth is to implement appropriate laws; and the last is to extend legal solutions such as promoting international cooperation and creating immigration solutions for victims.¹⁹⁶ This model aims to protect victims from traffickers and from prosecution for illegal immigration, labour violations, or prostitution, and empower them to step out of the cycle of victimization. Furthermore, it suggests traffickers must be identified and prosecuted, not relying solely on the testimony of trafficking victims.¹⁹⁷

The first element of an effective and comprehensive anti-trafficking method is the development of different perceptions on constitutive triggers of 'trafficking victims'. This element is also part of a human rights approach. With this model, Haynes contends that women have provided consent to work in the sex business, yet still do not consent to work in debt-bondage or in slave-like conditions. To consider a woman as a victim of trafficking, her situation at each stage of the investigation is evaluated separately. If she does not have control over her own

¹⁹⁶ Dina Francesca Haynes, 'Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers' [2004] 26(2) Human Rights Quarterly 221, 253-269

¹⁹⁷ Ibid, 253

destiny, she can be identified as a victim.¹⁹⁸ The reason for this is twofold. Firstly it involves the loss of a right, and is hence a violation of women's rights and, secondly, there are other elements of trafficking related to victimization. These include the threat of or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, and giving payments or benefits to a person in control of the victim.

Haynes's second element is a human rights perspective related to the first element of the model. According to Haynes, law and policy makers must accept trafficked persons as victims, not offenders, and they need to constitute a strategy in order to protect victims, rather than prosecute them. In addition, law and policy makers must focus on the social and economic reasons for human trafficking in order to prevent this crime from happening at the beginning of this brutal journey. It is of crucial importance to understand a rationale for detecting and identifying possible victims. In terms of further measures relating to this, the government should allow the legal migration of potential victims of trafficking in order to protect them from the possible damages of trafficking.¹⁹⁹

The third element concerns the prosecution process. Haynes recommends that governments should prosecute not only the traffickers, but also those who aid and abet traffickers. In this regard, governments must establish a comprehensive legal system alongside supportive policies against trafficking. According to Haynes, governments should block the profits of traffickers; to facilitate this, some argue that one solution is the legalization of prostitution.²⁰⁰ Conversely, other scholars, including Haynes and Raymond, do not support legalization, because they do not

¹⁹⁸ Ibid, 254

¹⁹⁹ Ibid, 255-257

²⁰⁰ Jakobsson and Kotsadam (n 103) 1

believe that legalization will directly result in eradicating trafficking.²⁰¹ These scholars contend that governments should sharply increase penalties to mitigate not only the traffickers' supply efforts, but also the economic benefits of trafficking. Cho, Dreher, and Neumayer demonstrate the direct relationship between the legalization of prostitution and increases in human trafficking. According to their study, countries with legalized prostitution such as Denmark, Sweden, and Germany experience a larger degree of reported human trafficking inflows.²⁰²

Haynes's fourth element concerns the implementation of laws, the important point being that laws which are passed domestically must be fully implemented at every level.²⁰³ Haynes states the requirements clearly: training for all relevant officials at every level, from identification to repatriation; and education for victims about their rights – both of which require crucial implementation into law.²⁰⁴ The law, which supports exercises from all levels of governmental institutions, can reach its objective and be result-oriented within this anti-trafficking model.²⁰⁵

The last element is the extension of legal solutions. This element consists of three main steps: promoting international cooperation, targeting patrons of brothels, and possible immigration solutions such as working and resident permits

²⁰¹ Janice G. Raymond, 'Prostitution on Demand Legalizing the Buyers as Sexual Consumers' [2004] 10(10) *Violence Against Women* 1156, 1183; Janice G. Raymond, 'Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand for Prostitution' [2004] 2(3-4) *Journal of Trauma Practice* 315, 317

²⁰² Seo-Young Cho, Axel Dreher and Eric Neumayer, 'Does Legalized Prostitution Increase Human Trafficking?' [2013] 41 *World Development* 67, 75

²⁰³ Haynes (n 196) 259-260

²⁰⁴ *Ibid*, 260

²⁰⁵ Amy Farrell, Colleen Owens and Jack McDevitt, 'New laws but few cases: understanding the challenges to the investigation and prosecution of human trafficking cases' [2014] 61 *Crime Law Social Change* 139, 154; Cassia Spohn, 'The non-prosecution of human trafficking cases: an illustration of the challenges of implementing legal reforms' [2014] 61 *Crime Law Social Change* 169, 171

for trafficked persons.²⁰⁶ For instance, temporary protection, asylum, and third-country hosting can be considered as both temporary and permanent immigration solutions. International cooperation is one of the necessary elements for improving prosecution (which would include extraterritorial jurisdiction) or the ability of a state to prosecute a perpetrator for offences that did not occur within its borders.²⁰⁷ As a further element of reaching a legal solution, governments must control brothels and their users, since trafficked women usually work in brothels and nightclubs. To prevent the exploitation of trafficked women in such places, the government should penalize users of brothels known to contain trafficked women. Haynes emphasizes that immigration solutions could be helpful for trafficked persons.²⁰⁸ She demonstrates that repatriation is an insufficient method for protecting trafficked victims, due to the possibility of re-victimization in their source country.²⁰⁹ This would mean that destination countries would send the victims into a possibly dangerous situation in which they could face prostitution, inhumane treatment, or ostracism. In addition, many destination countries aid and abet traffickers against victims in the source countries. Haynes emphasizes that asylum is a better method for opposing possible human rights violations in victims' countries. The UN High Commissioner of Refugees (UNHCR) stated that some trafficked women may be able to claim refugee status under the 1951 Refugee Convention, as: 'in individual cases, being trafficked could therefore be

²⁰⁶ Seo-Young Cho and Krishna Chaitanya Vadlamannati, 'Compliance with the Anti-trafficking Protocol' [2012] 28 *European Journal of Political Economy* 249, 250; Volha Charnysh, Paulette Lloyd and Beth Simmons, 'Frames and consensus formation in international relations: The case of trafficking in persons' [2015] 21(2) *European Journal of International Relations* 323, 344; Frances Simmons and Fiona David, 'The Road to Effective Remedies: Pragmatic reasons for treating cases of "sex trafficking" in the Australian sex industry as a form of "labour trafficking"' [2012] 1 *Anti-Trafficking Review*

<<http://www.antitraffickingreview.org/index.php/atjournal/article/view/22/40>> accessed 15 November 2015

²⁰⁷ Haynes (n 196) 260-269

²⁰⁸ *Ibid*, 261

²⁰⁹ *Ibid*, 263

the basis for a refugee claim where the State has been unable or unwilling to provide protection against such harm or threats of harm.²¹⁰ Unfortunately, there has been no example of this in Turkey's practice. It is crucial for the protection of individual women for states to ensure that trafficked women and girls who wish to seek asylum also have access to asylum procedures.²¹¹ In addition to the asylum alternative, Haynes discusses the possibility of third-country hosting.²¹²

With its comprehensive and victim-oriented features, Haynes's model is the most suitable anti-trafficking model for Turkey. The model provides different levels of analysis for the examination of trafficking in human beings into Turkey. With this model, an understanding of the social and economic reasons (push factors) plays a part in an active anti-trafficking model. Different from Shelley's Business Model Approach, this model produces its solutions out of the rationale for trafficking, whereas Shelley's model is a helpful means for the examination of the issue from the traffickers' side. Haynes's model focuses on the victims. Contrary to some criminological approaches, such as rational choice and economic theories, this model provides a more reliable and humane approach to prevention and prosecution. It recommends that prosecution as a part of an effective anti-trafficking model should protect victims, not prosecute them. Haynes's model also emphasizes the importance of international cooperation as a part of the prevention of crime, with prosecution for traffickers and protection for victims. In short, contrary to the aforementioned theoretical approaches, Haynes's anti-trafficking model provides an opportunity for the sustained examination of

²¹⁰ UNHCR, 'Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees' <<http://www.unhcr.org/3d58ddef4.pdf>> accessed 01 January 2015

²¹¹ John Morrison and Beth Crosland, 'The trafficking and smuggling of refugees: the end game in European asylum policy?' (2001) *New Issues in Refugee Research* April/2001, 39 <<http://www.unhcr.org/3af66c9b4.pdf>> accessed 01 February 2015, 54

²¹² Haynes (n 196) 269

trafficking in human beings, especially in women, towards Turkey. To provide better understanding and to establish a comprehensive and victim-oriented anti-trafficking strategy for Turkey, I will modify Haynes's approach with other scholars' recommendations and the principles of proposed anti-trafficking strategies in international documents, to build up a more solid and sufficient analytical strategy about Turkey's future work on trafficking in human beings, especially in women.²¹³

In short, Haynes's anti-trafficking model emphasises that victims must be protected from traffickers, protected from prosecution for illegal immigration, labour violations, or prostitution, and empowered to step out of the cycle of victimization. Traffickers must be identified and aggressively prosecuted, with alternatives to relying solely on the testimony of trafficked persons to prove the crime. In this regard, the thesis uses this model as a preliminary sketch in order to organize and add further elements related to Turkey's anti-trafficking agenda.²¹⁴

This section has analysed the elements of Haynes's model in order to develop it in conjunction with other approaches to create a theoretical construct which will be used to evaluate the data in this study. Haynes's model emphasizes the importance of international cooperation, the significance of victim protection and its elements such as effective witness protection, reflection periods, and asylum eligibility, and the role of prosecution elements in active anti-trafficking strategy.

²¹³ Cristina Andreatta, 'Protection, assistance and social (re)integration of human trafficking survivors: a comparative analysis of policy approaches and practices in the UK and in Italy' London: University of East London Centre for Social Justice and Change Working Paper No 2 <<http://www2.uel.ac.uk/csje/documents/no2CristinaAndreattaJan2015.pdf>> accessed 03 January 2016, 9; Tom Obokata, Trafficking of Human Beings from a Human Rights Perspective, Towards a Holistic Approach (Martinus Nijhoff 2006); Ryszard Piotrowicz, 'Human security and trafficking of human beings: the myth and the reality' in Human Security and Non-Citizens Law, Policy and International Affairs (eds) Alice Edwards and Carla Ferstman, (Cambridge University Press 2010).

²¹⁴ In Chapter 7, section 7.2, I utilize the elements of Haynes's Model and a human rights-based approach, and support them with other scholars' works.

Despite the model's wide range of comprehensive measures, Haynes does not emphasize social and cultural elements as preventative methods. In addition to this limitation, Haynes's work is a case-related work which focuses on the role of international peacekeepers and humanitarian workers in increasing trafficking problems in central and south-eastern Europe. UNHCHR addresses this issue openly in its guidelines covering 'Obligations of peacekeepers, civilian police and humanitarian and diplomatic personnel', asking states to consider '[e]nsuring that staff employed in the context of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic missions do not engage in trafficking and related exploitation or use the services of persons in relation to which there are reasonable grounds to suspect that they may have been trafficked.'²¹⁵ As a result of this, the model cannot reflect the special needs of the entire trafficking system. Haynes's model's main triggers are peacekeepers and international workers. However, these elements are not issues for the rest of the countries which are affected by the crime of trafficking.

As argued above, a combination of the most common trafficking index, which is '3P' (prevention, prosecution, and protection), with a victim-oriented approach and Haynes's model, allows me to produce a new standard which covers all the crucial missing elements of the 3P index. I critically evaluate Turkey's anti-trafficking strategy in connection with '5P' (prevention, prosecution, protection, partnership, and perception). These two extra 'P's are already latent in the treaties' prevention-related sections. For instance, the Trafficking Protocol emphasizes the importance of awareness raising campaigns, training programs for law enforcement officials, and partnership. However, I believe all these tools play

²¹⁵ *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, U.N. High Commissioner for Human Rights, E/2002/68/Add.1, Guideline 10, ¶ 3

a significant role in anti-trafficking strategies. For this reason, the ‘5P’ model clearly identifies them in order to illustrate their importance for anti-trafficking agendas. In this context, Haynes’s model and the victim-oriented approach provide me with the main missing elements in the 3P index. I will modify these two in order to establish a 5P model, which will be used in the analysis of developments in Turkey. As I highlighted above, human trafficking shows significant differences from region to region and from culture to culture. In order to eliminate these differences and to adapt the model to the cultural, religious, and sociological context, I suggest that it must be modified along the lines indicated above.

3.4. Critiques and Assessments Related to Women Trafficking from Various Approaches

The expression ‘trafficking in human beings’ was used to indicate the kidnapping and transportation of persons, mainly women and children, until the adoption of the definition in the Trafficking in Persons Protocol mentioned above.²¹⁶ In this regard, Morcom and Schloenhardt criticize the fact that international law has mostly focused on the traffic in women and children for the purpose of commercial sexual exploitation.²¹⁷

Two main approaches to anti-trafficking strategies have been developed within international law: the criminal justice and immigration control perspectives.²¹⁸ In addition to these, the labour regulation approach, which deals with exploitative or

²¹⁶ Silvia Scarpa, *Trafficking in Human Beings: Modern Slavery* (Oxford University Press, 2008) 91

²¹⁷ Corin Morcom and Andreas Schloenhardt, ‘All about Sex?! The Evolution of Trafficking in Persons in International Law’ (2011) Human Trafficking Research Paper <<http://www.law.uq.edu.au/documents/humantrafficking/international-law/Evolution-of-Int-Law-relating-to-Trafficking-in-Persons.pdf>> accessed 01 October 2014, 22

²¹⁸ Ibid, 24

abusive practices by employment agencies towards migrant domestic workers, has been developed by the ILO.²¹⁹ Trafficking in persons was traditionally addressed as a law and order problem. As a result of this approach, international law focused on the production of powerful, criminalising anti-trafficking measures, both at the expense of preventative strategies and at the expense of victim protection and rehabilitation. International law instruments focused almost exclusively on the prosecution and punishment of traffickers and, in some cases, of victims.²²⁰ The criminal justice approach of trafficking in persons was shaped by this context.

Trafficking in human beings in the definition of the Trafficking Protocol combines various acts, means, and purposes to expand the concept of trafficking.²²¹ The main basis for this conceptualization stems from the evolution of the international legal frameworks relating to the traffic in persons. In contrast to the previous approaches, the criminal justice, immigration control, and labour regulation approaches, trafficking in human beings is treated as a process occurring for various exploitative purposes at every level. A broad conceptualisation of trafficking in human beings will be shown to highlight the benefits of this expanded concept under the last subheading of this section.

3.4.1. A Gendered Perspective of Trafficking in Persons

This section criticizes the narrow perspective of international and national actors in describing the trafficking of human beings. The main subject matter of these approaches to trafficking is largely restricted to sexual purposes. Domestic efforts opposing trafficking in human beings – such as legislation, policies, law

²¹⁹ Judy Fudge, 'Protecting the Labour Rights and Human Rights of Migrant Domestic Workers – A Labour Regulation Approach' (Oxford Human Rights Hub, 26th February 2013) <<http://ohrh.law.ox.ac.uk/protecting-the-labour-rights-and-human-rights-of-migrant-domestic-workers-a-labour-regulation-approach/>> accessed 21 November 2015

²²⁰ Amiel (n180)6

²²¹ Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective* (n213)35

enforcement, victim rehabilitation measures, media, and public perception – are focused predominantly on the sex industry or sexual exploitation. Despite the expanded definition of the Trafficking Protocol, which mentions various forms of exploitation, and the men, women, and child victims of trafficking, debate focused on the issue of prostitution during the drafting process.²²²

Ignoring the complex realities of the trafficking process and the potential victims of trafficking from every age, gender, and country obstructs the establishment of a more comprehensive analysis of trafficking. Viewing trafficking in persons from a gendered perspective helps to contextualize prostitution and sexual exploitation, rather than the entire process. According to Blanchet, gendered stereotypes that present men as powerful and in control, and women as passive and primarily relegated to private sphere domestic roles, feed the misconception in many societies that ‘men migrate, but women are trafficked’.²²³ However, what is often not recognized is the fact that men are also trafficked, and that women are not only trafficked, but also migrate.²²⁴ Even today, in spite of the expanded concept of trafficking in the Trafficking Protocol and the international community, governments and academic scholars remain predominantly focussed on trafficking for the purpose of commercial sexual exploitation and, to a significantly lesser extent, on forced labour.

In this context, according to D’Cunha, a gender perspective on trafficking needs to accommodate five significant elements. It should accept that there is no gender and age difference for being a victim of trafficking business. It should also

²²² Morcom and Schloenhardt (n 217) 23

²²³ Thérèse Blanchet, *Beyond Boundaries: A Critical Look at Women and Labour Migration from Bangladesh* (Dhaka, Drishti Research Centre, 2002)

²²⁴ Jean D’Cunha, ‘Trafficking in persons: a gender and rights perspective’
<<http://www.un.org/womenwatch/daw/egm/trafficking2002/reports/EP-DCunha.PDF>> accessed 24 November 2015

describe the similarities and differences in the trafficking experience of victims. This perspective needs to identify the differences and the experiences of the most disadvantaged groups (women and children) regarding their social locations – gender, age, class, and ethnicity. It directs potential victims and trafficked persons, especially women and children, to access remedies and claim rights. This perspective should activate the appropriate policy-related, legislative, institutional, and programmatic initiatives to victims’ specific needs and concerns.²²⁵

3.4.2. A Broad Conceptualisation of Trafficking in Persons

The Trafficking in Persons Protocol consolidated legal responses to various related international concerns including slavery, prostitution, labour, human rights, and the rights of the child.²²⁶ It consolidated these into one concept, ruled by a single international instrument. However, it fails to specify certain rights, such as the right to immediate protection and support and the right of access to an effective remedy, implying that such rights did not in fact exist.²²⁷ According to the UNCHR’s special Rapporteur Coomaraswamy, the experience of a person being trafficked for the purpose of commercial sexual exploitation is fundamentally different from the experience of a person being trafficked for the purpose of labour exploitation; and the systems in place to address these different aspects of trafficking must be tailored accordingly.²²⁸

²²⁵ Ibid, 8

²²⁶ Section 4.6. in Chapter 4 will analyse the Protocol and its weaknesses and significances

²²⁷ Anne Gallagher, ‘Two Cheers for the Trafficking Protocol’ [2015] 4 Anti Trafficking Review 14, 17

²²⁸ UNCHR, Report of the Special Rapporteur (Radhika Coomaraswamy) on violence against women, its causes and consequences on trafficking in women, women’s migration and violence against women (UN Doc E/CH.4/2000/68, 2000)
<<http://www1.umn.edu/humanrts/commission/thematic52/53-wom.htm>> accessed 19 November 2015

The concept of human trafficking, which mainly focuses on commercial sexual exploitation, fails to recognize the different faces of the human trafficking issue, such as child, early, and forced marriage, child labour, and soldiers. These crimes can be evaluated under other crimes, such as sexual exploitation and forced labour. However, if the Protocol highlights its consideration on women and children, it should have emphasized these crimes, which are particularly important today with the Syrian Refugee crisis and the activities of Boko Haram, two of the main issues in regards to this matter. The Trafficking Protocol has highlighted the fact that trafficking in human beings is a complex, multi-faceted problem that intertwines issues of law enforcement, border control, gender, crime, security, and human rights.²²⁹ The expansive definition under the Protocol needs to be widened in order to provide comprehensive coverage for all aspects of trafficking. For example, the Protocol does not emphasize the root causes of trafficking. In this regard, one of the most important elements of Haynes's model, which is about the perception of what constitutes a 'trafficking victim', is not addressed by the Protocol. Without any reference to the root causes, it is almost impossible to understand the special circumstances that cause trafficking. Gallagher also states that the growth in trafficking is a direct consequence of the global failure to manage migration and deal with its root causes.²³⁰

3.5. A New Approach to Human Trafficking: The '5P' Model

The '3P' paradigm – prosecution, protection, and prevention – is the fundamental framework used around the world to combat human trafficking and to reflect the purposes in the Protocol to Prevent, Suppress and Punish Trafficking

²²⁹ Amiel (n 180) 5

²³⁰ Anne Gallagher, 'Trafficking, smuggling and human rights: tricks and treaties' [2002] 12 Forced Migration Review 25, 28.

in Persons, Especially Women and Children (Palermo Protocol), the United Nations Transnational Organized Crime Convention (UNTOC), and in the United States' Trafficking Victims Protection Act, as amended (TVPA).²³¹ As a result of assessments in relation to the paradigm, the US Department of State's Office to Monitor and Combat Trafficking in Persons (TIP Office) has evaluated countries via a tier ranking.²³² This assessment by the United States is the first attempt to provide a quantitative evaluation of anti-trafficking policy worldwide.²³³

This paradigm is important to evaluate the role of these elements in anti-trafficking policies around the world. Sheldon-Sherman emphasizes that there is a missing 'P' for this paradigm, which is 'partnership'.²³⁴ The 'fourth P' – partnership – serves as a pathway to achieve progress on the 3Ps in the effort against modern slavery, announced by Secretary of State Hillary Rodham Clinton in 2009.²³⁵

The '3P' paradigm and the tier ranking have limitations and have been subject to criticisms. Before discussing the political and methodological limitations, it is important to consider the objectivity of the reports. Since 2010 – nine years after the rating program's inception and the adoption of the TVPA – the US has included itself in the annual analysis. This situation has caused other countries to challenge the objectivity of the report, especially the tier ranking system, after the

²³¹ US Department of State, '3Ps: Prosecution, Protection, and Prevention' <<http://www.state.gov/j/tip/3p/index.htm>> accessed 11 October 2016

²³² In Chapter 5, section 5.4, I will evaluate Turkey's place in the Tier-ranking procedure.

²³³ Seo-Young Cho, 'Measuring Anti-Trafficking Policy- Integrating Trxt and Statistical Analyses' [2015] 96(2) Social Science Quarterly 656, 660

²³⁴ Jennifer A.L. Sheldon-Sherman, 'The Missing "P": Prosecution, Prevention, Protection, and Partnership in the Trafficking Victims Protection Act' [2012] 117 Penn State Law Review 443, 448

²³⁵ U.S. Department of State, 'The "3P" Paradigm: Prevention, Protection, and Prosecution' <<http://www.state.gov/j/tip/rls/fs/2010/143248.htm>> accessed 19 December 2014

US ranked itself as a Tier 1 country for the first time in the report's history, from its 2010 to 2014 reports.²³⁶

It is widely believed that global monitoring should ideally be in the hands of an international organization such as UNODC, rather than of an individual state.²³⁷ The evaluation is based on US standards rather than on internationally recognized ones. In addition to this, some critics believe that certain countries placed on the Tier 2 watch list should, in fact, be placed as Tier 3 countries, and vice versa. For instance, an examination of countries placed in the Tier 3 category from 2001 demonstrates political evaluation being smuggled into the procedure, as countries like 'Cuba, North Korea, Sudan, and Burma are regularly sanctioned'.²³⁸ While more "friendly" countries with significant amounts of slavery and trafficking', namely India, Pakistan, and Nigeria, are not (they were identified as Tier 2 countries in the 2012 and 2013 reports; however, in the 2014 report Pakistan was relegated to the Tier 2 watch list, whereas India and Nigeria remained on the list of Tier 2 countries).²³⁹ In other words, the tier ratings can be considered as being driven in part by the external political considerations of the US State Department.²⁴⁰

Another criticism is in relation to the TIP ranking mechanism. Dijk and Van Mierlo state that no distinction is made between the level of compliance in different policy domains, such as prevention, prosecution, and (victim)

²³⁶ Greg Kaufmann, 'The Nation: Human Trafficking, A US Problem Too' (npr, 17 June 2010) <<http://www.npr.org/templates/story/story.php?storyId=127900407>> accessed 19 December 2014

²³⁷ COHA, 'The trafficking in persons report; Who is the US to judge?' (COHA, 22 December 2011) <<http://www.coha.org/the-trafficking-in-persons-report-who-is-the-united-states-to-judge/>> accessed 21 December 2014

²³⁸ Burma has been promoted to Tier 2 (Watch List) since 2012. Sudan has been promoted Tier 2 (Watch List) since 2013.

²³⁹ COHA (n235)

²⁴⁰ Jan Van Dijk and Fanny Lerx- Van Mierlo, 'Quantitative indices for anti-human trafficking policies: based on reports of the U.S. State Department and the Council of Europe' [2014] 61(2) *Crime, Law and Social Change* 229, 232.

protection.²⁴¹ The State Department ‘does not comprehensively describe compliance with the standards, lessening the report’s credibility and usefulness as a diplomatic tool.’²⁴²

The US General Accounting Office criticizes the rating procedures and criteria used as unclear, making the final ratings vulnerable to subjectivity.²⁴³ In this respect, some countries have complained that the criteria and requirements for each tier of placement are difficult to quantify and identify.²⁴⁴

The ‘3P’ paradigm with its missing ‘P’ (partnership) could be made more comprehensive and reflective of the obligations of the Trafficking Protocol.²⁴⁵ On an operational level, law enforcement agencies play a significant role in every process related to the prosecution of trafficking.²⁴⁶ The UNODC states that state actors should assume full participation, responsibility, and accountability in defining objectives, implementing activities, and achieving the outcomes of national anti-trafficking responses.²⁴⁷ Partnership can be evaluated in two sections. The first is national coordination for law enforcement institutions and NGOs. Article 19 of the Organized Crime Convention encourages states to establish joint investigation bodies in relation to matters that are the subject of investigations, prosecutions, or judicial proceedings. In addition to the coordination of government institutions, cooperation between law enforcement

²⁴¹ Ibid.

²⁴² U.S. Government Accountability Office (GAO), Human trafficking: Better data, strategy, and reporting needed to enhance U.S anti-trafficking efforts abroad (GAO-06-825) p. 21-40.

²⁴³ Ibid p.26.

²⁴⁴ Ibid.

²⁴⁵ In Chapter 4, section 4.6, I critically analyse the obligations of the Trafficking Protocol in compliance with the elements of the ‘3P’ + ‘P’ paradigm.

²⁴⁶ Heather J. Clawson, Nicole Dutch and Megan Cummings, ‘Law Enforcement Response to Human Trafficking and the Implications for Victims: Current Practices and Lessons Learned’ Document Number: 216547 (December 2006)

<<https://www.ncjrs.gov/pdffiles1/nij/grants/216547.pdf>> accessed 11 January 2016

²⁴⁷ UNODC, Toolkit to Combat Trafficking in Persons Global Programme against Trafficking in Human Beings (United Nations, 2008)54

institutions and NGOs is important. The UNODC emphasizes that both the development and implementation of programmes and measures against trafficking must involve stakeholders who are independent of the state and outside the government and public administration.²⁴⁸ The second is international cooperation against trafficking in human beings. The crime of human trafficking is often a transnational crime.²⁴⁹ Gallagher and Karlebach illustrate the transnational nature of trafficking, in which victims may be recruited in one country, transported through a second, and exploited in a third.²⁵⁰ This is one of the main obstacles to effective prosecution. However, most countries have now established links for international cooperation surrounding criminal matters such as trafficking, alongside a range of tools that can be used by criminal justice agencies to facilitate such cooperation.²⁵¹

In addition to the Trafficking Protocol's aims to prevent and combat trafficking and to protect and assist victims, cooperation among state parties is one of the main purposes of the Protocol. Piotrowicz and Haynes emphasize the importance of promoting international cooperation as an anti-trafficking tool.²⁵² International cooperation is a crucial element in the resolution of human trafficking.²⁵³

²⁴⁸ Ibid

²⁴⁹ Alexey Vladimirovich Boretsky, Sergey Gennadjevich Pen and Alexander Vladimirovich Borovkov, 'Anti-Trafficking in the Commonwealth of Independent States: The Main Areas and Mechanism of International Cooperation' [2015] 6(3) *Mediterranean Journal of Social Sciences* 94, 94-95

²⁵⁰ Anne T. Gallagher and Nicole Karlebach, 'Prosecution of Trafficking in Persons Cases: Integrating a Human Rights-Based Approach in the Administration of Criminal Justice' Expert Meeting of the UN Special Rapporteur on trafficking in persons, especially women and children, (Background paper, 4 July 2011, Geneva, Switzerland) <http://works.bepress.com/anne_gallagher/18/> accessed 10 January 2016 23

²⁵¹ Ibid, 24

²⁵² Piotrowicz, 'Human security' (n 213) 410; Haynes (n 7) 260

²⁵³ Casey Hall, 'Strengthening Coordination of Efforts to Combat Human Trafficking' <<https://www.odu.edu/content/dam/odu/offices/mun/un-day-human-trafficking.pdf>> accessed 01 January 2015, 1; Boretsky, Pen and Borovkov, (n 44) 94

During my critical evaluation of Turkey, I concluded that the new ‘4P’ index is also inadequate to reflect the means of a comprehensive anti-trafficking policy. In addition to the elements of this new index, I therefore utilize a fifth ‘P’ – perception – in order to examine the role of public and institutional perceptions surrounding anti-trafficking efforts in Turkey. According to Robinson, trafficking can be classified more broadly as interpersonal violence (symbolic, emotional, mental, and physical).²⁵⁴ Accordingly, Turkey, through its legislative and administrative tools, needs to work towards a perception of trafficking that not only recognises the role of interpersonal violence, but also affords it the label of serious crime, deserving of serious punishment.

In this respect, I critically examine Turkey’s responses to its international obligations within the context of my ‘5P’ index. Chapters 5 and 6 examine Turkey’s national practices in connection with international and regional instruments against trafficking in human beings, especially in women. I examine the deficiencies in these practices in those chapters and also in Chapter 7. I have designed my arguments around Turkey’s national efforts according to the following equation:

$$‘3P’ (Prevention, Prosecution, Protection) + ‘P’ (Partnership) + ‘P’ (Perception) = x$$

In this equation, x symbolizes the positive outcomes of the proposed anti-trafficking measures for Turkey, which has fulfilled various criteria in every ‘P’ since 2002.²⁵⁵ However, Turkey continues to encounter criticism from

²⁵⁴ Jill Robinson, ‘Public Perceptions of Human Trafficking in Moldova’ [2011] 20(3) *Psychosocial Intervention* 269, 270; Sergio Herzog, ‘Lenient Social and Legal Response to Trafficking in Women: An Empirical Analysis of Public Perceptions in Israel’ [2008] 24(3) *Journal of Contemporary Criminal Justice* 314, 316-317

²⁵⁵ Chapter 5 examines Turkey’s regional and bilateral efforts. Chapter 6 highlights Turkey’s legal and political efforts. Chapter 7, section 7.3, configures the proposed anti-trafficking measures for Turkey

international and regional organizations because it has yet to establish minimum standards for the elimination of trafficking, and is still one of the biggest destination countries for victims. I evaluate why Turkey still is one of the main destinations for female victims of trafficking from the former Soviet states, and what Turkey should do in order to develop a comprehensive and victim-oriented anti-trafficking policy.

The advantage of the ‘5P’ index is that Turkey can use its own values in an active anti-trafficking strategy with regards to the fifth ‘P’. Prevention, prosecution, protection, and partnership are the elements of almost all international instruments. Building a new perception is also an element of anti-trafficking campaigns and training for law enforcement officials. The fifth ‘P’ may give several opportunities to state parties. Turkey or any other state parties of international instruments can utilize their own traditional, cultural, religious, and sociological values to support their political efforts.²⁵⁶ For instance, in Turkish culture, tradition, and religion, persecuted people are protected; Turkish people are tolerant and helpful.²⁵⁷ These kinds of values should be targeted by campaigns and training programs. Society requires identifiable triggers to engage its social consciousness against human trafficking. Perception in both public and institutional levels may help state parties on the operational level. In addition to this, perception at a public level may damage the balance between supply and demand. Perception at an institutional level may prevent re-victimization in every stage of the process from identification to protection.²⁵⁸ By using the ‘5P’ index,

²⁵⁶ Chapter 6, section 6.5, will exemplify how Turkey can utilize tools for establishing perception by using its own cultural, religious and traditional background.

²⁵⁷ Zahide Karakitapoğlu Aygün & E. Olcay Imamoğlu, Value Domains of Turkish Adults and University Students, [2002] 142(3) *The Journal of Social Psychology* 333, 340

²⁵⁸ I will use these assertions in order to identify the relationship between the findings of this thesis and the TIP and EU reports in Chapter 7, section 7.2.

this thesis seeks to find answers to the main research questions, which are ‘what can be done to improve the approach of Turkey in line with international obligations/theoretical considerations?’ and ‘how can those obligations be translated into Turkish law and the Turkish system?’

3.6. Conclusion

This chapter argues that most of the existing theoretical accounts concentrate on only one side of the human trafficking problem, whereas trafficking is a human rights issue which must be regarded as a serious threat to the promotion and protection of human rights. In other words, the existing theoretical considerations related to human trafficking are inadequate to understand and analyse this multi-faceted phenomenon.

In this chapter, I have used theories from different approaches in order to select the most comprehensive approach that can model human trafficking into Turkey. In particular, Haynes’s model and a human rights-based approach provide a comprehensive approach for the examination of every level of trafficking into Turkey, as well as Turkish prevention, prosecution, and protection measures. I argue that to reduce the prevalence of trafficking in human beings, theories need to apply holistic and humanitarian elements in their structure. Andreatta highlights the idea that an adequate response to the violation of human rights requires the adoption of a holistic and multi-disciplinary approach that places the protection of victims’ needs at the centre of any anti-trafficking measures, policy, and legislation.²⁵⁹ Their main aim is to protect victims from this criminal business. In this respect, the elements of their anti-trafficking models will help me to fill the

²⁵⁹ Cristina Andreatta, ‘Protection, assistance and social (re)integration of human trafficking survivors (n 213) 9

gaps in Turkey's anti-trafficking strategy. Human trafficking utilizes various methods and elements which are different for every region. These two approaches help to identify the most significant elements of a victim-oriented anti-trafficking policy. However, they are not adequate to analyse Turkey's efforts. In this regard, I develop a unique structure to evaluate Turkey. The '5P' model provides the missing elements of Haynes's model and the human rights-based approach, which are cultural, traditional, religious, and sociological reactions to an effective strategy. The violated rights of victims are the main issue of these approaches, but it is not enough to evaluate all the aspects of the problem and to produce efficient solutions against trafficking. For instance, these two approaches provide an analysis opportunity in order to understand what kind of elements should be accommodated in an anti-trafficking strategy. In addition, the '5P' model gives a broad perspective to analyse which types of elements increase demand, how culture and tradition can help the authorities to prevent the crime and to direct society from violation to protection, and how society is a subsidiary power for the detection, investigation, and prosecution steps. In other words, the '5P' model provides full coverage for all different levels of anti-trafficking measures.²⁶⁰

The next chapter will address international legal approaches to the trafficking in human beings, especially women. It critically evaluates both international and regional instruments in order to show the evolution of international law with regard to human trafficking. Besides this, it also provides an analysis of the international context in which the administrative transformation that has occurred in Turkey has taken place.

²⁶⁰ I will provide detailed information on these approaches in section 7.2.

4. International Legal Instruments Regarding Trafficking in

Human Beings

4.1. Introduction

The use of the term ‘trafficking’ has a long history and can be traced back to the mid-nineteenth century.¹ Contemporary trafficking is different from its original incarnations, in terms of its more complicated structure and multifaceted characteristics. The issue incorporates a wide range of social aspects, such as migration, criminology, human rights, and gender problems. Due to the complex structure of trafficking, this chapter examines the legal responses from various perspectives, such as forced labour, prostitution, crimes against humanity, enslavement, and transnational organized crime.

As a central point of analysis, this chapter mainly considers the Transnational Organized Crime Convention and the Trafficking Protocol. The chapter critically examines the scope, purposes, provisions, failures, and achievements of international obligations through the lens of the ‘5P’ model, and argues that the existing international framework on human trafficking has proven itself to be ill-equipped to deal with the current problem of human trafficking. The role of this chapter in the context of the 5P index is to analyse the international community’s approaches to prevention, prosecution, and protection. In addition to this, international instruments’ obligations include (albeit by implication) the requirements of partnership and perception. Despite these obligations, references in training programmes and awareness raising campaigns, which are the main

¹ Alison Brysk and Austin Choi-Fitzpatrick, *From Human Trafficking to Human Rights: Reframing Contemporary Slavery* (Pennsylvania, University of Pennsylvania Press, 2012) page 1

elements for the establishment of the institutional and social perception, particularly for Turkey, and for establishing governmental and sociological awareness, have not been possible so far. In this regard, this chapter examines one of the weakest point of Turkey's anti-trafficking policies.

Because of the length of the legal history of human trafficking, this chapter outlines (in chronological order) the details of the various legislative tools against trafficking. It begins with an evaluation of human trafficking and its transformation in international law, from the feminist movements of the mid-nineteenth century, to the beginning of World War II, in order to analyse the transition in the human trafficking phenomenon from the white slave trade into transnational organized crime. The chapter also analyses the legal responses to human trafficking from the foundation of the United Nations to the present day.

4.2. Human Trafficking: The International Feminist Movement and the League of Nations

The term trafficking first came in to common use in the mid-nineteenth century, when feminist movements were fighting against forced prostitution and the traffic in persons (the so-called white slave trade) in Europe and later in the United States.² The main cause of the increasingly alarmed reaction to the issue is the social panic about the 'white slave trade'.³ Human trafficking has since achieved greater recognition as an international problem, following the white slavery issue. Before the First World War, trafficking was addressed in several international instruments, such as the 1904 White Slave Trade Agreement, the 1910 International Convention for the Suppression of the White Slave Traffic, the

² Masika Rachel, *Gender, Trafficking and Slavery* (Oxfam Publishing 2002) 22

³ Marie Segrave, Sanja Milivojevic and Sharon Pickering, *Sex Trafficking: International Context and Response* (Willian Publishing 2009) 1

1921 Traffic in Women and Children Convention, and the 1933 International Convention for the Suppression of the Traffic in Women of Full Age.

4.2.1. The White Slave Trade and the International Feminist Movement

International feminist movements began to use the term ‘trafficking’ from the mid-nineteenth century until the early decades of the twentieth century.⁴ This was often directly associated with the phrase ‘white slave trade’, which first appeared in the campaign for the repeal of the Contagious Disease Acts between 1864 and 1869 in Britain. The phrase ‘white slave trade’ referred to the abduction and transport of young white women for prostitution. The white slave trade was used interchangeably for prostitution and trafficking in women in this campaign.⁵ Despite their contribution to the campaign against the trafficking of women, the weak point of these campaigns was their concentration on forced prostitution.⁶ In other words, this campaign was the first sign of the shift in legal terminology from slavery to trafficking. This part of the study provides the underpinning to one of the central arguments of this thesis, related to the deficiencies of international obligations. This section seeks to explain how it is possible that a term with such a long historical usage should still prove so conceptually inadequate as a weapon against exploitation.

⁴ Annuska Derks, ‘From White Slaves to Trafficking Survivors Notes on the Trafficking Debate’ (2000) Princeton University Centre for Migration and Development Working Paper Series in Conference on Migration and Development 4-6 May 2000 <<http://www.heart-intl.net/HEART/120104/FromWhiteSlavesTraffickingSur.pdf>> accessed 16 May 2015; Sheila Jeffreys, *The Idea of Prostitution* (Spinifex Press 1997) 7

⁵ Kuanruthai Siripatthanakosol, ‘Human Trafficking for Sexual Exploitation: The Framework of Human Rights Protection’ (PhD Dissertation, Newcastle University 2010) 25; Kathleen Barry, *The Prostitution of Sexuality: The Global Exploitation of Women* (NYU Press, 1995) 91-121

⁶ Kathleen Barry, *Female Sexual Slavery* (NYU Press 1979) 98-99; Vanessa Munro, ‘Exploring Exploitation: Trafficking in Sex, Work and Sex Work’ in Vanessa Munro and Marina Della Giusta (eds) *Demanding Sex: Critical Reflections on the Regulation of Prostitution* (Aldershot 2008) 83-97; Jo Doezeema, ‘Ouch! Western feminists: wounded attachment to the third world prostitute’ (2001) 67 *Feminist Review* 16

As a consequence of these campaigns, in London, in 1899, the first congress on the white slave trade was staged, and two diplomatic conferences were held in Paris in 1902 and 1910. The first international legal instrument, the 1904 White Slave Trade Agreement, was ratified in May 1904. The importance of this Agreement was that the problem of forced prostitution was considered a matter of international law.⁷ However, the term white slave trade was criticised by some scholars, such as Guy and Grittner, as it was limited to the fight against the trade in innocent white women for sexual exploitation. Arguably, prostitution during that period coincided with an increasing number of non-white migrant prostitutes.⁸

The Agreement defined trafficking for prostitution as a moral problem related to the condition of slavery.⁹ It also distinguished between pure and innocent women and former prostitutes, and highlighted the importance of international cooperation in abolishing the white slave trade. In this regard, all state parties became responsible for collecting information and were obliged to provide protection for female victims.¹⁰ Despite its contributions, the Agreement only covered trafficking offences that occurred internationally, whereas internal trafficking matters were excluded. The Agreement also failed to criminalise the procurement of women and girls for prostitution, and failed to strengthen the punishment of procurers as a tool to eradicate the white slave trade. The

⁷ Jeffreys (n 4) 11-12

⁸ Jo Doezema, 'Loose women or lost women?: the re-emergence of the myth of white slave trade in contemporary discourse of trafficking in women' (2000) 18 *Gender Issues* 2; Donna J. Guy, "'White Slavery,'" Citizenship and Nationality in Argentina' in A. Parker et al. (eds), *Nationalisms and Sexualities* (Routledge 1992) 203; Frederick K. Grittner, *White Slavery: Myth, Ideology and American Law* (Garland) 131

⁹ M. Cheriff Bassiouni, 'Enslavement as an International Crime' (1991) 23 *New York University Journal of Law and Politics* 445

¹⁰ Article 1, 2, 3, and 4 of the 1904 White Slave Trade Agreement

agreement was not racially neutral. Coomaraswamy emphasizes that the term white slave trade was not sufficiently broad to cover women of all colours.¹¹

This definition was broadened by the International Convention for the Suppression of the White Slave Traffic, signed in 1910.¹² According to the Convention, trafficking involved not only the procuring of women or girls abroad, but also within national borders.¹³ Paraphrased differently, the Convention obliged parties to punish anyone who recruited a woman below the age of majority into prostitution, even if she consented. This convention shifted the emphasis towards the criminalization of procurement and related acts, as well as the prosecution and punishment of offenders.¹⁴ However, the Convention was criticised as it only addressed the fight against trafficking into forced prostitution.¹⁵

¹¹ UNHCHR, *Integration of the Human Rights of Women and The Gender Perspective* (E/CN.4/2000/68) <[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2000.68.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2000.68.En)> accessed 04 August 2012, para 18

¹² UN, 'International Convention for the Suppression of the "White Slave Traffic," May 4, 1910, 211 Consol. T.S. 45, 1912 GR. Brit. T.S. No. 20, as amended by Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, and Amending the International Convention for the Suppression of the White Slave Traffic, May 4, 1949, 2 U.S.T. 1999, 30 U.N.T.S. 23 (entered into force June 21, 1951) <<http://www1.umn.edu/humanrts/instree/whiteslavetraffic1910.html>> accessed 10 July 2013

¹³ League of Nations, 'The International Agreement for the Suppression of the White Slave Trade' (Paris, 18 May 1904) <http://treaties.un.org/doc/Treaties/1920/09/19200907%2006-00%20AM/Ch_VII_8p.pdf> accessed 10 July 2013

¹⁴ Anne Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 57

¹⁵ Kathryn E. Nelson, 'Sex Trafficking and Forced Prostitution: Comprehensive New Legal Approaches' (2002) 24 *Houston Journal of International Law* 553-554

4.2.2. The Period of the League of Nations and Human Trafficking (1919-1945)

The first step of the League against slavery was the Convention of Saint-Germain-en-Laye.¹⁶ The first paragraph of Article 11 of the Convention is as follows:

The Signatory Powers exercising sovereign rights or authority in African territories will continue to watch over the preservation of the native populations and to supervise the improvement of the conditions of their moral and material well-being. They will, in particular, endeavour to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea.

This article shows that paternalist and racist attitudes towards Africa still existed among the Signatory Powers at that time. They thought that supervision and surveillance would inevitably lead to complete suppression. This played a significant role in revising the General Act of Berlin of 1885 as well as the General Act and Declaration of Brussels of 1890,¹⁷ which affirmed the signatories' intention to secure the complete suppression of slavery in all its forms, and of the slave trade by land and sea.¹⁸

The drafters of the Covenant of the League of Nations, which entered into force on 10 January 1920, were encouraged to take significant action against the traffic in women and children within the League's mandate by the international

¹⁶ The Treaty of Saint-Germain-en-Laye was signed on 10 September 1919 by the victorious Allies of World War I on the one hand and by the Republic of Germany-Austria on the other

¹⁷ The Ottoman Empire, which is the predecessor of modern Turkey, signed the 1890 Brussels Conference Act for the suppression of the slave trade. However, it is easy to find evidence to show that the slave trade in the Ottoman Empire was not stopped. Madeline C. Zilfi, *Women and slavery in the late Ottoman Empire: the design of difference* (Cambridge Un.Press, New York, 2010) p.xvi.

¹⁸ UN, 'Slavery Convention' <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>> accessed 11 July 2013

feminist movement.¹⁹ In 1921, the League held a conference on trafficking and established the Traffic in Women Committee.²⁰ As a result, the 1921 Traffic in Women and Children Convention was adopted and signed by thirty-three states. In contrast to its predecessors (the 1904 White Slave Trade Agreement and the 1910 White Slave Traffic Convention), it targeted more powerful protection provisions. As a significant step, to avoid racial expressions, it changed the prevalent terminology from ‘white’ slave traffic to women and young girls of all colours. The Convention raised several new ideas, such as extending the age limit of victims from 20 to 21 years of age in cases of non-forcible recruitment for prostitution,²¹ and giving protection to male minors who had been trafficked.²² Articles 6 and 7 of the Convention encouraged state parties to take action (whether legislative or administrative), especially by licensing and supervising employment agencies to protect and assist emigrant and immigrant women and children seeking employment abroad.

As a subsequent step, the League established a Temporary Slavery Commission to provide control in relation to the issue in 1924. The main aims of the Commission were to eradicate slavery and slave trading across the world, and to fight forced prostitution.²³ The Commission reported on 12 June 1924 that slavery

¹⁹ Article 23 of the Covenant; UNCHR, Report of the Special Rapporteur (Radhika Coomaraswamy) on violence against women, its causes and consequences on trafficking in women, women’s migration and violence against women (UN Doc E/CH.4/2000/68, 2000) <<http://www1.umn.edu/humanrts/commission/thematic52/53-wom.htm>> accessed 19 November 2015 para.19

²⁰ Jeffreys (n 4) 165

²¹ Article 5 of the 1921 Traffic in Women and Children Convention

²² Robyn Emerton, Trafficking of Women into Hong Kong for the Purpose of Prostitution Preliminary Research Findings, (2001) Centre for Comparative and Public Law Faculty of Law (University of Hong Kong February 2001)

<<http://www.law.hku.hk/ccpl/pub/Documents/paper3.pdf>> accessed 17 August 2015

²³ F. S. Northedge, *The League of Nations: Its Life and Times, 1920–1946* (Holmes & Meier 1986) 185-186

was an international issue, thus encouraging the League to create an international convention against slavery.²⁴

By virtue of encouragement by the Commission, the Slavery Convention was signed in Geneva on 25 September 1926, and entered into force on 9 March 1927.²⁵ It defined slavery and the slave trade in Article 1: ‘Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.’ This definition emphasized ‘any or all of the powers attaching to the right of ownership’ as a main element of slavery. Parts of the Article prohibited practices such as capture, sale, exchange, and transportation. In this regard, this definition reflected the outline of the modern definition of trafficking in human beings. Despite this, the definition did not outline any of the exploitation purposes of the slave trade. Miers criticizes the Convention in three respects. The first relates to the Convention’s lack of concern regarding different forms of slave trading; the second and the third criticisms highlight the fact that the Convention did not

²⁴ Jessica Bell, ‘Contemporary Slavery and International Law’ (2008) Human Rights & Human Welfare, 35 <<http://www.du.edu/korbel/hrhw/researchdigest/slavery/law.pdf>> accessed 07 July 2013

²⁵ Turkey ratified this convention and become one the state parties to it on 5 June 1933. Y. Hakan Erdem, *Osmanlı’da Köleliğin Sonu 1800-1909- The End of Slavery in the Ottoman Empire*, (Kitap Yayınevi, İstanbul, 2013) p.10

mention any monitoring mechanism to follow up and ensure progression, and that there was no final date set by which to provide/guarantee emancipation.²⁶

An Advisory Committee on the Traffic in Women and Children was appointed to provide general supervision over the execution of the Convention and to enhance the effectiveness of combating trafficking in women of all ages.²⁷ As a consequence, the 1933 Traffic in Women Convention was adopted, through which state parties were obliged to punish persons who procured, enticed, or led away women of all ages in another country. Yet the Convention still excluded the trafficking in women within national boundaries. Article 1 of the Convention noted that a woman's consent was not a defence in the crime of trafficking. In the agenda of the Convention, there were a number of serious issues such as the abolition of state regulation of prostitution and the criminalisation of procurers, brothel owners, and pimps. Because of the outbreak of World War II, however, discussions about these issues were suspended.

4.3. The United Nations: Human Trafficking and Human Rights

After World War II, the United Nations was founded with very broad purposes, including the maintenance of international peace and security, the development of friendly relations among nations, international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and the promotion of human rights.²⁸ The United Nations took over the issue of trafficking as a social problem. The 1949 United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of

²⁶ Suzanne Miers, 'Slavery and the Slave Trade as International Issues 1890-1939' [1998] 19(2) *Slavery & Abolition: A Journal of Slave and Post-Slave Studies* 16, 28-29

²⁷ Nora V. Demleitner, 'Forced prostitution: Naming and International Offence' [1994] 18(1) *Fordham International Law Journal* 163170

²⁸ Malcolm Evans, *International Law* (Oxford University Press 2003) 291

Others consolidated over four of the legal instruments on trafficking discussed above.²⁹

The Convention included gender-neutral terms, and aimed to penalize procurement irrespective of consent, in both international and domestic trafficking.³⁰ It contained a number of provisions to suppress and prevent human trafficking for sexual exploitation. For instance, it declared trafficking an extraditable offence in Article 8. Article 14 outlined that state parties needed to build a cooperation system to exchange information. According to Articles 17 and 20, state parties were bound to take all appropriate measures in connection with immigration and emigration procedures, and to supervise employment agencies, in order to prevent trafficking. In addition, Article 16 regulated other obligatory steps for state parties to take, such as the prevention of prostitution through rehabilitation programmes, alongside the social adjustment of victims of prostitution through education, health, social, economic, and other related services.

Because of all its ambiguities in its gender- and race-neutral language, and the meaning of punishment and consent, the convention is comparatively weak. According to Farrior, the Convention has done little to suppress trafficking. Despite its focal points, such as punishing procurers, persons exploiting prostitution, and brothel owners, its enforcement clauses are ineffective.³¹ The Convention is inadequate in protecting the rights of women who are trafficked and

²⁹ The 1904 White Slave Trade Agreement, the 1910 White Slave Traffic Convention, the 1921 Traffic in Women and Children Convention, and the 1933 Traffic in Women Convention

³⁰ Janie Chuang, 'Redirecting the debate over trafficking in women: definitions, paradigms, and contexts' [1998] 11 Harvard Human Rights Journal 65, 68

³¹ Stephanie Farrior, 'The International Law on Trafficking in Women and Children for Prostitution: Making It Live Up to its Potential' [1997] 10 Harvard Human Rights Journal 213, 217

it ignores the socio-economic causes of trafficking for prostitution. Moreover, it did not have an independent body through which to monitor the implementation and enforcement of the treaty,³² and it did not provide a definition either of trafficking or prostitution. However, it does define the actions that are prohibited. According to the Convention: ‘(t)he Parties to the present Convention agree to punish any person who, to gratify the passions of another: (1) Procures, entices or leads away, for 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.’³³ State parties are also required to punish the owners of brothels through their management and finances.³⁴

These articles establish three types of state obligations.³⁵ First, states are bound to a general anti-trafficking principle and obliged to work towards the abolition of sex trafficking.³⁶ Second, states are required to participate in specific enforcement measures, including cooperating in the extradition of traffickers, coordinating investigation efforts, sharing information, and recognizing foreign trafficking convictions.³⁷ Third, signatory states are required to rehabilitate and otherwise support the victims of prostitution by using various social welfare tools.³⁸ However, Gallagher identifies this concept as inadequate due to an interpretation

³² Megan C. Brand, ‘International cooperation and the anti-trafficking regime’ (2010) Refugee Studies Centre Working Paper Series, 71 <<http://www.rsc.ox.ac.uk/files/publications/working-paper-series/wp71-international-cooperation-antitrafficking-regime-2010.pdf>> accessed 15 July 2013

³³ Article 1 of the Convention

³⁴ Article 2 of the Convention

³⁵ Susan Jeanne Toepfer and Bryan Stuart Wells, ‘The World Wide Market for Sex: A review of International and Regional Legal Prohibitions Regarding Trafficking in Women’ [1994] 2(1) Michigan Journal of Gender and Law 83, 89

³⁶ Article 6 of the Convention: state parties agree ‘to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.’

³⁷ Toepfer and Wells (n 35) 97. In addition, see Articles 8 to 15 of the Convention.

³⁸ Article 16 of the Convention

of the 16th Article of the Convention. According to Gallagher, ‘the Convention does not prohibit prostitution nor demand its criminalization, instead requiring State Parties only to take social and economic measures aimed at preventing prostitution.’³⁹ It did not define ‘prostitution’ and ‘exploitation’, nor distinguish between forced and voluntary prostitution.⁴⁰ Chuang analyses this article, suggesting that if the framers of the Convention had directly criminalized and prohibited prostitution, the practices could have been driven underground and therefore been uncontrollable.⁴¹

In 2000, the UN Special Rapporteur on Violence against Women issued a critique emphasizing the deficiencies of the Convention. According to her report, the Convention provided little protection for women, and did not recognize women as reasonable, independent actors endowed with rights. The Convention defines women merely as vulnerable beings in need of protection from the ‘evils of prostitution’.⁴² Despite the Convention’s deficiencies, such as inadequate protection for women’s rights and its overall approach to women, this Convention was nevertheless a legal turning point, as it was the first international instrument on trafficking and related issues that was legally binding.⁴³

The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery⁴⁴ was built upon the work of the 1926 Slavery Convention, which proposed to secure the abolition of slavery

³⁹ Gallagher, *International Law of Human Trafficking* (n 14) 59

⁴⁰ Barbara Sullivan, ‘Feminism and International Law’ [2005] 5 *International Feminist Journal of Politics* 68, 68-69

⁴¹ Chuang (n 30) 77

⁴² UNHCHR, (n 19), paras 21-26

⁴³ UNODC, ‘Addressing Trafficking in Persons since 1949’ (UNODC, 02 December 2010) <<http://www.unodc.org/unodc/en/human-trafficking/2010/addressing-trafficking-in-persons-since-1949.html>> accessed 11 January 2015

⁴⁴ Adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 and conducted in Geneva on 7 September 1956

and of the slave trade, and the Forced Labour Convention of 1930, which banned forced labour.⁴⁵ The 1926 Slavery Convention and 1956 Supplementary Convention are the principle international law instruments concerning slavery. Slavery is defined in the 1926 Slavery Convention as ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’.⁴⁶ In this regard, state parties are required progressively to suppress the slave trade⁴⁷ and work towards the abolition of slavery in all its forms.⁴⁸ The legal intervention’s scope was extended by the 1956 Supplementary Convention. This Convention defined ‘institutions and practices similar to slavery’, which include debt bondage, serfdom, servile and early marriage, and child servitude in Article 1.⁴⁹ According to this Article, State Parties were required to seek ‘as soon as possible the complete abolition or abandonment of mainly debt bondage, serfdom, crimes related to women and children’.⁵⁰ Paraphrased differently, this Convention supplemented the 1926 Convention by dealing with the institutions and practices of slavery and the slave trade.⁵¹ The main distinction between merely servile statuses and slavery is ‘the right of ownership’.⁵²

⁴⁵ Jean Allain, *Slavery in International Law of Human Exploitation and Trafficking* (Martinus Nijhoff 2012) 164

⁴⁶ Article 1 of the 1926 Slavery Convention

⁴⁷ Article 1(2) of the 1926 Slavery Convention

⁴⁸ Article 2 of the 1926 Slavery Convention

⁴⁹ Article 1 of the Supplementary Convention

⁵⁰ (a) Debt bondage, (b) Serfdom, (c) Any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person; (d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

⁵¹ Jean Allain, ‘*The Definition of ‘Slavery’ in General International Law and the Crime of Enslavement within the Rome Statute*’ (The Office of the Prosecutor, 26 April 2007)

⁵² Jean Allain and Kevin Bales, ‘Slavery and Its Definition’ [2012] 14(2) Global Dialogue <<http://www.worlddialogue.org/content.php?id=529>> accessed 12 November 2013, 14

In this regard, it is important to analyse this acceleration in the context of process-tracing. The inputs of the process that brings the system from the legal slave trade to illegal trade are the campaign against the trafficking of women, and social pressure. As a result of these actions, political transformation appears as an output of the process. In later years, changing social demands, such as better life conditions and human rights, enter the equation as inputs to the process. In this regard, the League of Nations and the United Nations transformed their approaches to human trafficking as an output of the process. These efforts to respond to the changes in trafficking trends have been extended. For instance, while the 1933 Traffic in Women Convention excluded the trafficking in women within national boundaries, the 1949 United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others accepted the existence of both international and domestic trafficking.

In addition to the 1926 Slavery Convention and the 1956 Supplementary Convention, the Universal Declaration of Human Rights (UDHR)⁵³ and the International Covenant on Civil and Political Rights (ICCPR)⁵⁴ also have specific regulations banning slavery and slavery-related practices. Article 4 of the UDHR requires that '[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.' This article is important in demonstrating that both the institution of slavery and the slave trade are in direct conflict with fundamental Human Rights norms. The Declaration is, however, deficient in that there was no direct mention of prostitution and women's rights, except the expression in the preamble of the UDHR about the equality between

⁵³ UDHR, UNGA Res. 217A (III) (10 December 1948)

⁵⁴ ICCPR, 999 U.N.T.S. 171 (16 December 1966), entered into force 23 March 1976

men and women, and Article 16's mention of marriage and family.⁵⁵ Article 16 could be considered as a first step in dealing with marriage, which led to the reservations of the 1956 Supplementary Convention about early marriage and the prohibition of forced marriage in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Article 8 of the ICCPR reiterates the requirement of Article 4 of the UDHR to prohibit slavery and slave trade, which is a non-derogable right. According to Article 8(1) and 8(2) of the ICCPR, 'no one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited' and 'no one shall be held in servitude'. State parties to the Covenant are required to protect individuals against both slavery and the slave trade, and the performance of forced labour or compulsory labour is also prohibited.⁵⁶

There is an incontestable link between human trafficking and human rights violation.⁵⁷ Particularly after the second half of the twentieth century, concern about trafficking have been closely related to its human rights dimensions. According to Obokata, individuals and organisations dealing with women's issues address prostitution and other such relevant matters in terms of discrimination and violence against women.⁵⁸ They also focus on children's rights, child labour, and prostitution resulting from trafficking.⁵⁹ In addressing trafficking in human rights

⁵⁵ Preamble to the Declaration: 'Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom...'

⁵⁶ Article 8(3) of the Covenant

⁵⁷ Ryszard Piotrowicz, 'Trafficking of Human Beings and their Human Rights in the Migration Context' in R Cholewinski and R Perruchoud (eds) *International Migration Law. Developing Paradigms and Key Challenges* (T. M. C. Asser Press 2007) 275

⁵⁸ Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective* (Koninklijke Brill 2006) 33

⁵⁹ Carron Somerset, *What the Professionals Know: The Trafficking of Children into and through the United Kingdom for Sexual Purposes* (ECPAT UK, 2001)

terms, it is common to reference the existing international human rights instruments.⁶⁰ There are both regional and international instruments that can be applicable to human trafficking. In addition, human rights violations in the human trafficking process has been a conspicuous issue in a number of international human rights organisations and a variety of UN counter-measure strategies, ranging from specialist rapporteurs and programmes of action, to conferences, plans, and declarations.⁶¹

International human rights instruments affirm that human rights are universal: they apply to everyone, irrespective of their race, sex, ethnic origin, or other distinction. Trafficked persons also benefit from these rights. Even if they are outside their country of residence, international law is clear that trafficked persons cannot be discriminated against simply because they are non-nationals.⁶²

Human rights law indicates that certain groups require additional or special protection. In trafficking cases, these groups include children, women, migrants, migrant workers, refugees and asylum seekers, internally displaced persons, and persons with disabilities.⁶³ Analysis of the ways in which human rights violations arise throughout the trafficking cycle, as well as of states' obligations under international human rights law, is important to evaluate violations in the whole trafficking process. According to the UNHR Office of the High Commissioner, 'a human rights-based approach seeks to both identify and redress the discriminatory

⁶⁰ Toepfer and Wells (n 35) 93

⁶¹ Patrick Twomey, 'Europe's Other Market: Trafficking in People' [2000] 2 European Journal of Migration and Law 4-5

⁶² Elaine Pearson, *Human Rights and Trafficking in Persons: A Handbook* (GAATW, 2000) 8

⁶³ UNHR Office of the High Commissioner, 'Human Rights and Human Trafficking' (Fact sheet no.36) <http://www.ohchr.org/Documents/Publications/FS36_en.pdf> accessed 11 January 2016 7

practices and unjust distribution of power that underlie trafficking, that maintain impunity for traffickers and that deny justice to their victims.’⁶⁴

The national, regional and international responses to trafficking are anchored in the rights and obligations established by international human rights law. The key features of this approach are that the main objectives of policies and programmes should be focused on promoting and protecting rights. This approach identifies rights holders, their entitlements, and the corresponding duty bearers and their obligations. It aims at strengthening the capacities of rights holders to secure the rights and capacities of duty bearers to meet their obligations; and core principles and standards derived from international human rights law should guide all aspects of the response at all stages.⁶⁵

To sum up, there are two main aspects to consider in relation to the human rights framework relating to trafficking. Firstly, it is a framework of analysis. According to Obokata, this means exploring and identifying relevant human rights norms and principles in relation to the trafficking of human beings. These include many rights such as the rights to life, work, and health, as well as the prohibition of torture and slavery. Secondly, a human rights framework is a framework of action. This mentions the simultaneous attempts made by states, such as obligations to prohibit trafficking, prosecute traffickers, protect victims, and address the causes and consequences of the practice.⁶⁶ Another important point is that, in addition to these elements, a holistic and victim-oriented approach needs to consider the effects of cost and benefit analysis by traffickers and try to break the powerful linkage between supply and demand.

⁶⁴ Ibid, 8

⁶⁵ Ibid.

⁶⁶ Obokata (n 58) 35

A human rights framework is important because of its level of analysis. Two main reasons can be observed: firstly, it can facilitate an understanding of the problems experienced by those trafficked (the victim-centred approach);⁶⁷ secondly, it can address not only the process of trafficking itself, but also wider issues such as its causes and consequences.⁶⁸ This framework can holistically evaluate the issue, if it can understand and adopt the domestic dynamics of source and destination countries. In other words, the main shortcoming of a human rights-based approach is its lack of concern for the root causes of the crime and the destination countries' operational and social perceptions towards victims. Accordingly, I adopt the 5P model for Turkey to compensate for the shortcomings of the human rights framework.

In relation to human trafficking, the United Nations Declaration on the Elimination of Violence against Women (DEVAW)⁶⁹ gives definitions for various forms of violence related to exploitation of and trafficking in women and forced prostitution, from which women are protected.⁷⁰ The main United Nations instrument-governing women's status is the CEDAW.⁷¹ This mainly concentrates on the elimination of discrimination against women. The Introduction, Preamble, and Article 1 of CEDAW declare other aims of the Convention as being to eliminate all forms of violence against women and of exploitation such as sexual exploitation or sexual harassment. The significant feature of the CEDAW was its egalitarian language, which was in stark contrast to earlier League of Nations and

⁶⁷ Naomi Roth-Arriaza, 'Punishment, Redress, and Pardon: Theoretical and Psychological Approaches' in Naomi Roth-Arriaza (ed), *Impunity and Human Rights in International Law and Practice* (Oxford University Press 1995) 19

⁶⁸ Obokata (n 58) 35

⁶⁹ The United Nations Declaration on the Elimination of Violence against Women, UNGA Res 48/49 (20 December 1993)

⁷⁰ Articles 2 and 3 of the DEVAW

⁷¹ CEDAW, 1249 U.N.T.S. 13 (18 December 1979), entered into force 3 September 1981

UN documents. It addressed the trafficking issue by creating international standards for women's rights and providing a blueprint for nations to improve women's lives by protecting them. According to Article 6 of the Convention, state parties are required 'to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.'

Before examining criticisms of CEDAW, it is helpful to explain its enforcement mechanisms, such as the interstate procedure that is outlined in Article 29,⁷² and state reporting in Article 18.⁷³ The main criticisms originate from its enforcement mechanisms; for instance, the Ontario Women's Justice Network claims that the interstate procedure has yet to be used, and state reports are routinely inaccurate and late.⁷⁴ In addition to these issues, women's difficulties in this respect are not only related to trafficking but include prostitution, the right to work, equal education right, and equal rights with men (etc.), all of which remain a low priority in the political agendas of many state parties. These ignored problems are amongst the most important push factors of trafficking. This means that CEDAW is limited to trafficking crime only and does not recommend any specific regulations in order to address the push factors. For example, in the forty-sixth session of the Committee on the Elimination of Discrimination against Women on 30th July 2010, the Committee highlighted its satisfaction with Turkey's efforts, such as the Second National Action Plan to Combat Trafficking

⁷² This provision states that all conflicts dealing with the interpretation of CEDAW have to be arbitrated. If the conflict cannot be resolved during arbitration, it is sent to the International Court of Justice (ICJ)

⁷³ States who sign on to CEDAW must submit an initial report within the first year of ratifying CEDAW and must submit further reports every four years

⁷⁴ CEDAW, 'Background Information'

<http://www.owjn.org/owjn_2009/index.php?option=com_content&view=article&id=281%3Acedaw-background-information&catid=59&Itemid=108> accessed 11 February 2015

and the establishment of a National Task Force.⁷⁵ However, it recommended some measures regarding prosecution and protection matters concerning trafficking, such as shelters, international and national partnerships, and training programs for law enforcement officials. Despite these recommendations, the Committee did not mention any push factors that force victims into this brutal business.⁷⁶

According to Articles 17, 20, and 21 of CEDAW, the Committee on the Elimination of Discrimination against Women's General Recommendation No. 19 described gender-based violence as a form of discrimination which is detrimental to women's ability to enjoy rights and freedom on the basis of equality with men.⁷⁷ This also highlighted the serious link between human trafficking and violence against trafficked women. It seriously argued for the root causes as a trigger for trafficking and new forms of sexual exploitation. The root causes, such as poverty, unemployment, and war, are the main obstacles between women and fundamental human rights and human dignity. They push women into violence and exploitative practices.⁷⁸

Minors are also the main target for traffickers, like women. The Convention on the Rights of the Child (CRC) prohibits child trafficking.⁷⁹ According to the CRC, state parties are responsible for stopping trafficking in children for prostitution, child labour, and sexual exploitation.⁸⁰ They are also required to provide special protection to minors who are victim of any negative situation such as trafficking

⁷⁵ CEDAW, 'Concluding observations of the Committee on the Elimination of Discrimination against Women' <<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-TUR-CO-6.pdf>> accessed 11 January 2016, para 26

⁷⁶ Ibid, para 27

⁷⁷ Committee on the Elimination of Discrimination against Women, 'Violence against Women', General Recommendation No. 19 (eleventh session, 1992), CEDAW/C11992/L. 1/Add. 15, paras 11-12

⁷⁸ Ibid, paras 13-16

⁷⁹ The CRC, 1577 U.N.T.S. 3 (20 November 1989)

⁸⁰ Article 35 of the CRC

and armed conflict.⁸¹ The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography was adopted in 2000 in order to accomplish the aims of the CRC.⁸² This obliges state parties to provide child victims with legal and support services in any interaction with the criminal justice system.⁸³

Despite this binding human rights instrument for children, minors still suffer from the risk of trafficking for sexual exploitation. In 2012, the UNODC reported that the percentage of child victims had risen in a 3-year span from 20 per cent to 27 per cent. Of every three child victims, two are girls and one is a boy.⁸⁴ In 2014, the UNODC gave the number of children being trafficked as 33 per cent of detected victims.⁸⁵ This means human rights tools for children are inadequate in order to achieve their aims.

Trafficking in human beings is one of the most significant contemporary threats to human rights. In this regard, the human rights dimension of trafficking is one of the key elements for protecting victims and preventing re-victimization. States are primarily responsible for compensating the victims for their violated human rights and for protecting their citizens against these kinds of threats. Due to its focal points, which are promoting and protecting human rights, human rights law is important for the 5P model. As I evaluated in section 3.5, the 5P model has been built upon Haynes's model and a human rights approach. In this regard, the obligations of human rights law are included by the 5P model. Human rights law provides a comprehensive perspective in order to answer the question 'who is the

⁸¹ Articles 3, 8, 13, 15, 16, 17, 20, 22, 25 and 38 of the CRC

⁸² OP/SOC, 2173 U.N.T.S. 222 (25 May 2000), entered into force 12 February 2002

⁸³ Article 8 of OP/SOC

⁸⁴ UNODC, *Global Report on Trafficking in Persons* (UNODC, 2012) 1

⁸⁵ UNODC, *Global Report on Trafficking in Persons* (UNODC, 2014) 5

victim?’ However, the main issue for effective anti-trafficking measures is to find solutions for every stage of the crime, from detection and identification to protection. The obligations of human rights law suffer from a lack of enforcement mechanisms. As a result of this, cooperation and coordination between state parties (partnership) and the impact capacity of its obligations into domestic strategies (protection) are weak. Despite the obligations and various human rights documents’ emphasis on the root causes of the crime, human rights law ignores the power of cultural, traditional, and religious elements necessary to be recognised in order to prevent crime and establish ‘perception’ for both law enforcement officials (institutional perception) and society (public perception).

4.4. International Legal Instruments Regarding Human Trafficking

Human trafficking is a dynamic issue, which is discussed in various international legal discourses in addition to key international documents. For instance, trafficking in human beings is evaluated as an issue of international criminal law and a form of forced labour. This section will assess human trafficking as a first step towards analysing its situation in different legal discourses.

4.4.1. Enslavement and Sexual Violence under the Headings ‘War Crimes’ and ‘Crimes against Humanity’

The United States, Great Britain, the Soviet Union, and France created the Nuremberg Military Tribunals for the prosecution of the political, military, and economic leaders of Germany after World War II. Principle VI of Nuremberg holds that ‘the crimes hereinafter set out are punishable as crimes under international law.’ These are ‘crimes against peace’, ‘war crimes’ and ‘crimes

against humanity'. Human trafficking as a new form of enslavement is regarded as a crime against humanity which ranks amongst 'the most serious crimes of concern to the international community as a whole' – *delicta juris genuim*.⁸⁶

Enslavement was addressed as a crime against humanity, together with 'murder, extermination, deportation and other inhumane acts done against any civilian population, or persecutions on political, racial, or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.' Fritz Sauckel, who was responsible for labour mobilization, was prosecuted for the deportation of more than five million human beings under terrible conditions, for the purposes of slave labour.⁸⁷

Under the Geneva Conventions, 'outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault', including rape, are prohibited.⁸⁸ In addition to these assaults, slavery and the slave trade in all forms were prohibited at any time and in any place.⁸⁹ Human Rights Watch characterised the issue of sexual violence as a method of warfare, and as a tool of genocide during the 1990s.⁹⁰ Sexual violence was defined as a gender-specific form of violence; examples include sexual

⁸⁶ Tom Obokata, 'Trafficking of human beings as a crime against humanity: some implications for the international legal system' [2005] 54 International and Comparative Law Quarterly 445

⁸⁷ Seymour Drescher, 'Slavery' in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford University Press 2012) 913

⁸⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) Article 75. Also the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) Article 4. See also the Convention (IV) relative to the Protection of Civilian Persons in Time of War Article 3(2).

⁸⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Article 4 (2)(f).

⁹⁰ Human Rights Watch, 'Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath' (September 1996) <<http://www.hrw.org/reports/1996/Rwanda.htm>> accessed 11 July 2013

mutilation, forced pregnancy, rape, or sexual slavery.⁹¹ One such example of this practice was the Rwandan Genocide, during which rape was used as a weapon to terrorize and degrade communities.⁹²

More specifically, the Statutes of the Special Court of Sierra Leone and the International Criminal Tribunal for Rwanda (ICTR) define rape, enforced prostitution, and any form of sexual assault as war crimes.⁹³ The ICTR had the power to prosecute persons responsible for enslavement and rape under the title of crimes against humanity.⁹⁴ The Statute of the International Criminal Tribunals for Former Yugoslavia (ICTY) assesses enslavement and rape as crimes against humanity,⁹⁵ and rape was defined for the first time by the ICTR in 1998.⁹⁶ In June 1996, the ICTY issued an indictment against eight Bosnian Serb soldiers for the enslavement and rape of Muslim women in the eastern Bosnian town of Foca in 1992 and 1993. The *Foca Case* focused on various forms of sexual violence committed against women and girls in Foca.⁹⁷ This case was the first sexual

⁹¹ World Health Organization, World report on violence and health, (Geneva: World Health Organization, 2002), Chapter 6, pp. 149.

⁹² Human Rights Watch, 'Shattered Lives..' (n90).Ibid

⁹³ Statute of the Special Court of Sierra Leone at Article 3(e). Statute of ICTR at Article 4(e)

⁹⁴ Statute of ICTR at Article 3(c)-(g)

⁹⁵ Statute of ICTY at Article 5(c)-(g)

⁹⁶ *The Prosecutor v. Akayes*, Case No ICTR-96-4-T. The Trial Chamber held that rape (which it defined as 'a physical invasion of a sexual nature committed on a person under circumstances which are coercive') and sexual assault constitute acts of genocide insofar as they were committed with the intent to destroy, in whole or in part, a targeted group, as such. It found that sexual assault formed an integral part of the process of destroying the Tutsi ethnic group and that rape was systematic and had been perpetrated against Tutsi women only, manifesting the specific intent required for those acts to constitute genocide.

⁹⁷ *The Prosecutor v. Kunarac (et al. Foca)* Case No. IT-96-23&23/1. 'The Trial Chamber found Dragoljub Kunarac guilty of crimes against humanity on the counts of enslavement, rape and torture as well as violations of the laws and customs of war on the counts of rape and torture. In the same decision, Radomir Kovac was found guilty of crimes against humanity on the counts of enslavement and rape as well as violations of the laws and customs of war on the count of outrages upon personal dignity. Zoran Vukovic was found guilty of crimes against humanity on the counts of rape and torture as well as violations of the laws and customs of war on the counts of rape and torture. The three accused were given single sentences of 28, 20 and 12 years' imprisonment respectively.' <<http://www.icty.org/sid/8095>> accessed 11 July 2013

slavery prosecution in any international criminal proceeding.⁹⁸ In *Prosecutor v. Krnojelac*, the ICTY highlighted that enslavement can also be evaluated as a war crime. According to the Tribunal, enslavement can have similar elements not only to a crime against humanity but to a war crime.⁹⁹ In legal history, the definition of a crime against humanity was first articulated at the Nuremberg Trials; it had been developed through multilateral efforts of the draft on the Rome Statute.¹⁰⁰

Another important example was the Tokyo Women's Tribunal, which was held from 8 to 10 December 2000 in Tokyo. The main aspirations of the Women's International War Crimes Tribunal for the Trial of Japanese Military Sexual Slavery related to the situation of the so-called 'comfort women',¹⁰¹ and Japan's failure to make any meaningful response to the violations of the laws of war and the commission of crimes against humanity committed by its armed forces during World War II.¹⁰² The most important point about the Tribunal is that it was established to achieve the goals mentioned above by creating a dedicated group of non-governmental organisations to ensure justice for survivors of military sexual slavery. In other words, the Tribunal was set up as a result of active lobbying instead of national governmental efforts. The judges evaluated the evidence of the cases under 6 headings: physical suffering, reproductive harm, psychological harm, harm to intimate relationships and social/community life, silence, and poverty and social/economic hardship, by means of the testimony of survivors and

⁹⁸ George Rodrigue, 'Sexual Violence: Enslavement' (2011) Crimes of War <<http://www.crimesofwar.org/a-z-guide/sexual-violence-enslavement/>> accessed 11 July 2013

⁹⁹ *Prosecutor v Krnojelac*, Case No IT-97-25-T, Judgment of 15 Mar 2002, para 356

¹⁰⁰ Article 6(c) of the Nuremberg Charter

¹⁰¹ *The Prosecutors and Peoples of Asia Pacific Region v. Hirohito* (Women's Int'l War Crimes Trib. 2000, Dec. 12, 2000). 'Comfort Women were women and girls forced into sexual slavery by the Imperial Japanese Army before and during World War II.' Carmen M. Argibay, 'Sexual Slavery and the Comfort Women of World War II' [2003] 21(2) Berkeley Journal of International Law 375

¹⁰² Tina Dolgopoul, 'The Judgement of the Tokyo Women's Tribunal' [2003] 28(5) Alternative Law Journal 242

the experts' comments.¹⁰³ Dolgopol highlights that the Tribunal adopts and develops the approaches of the ICTY on the concept of sexual slavery. It also demonstrates that the international legal community does not adhere to the narrow definition given to the term slavery in the Rome Statute which is as 'the right of ownership over a person in particular women and children' in article 7(2)c.¹⁰⁴

The ICTY established the link between the notion of slavery and enslavement stipulated under customary law and relevant treaties, for instance, the 1926 Slavery Convention. It held that the *actus reus* of enslavement is identical to that of slavery – the exercise of any or all of the power attached to the right of ownership over a person. The ICTY determined that indications of enslavement include elements of control and consent.¹⁰⁵ There is a relation between ownership and notions of consent. The issue of consent will be rendered irrelevant by, for example, the threat or use of force and coercion or other forms of control.¹⁰⁶

The International Criminal Court (ICC) was created by the Rome Statute on July 1, 2002. It is a permanent court to prosecute 'genocide', 'crimes against humanity', 'war crimes', and the 'crime of aggression'. The crime of 'trafficking in persons' is not defined either in the ICC Statute nor in the ICC Elements of Crime. The ICC Statute follows Article 7 of the 1956 Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which defines slavery as 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.'¹⁰⁷ According to

¹⁰³ Ibid, 244

¹⁰⁴ Ibid, 247

¹⁰⁵ *The Prosecutor v. Kunarac (et al. Foca)* Case No. IT-96-23&23/1, paras 542-543

¹⁰⁶ Ibid, para 542

¹⁰⁷ Mohammed Y. Mattar, 'The International Criminal Court (ICC) Becomes a Reality: When Will the Court Prosecute The First Trafficking in Persons Case?' (The Protection Project, July 9, 2002) <<http://www.protectionproject.org/wp-content/uploads/2010/09/icc.pdf>> accessed 13 July 2013

Allain, the statute does not evaluate trafficking in persons as a type of slavery.¹⁰⁸

Gallagher also notes that the statute does not make any effort to define trafficking in persons.¹⁰⁹

However, the statute clearly recognizes trafficking in persons as a ‘crime against humanity’.¹¹⁰ The Elements of Crimes mentions trafficking in persons in defining the expression ‘deprivation of liberty’. The Elements of Crimes states: ‘it is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.’¹¹¹

Bassiouni sheds light on the differences between forced labour and enslavement. According to him, an act of slavery is not related to forced labour imposed by an occupying power upon a civilian population. The forced labour issue is related to a state’s need to sustain its own existence and economy. In this situation, the occupying power is not exercising ownership over the population, it

¹⁰⁸ Jean Allain, *The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Conventions* (Martinus Nijhoff 2008) 236

¹⁰⁹ Gallagher, *International Law of Human Trafficking* (n 14) 216

¹¹⁰ Crimes against Humanity in the Rome Statute Article 7 cover acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder, extermination, enslavement, deportation or forcible transfer, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court, enforced disappearance of persons, the crime of apartheid, and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

¹¹¹ ICC, ‘ICC Elements of Crimes’ <<http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>> accessed 10 July 2013, 6

is infusing the population with ownership over its own existence, by virtue of the fact that the power is enabling the population to literally sustain itself.¹¹²

There are three main elements that a situation must contain to be considered ‘enslavement’, which are the right of ownership over one or more persons, a widespread or systematic attack directed against a civilian population, and the fact that the perpetrator knew that the conduct entailed, or intended the conduct to be part of, a widespread or systematic attack.¹¹³ In addition, ‘sexual slavery and enforced prostitution’ are evaluated under ‘sexual violence’.¹¹⁴

These differ from the elements of enslavement, because in this case the perpetrator has committed an act of a sexual nature against one or more persons, or caused a person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion (such as by fear of violence, duress, detention, psychological oppression, abuse of power against a person or persons, or by taking advantage of a coercive environment or a person’s or persons’ incapacity to give genuine consent).¹¹⁵

Bassiouni has also elaborated upon the elements of sexual slavery. Like the provisions on enslavement, the introduction to Article 7 provides the main elements mentioned above.¹¹⁶ According to Bassiouni, there are two more elements which differ from other crimes related to sexual slavery. Firstly, the perpetrator must have caused such a person or persons to engage in one or more acts of a sexual nature. Secondly, the perpetrator must have exercised any or all of the powers attaching to the right of ownership over one or more persons, such as

¹¹² M. Cherif Bassiouni, *Crimes Against Humanity*(n9)380

¹¹³ Bassiouni, *Crimes Against Humanity* (n 19) 380-381: ICC (n 111)

¹¹⁴ The Rome Statute Article 7 (1)(g)

¹¹⁵ Bassiouni (n 114) 443

¹¹⁶ ‘...any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack...’

by purchasing, selling, lending, or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.¹¹⁷

‘Sexual slavery’ is different from ‘enslavement’ in the Rome Statute. The first significant difference has to do with the scope of their application,¹¹⁸ as while sexual slavery and enslavement are both identified as crimes against humanity, sexual slavery is also identified as a war crime. The second difference is that the elements of enslavement cover the issue of sexual slavery only if the acts of enslavement include a sexual element.¹¹⁹

These definitions are important for the overall argument about the ill-equipped and inadequate structure of international obligations in relation to human trafficking. The concepts of trafficking in human beings and enslavement as elaborated in the aforementioned case law and the Rome Statute are not to be conflated because they do not fully coincide. According to der Wilt, trafficking in human beings covers widely different actions and situations, ranging from the young male lover who exploits the physical attractions of his ‘girlfriend’, to huge organizations that reap millions of dollars from their ignoble trade.¹²⁰ In this regard, Gallagher underlines that not each and every form of trafficking in human beings would result in enslavement.¹²¹ In this regard, there is a misguided corresponding approach between the Rome Statute’s definition of ‘enslavement’ and the UN Trafficking Protocol’s definition of ‘trafficking in human beings’.

¹¹⁷ ICC (n 111) 8

¹¹⁸ Gallagher, *International Law of Human Trafficking* (n 14) 213

¹¹⁹ Ibid, 214

¹²⁰ Harmen van der Wilt, ‘Trafficking in Human Beings, Enslavement, Crimes Against Humanity: Unravelling the Concepts’ [2014] 13 *Chinese Journal of International Law* 297, 314

¹²¹ Gallagher, *International Law of Human Trafficking* (n 14) 177–191

4.4.2. Human Trafficking and the Forced Labour Problem

In the twenty-first century, human trafficking involves various forms of force, coercion, and exploitation, such as sexual exploitation and labour exploitation.¹²² The main reason for this is that most trafficked persons are controlled and forced into easily exploited working conditions such as domestic services, sweatshops, agriculture, and sex-related jobs. Other than international human rights instruments,¹²³ forced labour has been systematically addressed in some specific thematic treaties under the auspice of the International Labour Organization (ILO).¹²⁴

The ILO has four main objectives: to promote rights at work, encourage decent employment opportunities, enhance social protection, and strengthen dialogue on work-related issues. As a part of the standardization of these objectives, the ILO conducts activities related to trafficking in human beings. It has adopted two Conventions, which are ILO Convention No. 29 concerning Forced or Compulsory Labour Conventions, and ILO Convention No. 105 concerning the Abolition of Forced Labour, aimed at the prohibition and elimination of forced or compulsory labour.¹²⁵

For the first time in international law, the ILO defined forced labour in its Convention No. 29. In article 2(1) of the Convention, forced labour is defined as

¹²² Kevin Bales, *Understanding Global Slavery: A Reader* (University of California Press 2005) 134

¹²³ Article 23 of the UDHR and Article 8 of the ICCPR

¹²⁴ The ILO was created in 1919 to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice, as part of the Treaty of Versailles that ended World War I. The International Labour Organization Constitution entered into force on 28 June 1919. The latest version is the Instrument of Amendment of the Constitution of the ILO, 1972, *adopted by International Labour Conference, 57th Session (Geneva, 22 June 1972) and entered into force on 1 November 1974

¹²⁵ The ILO Convention No. 29, 39 U.N.T.S. 55 (26 June 1930), entered into force 1 May 1932. The ILO Convention No. 105, 320 U.N.T.S. 291 (25 June 1957), entered into force 17 January 1959

‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered him voluntarily’.¹²⁶ This definition established a link between the forced labour issue and the slavery-like conditions (present in trafficking) by using the same elements in their definitions, namely coercion and force. Convention No. 29 requires state parties to abstain from employing all forms of forced or compulsory labour, and to act in order to suppress all forms of forced labour within the shortest possible period.¹²⁷ Also, it requires each state to ensure that the illegal exaction of forced or compulsory labour is an offence punishable, and strictly enforced, under domestic law.¹²⁸ The forced labour issue represents a severe violation of human rights and a restriction of human freedom, as defined in ILO Convention No. 29 on the subject and in other related international instruments covering slavery (and practices similar to slavery), debt bondage, or serfdom. The ILO’s definition of forced labour comprises two basic elements: the work or service is exacted under the menace of a penalty, and it is undertaken involuntarily.¹²⁹

ILO Convention No. 105 was adopted to abolish any form of forced or compulsory labour in specific circumstances: forced labour used for the purposes of political or economic development; forced labour as a means of discipline or of discrimination; and forced labour as a punishment for strike action.¹³⁰ Forced labour takes different forms, including debt bondage, trafficking, and other forms of modern slavery. The victims are the most vulnerable – women and girls forced into prostitution, migrants trapped in debt bondage, and sweatshop or farm workers kept there by clearly illegal tactics and paid little or nothing. Despite

¹²⁶ Article 2 (1) of the ILO Convention

¹²⁷ Articles 1(1) and 2(2) of the ILO Convention

¹²⁸ Article 25 of the ILO Convention

¹²⁹ ILO, ‘*A Global Alliance Against Forced Labour*’ (Geneva, ILO, 2005) 5

¹³⁰ Articles 1 and 2 of the ILO Convention

these efforts, forced labour, trafficking, and the challenges of globalization required a renewed commitment and immediate, targeted action in the late 1990s.¹³¹ In June 1998, the ILO Declaration on Fundamental Principles and Rights at Work was adopted to represent social ground-rules founded on common values, to enable all those involved to claim their fair share of the wealth they had helped to generate.

The Forced Labour (Supplementary Measures) Recommendation has been adopted to recommend supplementary measures for the effective suppression of forced labour.¹³² With these recommendations, the 1930 Forced Labour Convention is given greater effect, through detailed guidance covering the implementation of measures for the protection of victims of forced labour, the prevention of forced labour itself, and the strengthening of enforcement of national laws and regulations. The Recommendation has a gender and child-sensitive approach, which emphasizes privacy with regard to personal data, whilst also stressing the importance of unbiased and detailed information or statistical data about sex, age, and nationality, and the nature and extent of forced or compulsory labour.¹³³ Different from other related international instruments, Recommendation No. 203 underlines the importance of members' national circumstances as a preventative measure. As already pointed out, human trafficking and trafficking-related crimes appear in different incarnations in different regions and countries.¹³⁴

¹³¹ ILO, *Trafficking in Human Beings: New Approaches to Combating the Problem* (Geneva, Work in Freedom, 2003) 6

¹³² ILO, Forced Labour (Supplementary Measures) Recommendation (No. 203), 103rd ILC session (11 June 2014)

¹³³ Ibid, Articles 1 and 2

¹³⁴ Ibid, Article 4

The 2014 Protocol has been adopted to bring the Forced Labour Convention up to date.¹³⁵ The Protocol makes Article 2 of the Convention applicable to all human beings without distinction. It accepts the changes in the context and forms of forced or compulsory labour and trafficking in persons for the purposes of forced or compulsory labour.¹³⁶ To take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery, the Protocol concerning forced labour should be read in conjunction with other international human rights documents.

The ILO produces detailed instruments concerning forced or compulsory labour. In particular, its last two instruments on the subject take significant steps in terms of all necessary criteria for measures of prevention, protection, and remedy, such as compensation and rehabilitation. The ILO evaluates the issue as the prohibition of forced or compulsory labour forms part of the body of fundamental rights, and forced or compulsory labour violates the human rights and dignity of millions of people, contributes to the perpetuation of poverty, and stands in the way of achievement.¹³⁷ This approach is the most comprehensive and victim-oriented regulation to combat forced and compulsory labour. But the efforts and approaches of the ILO should be supported by other related instruments. On the subject of human trafficking, the instruments of the ILO are inadequate to prevent forced labour, because they are fragmented and lack the comprehensive evaluation of the issue that can only be provided under a single instrument that covers all elements of trafficking and all trafficking purposes. Despite the ILO's efforts, US\$150 billion in illegal profits are annually made on

¹³⁵ Per the 103rd ILC session, *ibid*

¹³⁶ See the preamble to Recommendation No. 203, *ibid*.

¹³⁷ *Ibid*

the labour of the 21 million men, women, and children who are coerced into various forms of forced labour. The vast majority (90 per cent) are exploited by private individuals or businesses which operate outside the rule of law; the remaining 10 per cent is exacted by state authorities.¹³⁸

The application of the labour provisions to trafficking would have been helpful in establishing a new international method for anti-trafficking strategies. Different from other international documents, the 2014 Protocol has a broad coverage and a lot of potential to protect victims' human rights. It addresses the importance of the root causes of vulnerability in Article 4(a). In addition to this, it builds up a perception for at-risk population groups in Articles 4(b) and 4(d). The Protocol develops the existing international obligations' 3P measures to 5P. However, it is only related to the forced labour issue, and is not related to the entire phenomenon of trafficking or modern-day slavery. It needs to underline the domestic dynamics such as the ethics of labour unions and the duties of relevant ministries, in order to make its approach fully functioning.

4.5. Human Trafficking in Transnational Organized Crime

At the start of the 1990s, transnational crime attracted serious consideration due to a significant increase in cross-border criminal activities, as a negative effect of globalization, and its inevitable result of increased border crossing.¹³⁹ The United Nations carried out an attempt at the identification of such crimes in 1994.¹⁴⁰ It recognised 18 definite categories of transnational organized crime, which had a

¹³⁸ ILO, 'Guy Ryder: "Trafficking in human beings is not a thing of the past"' (30 July 2014) <http://www.ilo.org/global/about-the-ilo/who-we-are/ilo-director-general/statements-and-speeches/WCMS_250609/lang--en/index.htm> accessed 11 November 2015

¹³⁹ Obokata, *Trafficking of Human Beings from a Human Rights Perspective* (n 58) 29-32

¹⁴⁰ G. Mueller, 'Transnational Crime: Definitions and Concepts' in P. Williams and D. Vlassis (eds), *Combating Transnational Crime* (Frank Cass 2001) 14

direct or indirect effect in two or more countries.¹⁴¹ According to a list compiled by Albanese, the two most common crimes were terrorism and money laundering. Other crimes were divided into three categories:¹⁴² the provision of illicit goods,¹⁴³ the provision of illicit services,¹⁴⁴ and the infiltration of business.¹⁴⁵ More recently, principal transnational activities have been briefly re-categorized – due to the changing tendencies of crime networks – by Reuter and Petrie, as follows:¹⁴⁶

1. Smuggling: goods, illicit drugs, protected species.
2. Contraband: (limitations – tariffs and quotas for commodities).
3. Services: trafficking in human beings as immigrants, prostitution, bound servitude, money laundering, and fraud.

Furthermore, despite all efforts to make a new and broad categorization, today's transnational organized crime networks focus not only trafficking humans, but also drugs and arms (in addition to money laundering), due to the potential profits to be made from these activities.¹⁴⁷

In this context, a number of international conventions and protocols were signed to aid the identification, prevention, and prosecution of those who participated in any transnational organized crime processes, with full respect afforded to the protection of the human rights of their victims. The fundamental instrument in the struggle against these crimes is the Convention on Transnational

¹⁴¹ Jay S. Albanese, *Organized Crime in Our Times* (Anderson Publishing 2004) 211

¹⁴² Ibid, 212

¹⁴³ Stealing of art and cultural items, stealing of intellectual objects, trafficking of arms, sea piracy, trade in human body parts, drug trafficking, airplane hijacking, and hijacking by land

¹⁴⁴ Money laundering, trafficking in persons, computer crimes, and environmental crime

¹⁴⁵ Insurance fraud, bankruptcy fraud, corruption, and bribery of public officials

¹⁴⁶ Peter Reuter and Carol Petrie, *Transnational Organized Crime: Summary of a Workshop* (National Research Council, Committee on Law and Justice 1999) 11-12

¹⁴⁷ D. Felsen and A. Kalaitzidis, 'A Historical Overview of Transnational Crime' in Philip Reichel (ed), *Handbook of Transnational Crime and Justice* (Sage 2005) 15

Organized Crime, which was adopted by General Assembly resolution 55/25 on November 15 2000. The Convention was submitted for signature at a high-level political conference brought together for that purpose in Palermo on 12 December 2000. It came into force on 29 September 2003.¹⁴⁸

The Convention is supplemented by three protocols which target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

A state must also be a party to this Convention in order to become a party to a Protocol.¹⁴⁹ The Convention has five main application areas: criminalisation, international cooperation, technical cooperation, witness protection, and implementation. The Convention's provisions apply *mutatis mutandis* to its Protocols, in which the Protocol's provisions will have the same essential meaning or effect as in the Convention.¹⁵⁰

Five offences are criminalised to eliminate transnational activities, which are any acts participated in by organized criminal groups,¹⁵¹ money laundering,¹⁵² corruption,¹⁵³ obstruction of justice,¹⁵⁴ and serious crimes.¹⁵⁵ There are two

¹⁴⁸ UN, 'Citing Explosion of TOC, Secretary-General Hails UN Anti-Crime Convention as Blueprint to Counteract Threat' (2010, Sixty-fourth General Assembly Plenary 96th & 97th Meetings) <<http://www.un.org/News/Press/docs/2010/ga10949.doc.htm>> accessed 27 June 2013

¹⁴⁹ Article 37 (2) of the Transnational Organized Crime Convention

¹⁵⁰ Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions. Addendum. Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto. A/55/383/Add.1, paras 62 to 87

¹⁵¹ Article 5 of the Transnational Organized Crime Convention

¹⁵² Ibid, Article 6

¹⁵³ Ibid, Article 8

¹⁵⁴ Ibid, Article 23

prerequisites required in terms of the Convention's application. Firstly, an offence must involve an organized criminal group.¹⁵⁶ Secondly, an offence must have some kind of transnational aspect.¹⁵⁷ In this regard, the trafficking business is a transnational crime because of its scope, nature, and elements. Article 2(a) of the Convention defines an organized crime group as a 'structure or group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences in order to obtain, directly or indirectly, a financial or other material benefit.' The definition provides two significant elements which are 'the acts' and 'the purpose' of an organized crime group.

The Convention highlights the importance of communication and cooperation between states and law enforcement. In this regard, one of the main functions of the Convention is to improve and strengthen state cooperation in mutual legal assistance,¹⁵⁸ investigation,¹⁵⁹ judicial proceedings,¹⁶⁰ and extradition.¹⁶¹ These fill the gaps between national legislation and international legislation, and provide uniformity. In addition to this, communication and cooperation play significant roles in preventing the actions of organized crime groups.

Another aim of the Convention is to increase working capacity. In this regard, the Convention requires that state parties develop specific training programmes, to assist law enforcement in the fight against transnational organized crime, not only at the international level but also the domestic level, in order to improve the

¹⁵⁵ Ibid, Article 3(1) b

¹⁵⁶ Ibid, Article 2(a)

¹⁵⁷ Ibid, Article 3.2

¹⁵⁸ Ibid, Article 18

¹⁵⁹ Ibid, Article 19

¹⁶⁰ Ibid, Article 21

¹⁶¹ Ibid, Article 16

effectiveness of intervention.¹⁶² To promote and review the implementation of this Convention and to improve the capacity of state parties, the Convention mandates a conference.¹⁶³ For this conference, each state is in principle required to provide an exchange of information, technical assistance, and cooperation with international and non-governmental organisations,¹⁶⁴ in order to collect detailed and comprehensive data about state legislation and practices.

State parties are in principle required to provide for all victims a right to protection and assistance, including the right to compensation and restitution, yet subject to domestic laws.¹⁶⁵ Non-binding obligations to protect victims render protection measures less effective at the domestic level, where views on protection are divergent and depend solely upon the discretion of states.¹⁶⁶

As noted in the above sections, trafficking in human beings is a human rights violation. This violation shows various trends and tendencies in different regions. Different trends show that traffickers' choices rely on their potential profit. In Chapter 7 I will underline how international organizations and their members can reduce the profit of international and domestic organized crime groups. International cooperation and domestic coordination among government institutions and NGOs in particular could make this business less profitable than other organized crimes.¹⁶⁷

¹⁶² Ibid, Article 29

¹⁶³ Ibid, Article 32(1)

¹⁶⁴ Ibid, Article 32(3)(a-e)

¹⁶⁵ Ibid, Article 25

¹⁶⁶ Siripatthanakosol (n 5) 102

¹⁶⁷ In this regard, Chapter 5 will emphasize Turkey's international and regional efforts to enhance coordination and co-operation. In Chapter 7, section 7.2.2, I will highlight that governments need to make trafficking 'too risky' and 'less profitable'

4.6. The Trafficking Protocol

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, is the only international legal document addressing human trafficking as a crime.¹⁶⁸ There are specific regulations to prevent the activity, to prosecute the perpetrators, and to protect the victims. To a certain degree, migrant smuggling and trafficking in human beings are linked. For instance, both are classified as irregular migration and assisted by intermediary agents. As stated in Chapter 3, they are different and need different legal interpretations, practices, and responses. On the one hand, migrant smuggling is a violation of state sovereignty. On the other hand, trafficking in human beings is a violation of human rights. In this context, the main reason for the idea of the separate Protocols was to draw a distinction between the smuggling of migrants and trafficking in persons.

The Protocol has three main purposes in its fight against human trafficking. Article 2 of the Protocol aims to prevent and combat trafficking in persons; to protect and assist the victims of such trafficking, paying particular attention to women and children, and with full respect for their human rights; and to promote cooperation among state parties.

The Trafficking Protocol mandates three principles in conjunction with the Transnational Organized Crime Convention. Firstly, a state is required to be a party to the Convention in order to become a party to the Trafficking Protocol.¹⁶⁹ Secondly, the Protocol's provisions must be consistent with the Convention's

¹⁶⁸ UN.GIFT, 'Human Trafficking: An Overview' (UNODC, 2008)
<<http://www.ungift.org/docs/ungift/pdf/knowledge/ebook.pdf>> accessed 17 July 2013

¹⁶⁹ Article 32 (2) of the Transnational Organized Crime Convention

provisions.¹⁷⁰ Thirdly, offences established in accordance with the Protocol shall be regarded as offences established in accordance with the Convention.¹⁷¹

Offences established in the Convention cover a range of criminal activities involving elements of transnationality and organized crime. Because of the consistency between the Convention and the Protocol, all provisions of the Protocol must be implemented in conjunction with the Convention. State parties are required to take necessary measures, including legislative and administrative measures, in accordance with fundamental principles of their domestic law, to ensure the implementation of its obligations.¹⁷² This article provides the minimum requirements to fight against human trafficking.

The protocol treats trafficking primarily as an international matter, but such crimes also occur internally. Furthermore, the involvement of an organized crime group (which is a prerequisite under the Convention) is not always present. The Trafficking Protocol does not address international norms, such as the principles of non-discrimination and non-expulsion (non-refoulement),¹⁷³ with regard to protection consistent with other international obligations to human rights. In relation to this issue, Haynes emphasizes that states should create a distinct immigration status for victims.¹⁷⁴ Similarly, the UNODC has placed emphasis upon the immigration status of victims and their return and reintegration.¹⁷⁵ In this

¹⁷⁰ Article 1 (1) of the Trafficking Protocol

¹⁷¹ Ibid, Articles 1(3) and 5

¹⁷² Article 34(1) of the Convention

¹⁷³ Article 33 of Convention and Protocol Relating to the Status of Refugees states that ‘No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.’

¹⁷⁴ Dina Francesca Haynes, ‘Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers’ [2004] 26(2) Human Rights Quarterly 221-261

¹⁷⁵ UNODC, *Toolkit to Combat Trafficking in Persons Global Programme against Trafficking in Human Beings* (United Nations, 2008) 303

regard, the reflection period, accompanied with temporary or permanent residence permits and non-refoulement status, establishes another relevant obligation. The UNODC requires that the reflection period grants victims of trafficking the possibility of beginning to recover from their experiences and of making informed decisions about whether to assist and cooperate with criminal proceedings.¹⁷⁶ It can be said that repatriation is not a sufficient solution to protect victims because trafficked persons may face real threats of retaliation from traffickers, together with social and economic problems, upon their return.¹⁷⁷

Non-refoulement or non-return applies in particular to refugees. However, the ECtHR case of *Bensaid v. the United Kingdom* demonstrates its application to people who are likely to face torture, or inhuman or degrading treatment perpetrated by non-state actors.¹⁷⁸ Obokata has suggested that its application extends even further, examining the ECtHR case of *Barar v. Sweden*,¹⁷⁹ in which the Court had to consider whether returning the applicant to Mauritania (where he could face slavery), could give rise to a violation of the Convention.¹⁸⁰ These norms provide an effective and victim-oriented perspective for state parties, in order to protect victims from secondary traumas.

As stated in Chapter 2, the Protocol sets out a definition of trafficking in human beings. As a significant part of the treaty-making process, the discussion regarding the definitions to be included in the Protocol proved to be the most controversial

¹⁷⁶ Ibid, 304

¹⁷⁷ Jenna Shearer Demir, 'The Trafficking of Women for Sexual Exploitation: A Gender-Based and Well-Founded Fear of Persecution?', 21-23 <<http://sites.tufts.edu/jha/files/2011/04/a115.pdf>> accessed 21 October 2013

¹⁷⁸ *Bensaid v United Kingdom* App no. 44599/98 (ECHR, 6 February 2001), para 34

¹⁷⁹ Tom Obokata, Trafficking of Human Beings from a Human Rights Perspective, Towards a Holistic Approach (Martinus Nijhoff 2006) 156; *Barar v Sweden* (Admissibility Decision) App no. 42367/98 (ECHR, 19 January 1999)

¹⁸⁰ Virginia Mantouvalou, 'Servitude and Forced Labour in the 21st Century: The Human Rights of Domestic Workers' [2006] 35(4) Industrial Law Journal 395, 403

issue.¹⁸¹ Women's organizations played a significant role during the drafting process to differentiate sex work from trafficking.¹⁸² Their role was to defend the idea of 'protection for all victims' not just 'protection for victims who could prove they had been forced'.¹⁸³ Despite these efforts, Munro states that the marginalization of an ongoing 'special relationship' between trafficking and prostitution makes trafficking for the purpose of prostitution much more marginalized.¹⁸⁴

Before considering the limitations of the Protocol and the definition of trafficking, the highlights of the Protocol should be evaluated. Under Article 2(b) of the Protocol, trafficked persons are no longer to be treated as criminals but as victims of crime. Article 10 of the Protocol provides details of a global response to a global crime. Perhaps the most important outcome of the Protocol is that there is now an agreed-upon international definition of human trafficking and an agreed-upon set of mechanisms for the prosecution, protection, and prevention of the practice, providing bases for potential changes in national anti-trafficking legislation and further harmonizing the legal tools of different countries. Under Articles 3a and 3b of the Protocol, all victims are protected – not just those who can prove force and coercion. The consent of a victim of trafficking in persons to the intended exploitation set forth in Article 3(a) shall be irrelevant where any of the means set forth in 3(a) have been used. Despite the difference between prostitution and trafficking, the Protocol acknowledges that most trafficking cases

¹⁸¹ Janice G. Raymond, 'The new UN Trafficking Protocol' [2002] 25(5) Women's Studies International Forum 491, 493

¹⁸² Moshoula Capous Desyllas, 'A Critique of the Global Trafficking Discourse and U.S. Policy' [2007] 34(4) Journal of Sociology & Social Welfare 57, 62

¹⁸³ Raymond, 'The new UN Trafficking Protocol' (n 175) 494; Kara Abramson, 'Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol' [2003] 44 Harvard International Law Journal 473

¹⁸⁴ Vanessa Munro, 'Stopping Traffic? A Comparative Study of Responses to the Trafficking in Women for Prostitution' [2006] 46 British Journal of Criminology 318, 328

are related to the pursuit of prostitution and other forms of sexual exploitation. Hence, the exploitation of prostitution and trafficking cannot be separated in accordance with the Protocol. Another significant recognition is that the elements of transnationality are not necessary for trafficking crimes. However, the Protocol takes extra care for international cooperation in order to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking. In other words, despite the Protocol's attention to domestic measures, transnational features of the trafficking crime are more explicit in the Protocol. Domestically trafficked victims are also protected and subject to the provisions listed in Article 3 of the Convention against Transnational Organized Crime. Article 3a changed the key actionable element in trafficking crime from 'movement across a border' to 'exploitation'.

Despite its wide-ranging consideration of all forms of trafficking, the definition has a limitation. The term 'exploitation' needs further clarification. It is as yet ill-defined. The Human Rights Caucus argued for the removal of this term because they considered it to be vague and controversial.¹⁸⁵ The UN Commission on Crime Prevention and Criminal Justice was unable, after long debates, to reach agreement upon such a term. According to the *Travaux Préparatoires*, the Protocol addresses 'the exploitation of the prostitution of others and other forms of sexual exploitation' only in the context of trafficking in persons.¹⁸⁶ In this regard, states have an opportunity to clarify or interpret such terms in their domestic laws. In

¹⁸⁵ LeRoy G. Potts, Jr., 'Global Trafficking in Human Beings: Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons' [2003] 35 The George Washington International Law Review 228, 238

¹⁸⁶ OHCHR, 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' (2002) Text presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1) <<http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>> accessed 01 December 2013 para 64

considering the lack of clarity over the term ‘exploitation’, Munro states that it is deemed problematic and has practical consequences.¹⁸⁷ Because of this problematic definition, if victims cannot prove that they have been forced or coerced, they may be prosecuted as criminals under immigration or prostitution laws.

The Trafficking Protocol was the first international instrument to address prevention, prosecution, and protection. Apart from the general provisions (Article 1-5), the Protocol covers three main areas: protection provisions (Articles 6-8); prevention, cooperation, and other measures such as training and information exchange (Articles 9-13); and the final provisions (Articles 14-20). In this respect, the Protocol emphasizes the need to adopt a comprehensive approach to trafficking in persons which addresses all aspects of the crime and which balances criminal justice concerns with the need to ensure the rights and protection of victims. Based on the objectives of the Protocol and its provisions, the Anti-Trafficking Framework assists Member States to reach the ultimate goals of the Protocol.¹⁸⁸

The UNODC outlines that origin and destination countries must: ‘consider implementing measures to provide for the physical, psychological and social recovery of trafficked victims’.¹⁸⁹ According to the UNODC, governments should provide support in the following forms: medical, psychological, language and translation, rehabilitation, skill training and education, and shelter. Similarly, Piotrowicz notes that the tools for victim protection should provide solutions for victims’ needs, such as medical treatment, access to competent translators and

¹⁸⁷ Vanessa Munro, ‘Of rights and rhetoric: discourse of degradation and exploitation in the context of sex trafficking’ [2008] 35 *Journal of Law and Society* 259-262

¹⁸⁸ UNODC, *International Framework for Action: To Implement the Trafficking in Persons Protocol* (New York, UN, 2009) 3

¹⁸⁹ UNODC, *Toolkit to Combat Trafficking* (n 175)350

interpreters, and access to legal advisors.¹⁹⁰ In this regard, the ECtHR has held that the spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking.¹⁹¹ It is possible to criticize the Protocol's provisions over protection in two ways. Firstly, victims of trafficking have important roles as witnesses, and protection provisions need to be utilised from the very beginning of trafficking crimes to the very end. In other words, investigation, identification, and prosecution processes should meet the special needs of victims. Secondly, in accordance with my previous arguments, I argue that the protection framework is inadequate to provide comprehensive responses to victims' needs. Most of the provisions of Article 6, such as the protection of privacy, the identity of the trafficking victim,¹⁹² and the protection of any information in relevant court proceedings regarding the victim,¹⁹³ depend upon the endeavours of state parties or the discretion of state parties. Except for the mandatory language surrounding the obligation to provide basic protection measures for victims who are not guaranteed the same standard of protection,¹⁹⁴ the language of the Protocol's protection provisions is optional.

¹⁹⁰ Piotrowicz, 'Human security' (n 57) 410

¹⁹¹ *Rantsev v. Cyprus and Russia*, Application no. 25965/04, (ECHR 07 January 2010) para 284 Despite the fact that the ECtHR has generated much praise over the years, rulings of the ECtHR have been a cause of considerable dissatisfaction. Sometimes an outcome seems manifestly unjust, sometimes the court's reasoning appears to descend into opacity right at the most important moment, sometimes the court seems unreasonably stubborn, and sometimes the very narrow remit of the court itself is reason for dissatisfaction. Despite its deficiencies, the practices of the ECtHR provide opportunity to follow the evolution of human rights in Europe and to analyse the outcomes of the Court in accordance with the human rights perspective. Marie-Benedicte Dembour, *Who Believes in Human Rights?: Reflections on the European Convention* (Law in Context), (Cambridge, Cambridge University Press, 2006); Stephen Humphreys, 'Who Believes in Human Rights? Reflections on the European Convention by Marie-Bénédicte Dembour' [2007] 70(4) The Modern Law Review 709

¹⁹² Article 6(1) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons (n 137)

¹⁹³ *Ibid*, Article 6(2)

¹⁹⁴ *Ibid*, Article 6(5)

The Protocol can also be criticized because of the lack of effective witness protection provisions. Victims may be fearful or hesitant to cooperate with law enforcement officials, especially in the course of testifying against offenders. The Transnational Organized Crime Convention's protection provisions surrounding witnesses should be taken into consideration.¹⁹⁵ When repatriating victims, cooperation between the source country and the destination country is a requirement to ensure a safe return.¹⁹⁶ In this respect, state parties in a repatriation case (both the countries of origin and destination) should take into consideration the Protocol's preventative measures to prevent re-trafficking of victims who have already suffered from this crime.

In addition to protection provisions, the Protocol builds up legislative and policy-oriented prevention provisions to combat trafficking. In addition to these, it establishes cooperation provisions as a tool for state parties. Article 9 of the Protocol outlines the main purposes of preventative instruments, under which state parties are required to establish comprehensive policies, programs, and other measures in pursuit of two main aims: to prevent and combat trafficking; and to protect victims (especially women and children) from the risk of re-victimization. With these, the Protocol highlights the importance of bilateral or multilateral cooperation to achieve prevention-related goals.¹⁹⁷ Such measures include information exchange regarding travel documents and the fraudulent use of travel documents.¹⁹⁸ Probably the most solid preventative method offered by the Protocol is that state parties should provide adequate training for law enforcement

¹⁹⁵ Ibid, Article 24(4)

¹⁹⁶ Ibid, Article 8

¹⁹⁷ Ibid, Article 9(4)

¹⁹⁸ Ibid, Article 10(1) and 12

officials.¹⁹⁹ This is important because, with training programs, relevant officials who are working on the prevention of trafficking, the prosecution of traffickers, and the protection of victims, can work carefully to examine every detail of the trafficking process in order to provide better services in the investigative, prosecutorial, and rehabilitation processes.

State parties are required to strengthen their border controls as part of the prevention measures. As stated in section 2.4.4, tighter border controls or stricter visa regimes have side effects, such as illegal entry and underground businesses. As a part of a holistic perspective, preventative measures should address the root causes of trafficking and bring solutions against them. As a business, trafficking in human beings flows to meet demand. Prevention provisions should take into consideration the demand issue. To decrease negative effects on victims and societies, state parties need to organize public education programs, anti-trafficking campaigns, and socio-economic welfare initiatives. The regulations of Article 9 of the Protocol provide a general perspective in relation to the above elements. However, the establishment of academic and social perceptions hostile to trafficking requires practices which reflect these social concerns. The Protocol fails to consider state parties' traditional, cultural, religious, and sociological parameters, such as societies' demands, religions influences on trafficking, the role of culture in trafficking, etc., and does not mention their significant role in anti-trafficking policies.²⁰⁰ Another important issue is the content of trafficking, which is a systematic violation of human rights. Both the countries of origin and of

¹⁹⁹ Ibid, Article 10(2)

²⁰⁰ I evaluated the importance of these elements particularly for establishing perception in section 3.5 of Chapter 3. I will also emphasize these elements' importance in the fight against trafficking in Chapter 6

destination need to emphasize the rights-violating characteristics of the trafficking business in order to protect potential victims.

In brief, the Protocol mostly relates to the prosecution of trafficking crime, which is not particularly relevant to the protection of victims or the prevention of trafficking. This means that the Protocol works to evaluate the consequences of trafficking, not the reasons for it. It has comprehensive measures across almost all levels of the trafficking business. In addition to monitoring mechanisms, it needs to enhance international and regional pressures in source, transit, and destination countries.²⁰¹

4.7. Partnership and Perception: The Implementations and Effectiveness of the Trafficking Protocol

Partnership and perception are the main elements of the 5P model. In this regard, this section will evaluate the Protocol in terms of its partnership and perception efforts. Both the Organized Crime Convention and the Trafficking Protocol strongly encourage state parties to cooperate and exchange information at the international level.²⁰² In this regard, the European Court of Human Rights in the case *Rantsev v. Cyprus and Russia* emphasizes that to carry out full and effective investigations into trafficking, states are required to ‘take such steps as are necessary and available in order to secure relevant evidence, whether or not it is located in the territory of the investigating State.’²⁰³ As a further confirmation, the Court emphasizes that ‘in addition to the obligation to conduct a domestic investigation into events occurring on their own territories, member States are also

²⁰¹ In Chapter 6, section 6.5, I will focus on how states change the balance between supply and demand. For example, states should build perception to reduce buyers’ tendencies, prosecute perpetrators and those who aid and abet perpetrators.

²⁰² Articles 7, 13, 20, 26, 27 and 30 of the Convention; Article 9 of the Protocol

²⁰³ *Rantsev v. Cyprus and Russia* (n 191))para 241

subject to a duty in cross-border trafficking cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories.²⁰⁴

According to Cho and Vadlamannati, the UN Trafficking Protocol²⁰⁵ is a human rights treaty calling for a concerted effort against human trafficking and for the protection of victims.²⁰⁶ As highlighted in section 4.6, Article 2 underlines that protection and assistance-related efforts must be performed with full respect for victims' human rights, while Article 10 emphasizes that training programs for law enforcement officials should be focused on victims' human rights. While the Protocol pays lip service to human rights with these two Articles, a true commitment to the human rights approach is lacking. However, Scarpa states that the Protocol focuses on the prosecution of traffickers rather than creating firm and specific obligations on states to assist victims or address the factors contributing to the prevalence of transnational sex trafficking.²⁰⁷ In other words, the law enforcement framework prioritizes prosecution over the protection of victims and the prevention of trafficking.²⁰⁸ As a result of the Protocol's focus, governments have been reluctant to be a part of it, given that it limits their sovereignty.²⁰⁹ Ratification of the Protocol makes governments responsible for regulating domestic anti-trafficking infrastructures, such as opening shelters, providing

²⁰⁴ Ibid, para 289

²⁰⁵ The Trafficking in Persons Protocol has 167 states parties; 117 states have also ratified the Protocol as of 19 September 2015

²⁰⁶ Seo-Young Cho and Krishna Chaitanya Vadlamannati, 'Compliance with the Anti-trafficking Protocol' [2012] 28 European Journal of Political Economy 249, 250

²⁰⁷ Silvia Scarpa, *Trafficking in Human Beings: Modern Slavery* (Oxford University Press, 2008) 65; Kinsey Alden Dinan, 'Globalisation and National Sovereignty: From migration to trafficking' in Sally Cameron and Edward Newman (eds), *Trafficking in Humans: Social, Cultural and Political Dimensions* (United Nations University Press 2008) 74

²⁰⁸ Laura L. Shoaps, 'Room for Improvement: Palermo Protocol and The Trafficking Victims Protection Act' [2013] 17(3) Lewis&Clark Law Review 931, 949

²⁰⁹ Christine Min Wotipka and Kiyoteru Tsutsui, 'Global Human Rights and State Sovereignty: State Ratification of International Human Rights Treaties, 1965–2001' [2008] 23(4) Sociological Forum 724, 728

financial assistance, or providing temporary residency visas to victims.²¹⁰ In other words, the costs of such domestic changes form the main reservations of governments.²¹¹

In a human rights-based approach, victims' protection, rehabilitation, and adaptation for a life after trauma should be key aspirations for states. In this regard, it is hard to say the Trafficking Protocol is a human rights instrument because of its very limited human rights protections.²¹² According to Obokata, the Palermo Protocol's weak provisions regarding nation state human rights obligations should not be considered a disadvantage because the Protocol can be supplemented by international human rights law and other international mechanisms.²¹³ To transform the Trafficking Protocol from a law enforcement standpoint to a human rights viewpoint, Gallagher states that the failure to clearly specify certain rights, such as the right to immediate protection and support and the right of access to an effective remedy, implied that such rights did not in fact exist. A similar inference could be made of the Protocol's failure to articulate certain critical obligations such as the obligation to proactively identify victims.²¹⁴ Moreover, the Trafficking Protocol adopts an unfortunate choice of language. It uses an optional, rather than mandatory tone in regards to the issue of victim protection. As I highlighted above, victims, their violated rights, and the solutions or compensations for their vulnerability should be the main aspiration of all such international documents.

²¹⁰ Heather M. Smith, 'Sex Trafficking: Trends, Challenges, and the Limitations of International Law' [2011] 12 Human Rights Review 271, 283

²¹¹ University of Queensland, 'Trafficking in Persons in International Law' (Human Trafficking Working Group, 2015) <<http://www.law.uq.edu.au/documents/humantrafficking/international-law/UQ-HTWG-International-Law.pdf>> accessed 11 January 2016

²¹² Anne T. Gallagher, 'Two Cheers for the Trafficking Protocol' [2015] 4 Anti Trafficking Review 14, 16

²¹³ Tom Obokata, Trafficking of Human Beings (179)164-165.

²¹⁴ Gallagher (n212) 17

At this point, it is important to look at the differences between ‘sincere ratifiers’ and ‘insincere ratifiers’. Simmons states that treaties are an opportunity for ‘sincere ratifiers’ who want to improve their policy.²¹⁵ However, there may be other possible reasons behind ratification. Some scholars emphasize that the main reason behind ratification could be to prevent criticism for neglecting international agendas, or to use EU or other organisational membership to disguise violations of such norms.²¹⁶ Because of these insincere ratifications and governments’ reservations, the practical aims behind such international instruments fall below their targets with regard to prosecution, protection, prevention, and partnership programmes.

The prosecutorial requirements within the Trafficking Protocol would necessitate the adoption of new policies and legislation that would not only impose a monetary burden on a country, but also trigger domestic resistance due to potential conflicts with existing law.²¹⁷ Consequently, the legal status of victims changes, from illegal migrants, to victims in possession of temporary residence permits. The Protocol also outlines heavier punishments for traffickers. However, these measures lead to high costs for law enforcement institutions in developing and implementing practices (such as training, and awareness campaigns) that give effect to the new laws.²¹⁸ In other words, changes to prosecution processes in national legislative systems require the adoption and implementation of long and expensive programmes. However, trainings for law

²¹⁵ Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009) 58

²¹⁶ Cho and Vadlamannati (n 206) 250; Oona A. Hattaway, ‘Do human rights treaties make a difference?’ [2002] 111 Yale Law Journal 1935, 1939-1945; James Raymond Vreeland, ‘Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture’ [2008] 62(1) International Organization 65, 72; Dina Francesca Haynes, ‘Used, Abused, Arrested and Deported (n 174)232

²¹⁷ Cho and Vadlamannati (n 206) 252

²¹⁸ Ibid

enforcement officials in particular and public awareness campaigns have a significant role. These help to build up an official and social perception against the crime. In the 5P model, due to the main aim of the model, which is protection of the violated human rights of victims, high costs and long term returns are expenses that states must pay. Protection policies, like prosecution policies, require fundamental transformations in immigration and witness protection law. Due to the change in the status of victims, they need protection and assistance policies which include shelter, medical care, job training, legal assistance, and temporary or permanent residence.

International, regional and national changes to anti-trafficking provisions are arguably ill-equipped to reflect the common sense of international actors. Indeed, more than 2 billion people do not fall under the full protection of the Trafficking Protocol.²¹⁹ The Global Report 2014 and 2015 TIP Report state certain deficiencies in anti-trafficking efforts.²²⁰ According to both reports, an analysis of the geographic dimension of this crime is crucial to identify and monitor the crime within specific regions. At this point, the significance of a state's partnerships inside its territory becomes visible. In order to allocate and prioritize anti-trafficking efforts effectively, the collection of statistical data is crucial; this requires the cooperation of governmental and non-governmental sources. Furthermore, to create a comprehensive anti-trafficking effort, which is the intended outcome of the 5P model, and to eliminate the weaknesses in policy-making processes, governments need to build effective partnerships with civil

²¹⁹ UNODC, 2014 Global Report (n 85) 12. According to the report, '9 countries still lack legislation altogether, whereas 18 others have partial legislation that covers only some victims or certain forms of exploitation. Some of these countries are large and densely populated, which means that more than 2 billion people lack the full protection of the Trafficking in Persons Protocol.'

²²⁰ U.S Department of State, *The 2015 TIP Report* (Washington, U.S. Department of State); UNODC, 2014 Global Report (n 88) 16, 36 and 70

society and the private sector. Perhaps one of the most important aims for governments should be the pursuit of bilateral and multilateral partnerships. Because of conflicts in their national legislation and fears of intervention with sovereignty, governments are hesitant to establish partnerships. To eliminate these problems, governments need to adopt a human rights approach, rather than a continued focus on state-centric efforts. On 9 February 2016, an important call was made for strengthened global partnerships to combat human trafficking by the UN.²²¹ This is a promising effort for future work on human trafficking. In the context of this call, former Secretary General Ban Ki-moon highlighted the importance of strengthening partnerships and coordination in efforts to end the suffering of all victims of trafficking, including those subjected to slavery, servitude, forced labour, or bonded labour. In addition to this approach, he emphasized the important role of human rights for anti-trafficking strategies.²²² In short, the UN will design its strategy in order to promote human rights and to establish solid partnerships and a clear approach against trafficking in human beings.

Despite the Protocol's mention of the establishment of 'perception', which is about awareness raising campaigns and trainings for law enforcement officials, its efforts remain limited and narrow in Articles 9 and 10. However, I believe that institutional and social perceptions are the most important elements for an effective anti-trafficking strategy. Institutional perception helps victims through the process of the investigation of the crime, to the identification and rehabilitation processes. Society's perception decreases demand, establishes a moral compass,

²²¹ UN, 'UN officials call for strengthened global partnerships to combat human trafficking' <<http://www.un.org/apps/news/story.asp?NewsID=53196#.VvExgctVqUn>> accessed 11 February 2016

²²² Ibid

and helps detect crime in their neighbourhood. In this regard, the Protocol fails to mention the crucial importance of societies' cultural, traditional, and religious elements as prevention and protection methods.

4.8. Conclusion

This chapter argues that the existing international framework on human trafficking has proven itself to be ill-equipped and inadequate to deal with the current problem of human trafficking. Despite all their efforts, trafficking in human beings still maintains its reputation among other lucrative illegal business. Legal instruments are prior conditions to allow a state into an international organization as a party. In other words, international organizations pay attention to a government's signature or ratification of an instrument, rather than the government's actual efforts against trafficking. This means that international organizations provide policy isomorphism to solve a specific matter with universal consent.²²³ In this regard, cooperation between international and national instruments on trafficking is the main way to eliminate this crime.

This chapter has attempted to analyse the influence of international instruments on Turkey's domestic transformation. From the early 1900s, slavery, 'slavery-like' practices, and human trafficking have been treated as serious crimes by various organizations, from their own perspectives. For example, the ILO emphasizes the negative effects of human trafficking in general, and specifically the forced labour issue. Turkey has been a part of international organizations and participated in their efforts against trafficking in human beings. In particular, transnationality and human rights violations in the trafficking process are important for the further

²²³ Claudio. M. Radaelli, 'Policy Transfer In The European Union: Institutional Isomorphism as a Source of Legitimacy' [2000] 13(1) Governance 30

chapters of this thesis. As noted above, human trafficking is a brutal business that violates human rights. In this context, I will analyse the effects of Turkey's policy transformation process in order to determine deficiencies in the context of international instruments, and to establish a solid anti-trafficking strategy in Chapter 7, by using the theoretical pathways of the 5P model as emphasized in Chapter 3. Trafficking in human beings has various determinants, such as the social and political conditions of source countries, and the legal and political advantages and disadvantages of destination countries. These two determinants affect traffickers' choices, the direction of business flow, and victims' vulnerability.

5. Turkish Efforts Related to the Trafficking of Women under Regional and Bilateral Partnerships and their Impact on Turkey's Domestic Anti-Trafficking Strategy

5.1. Introduction

Turkey is a member of many organizations, both regional and international. These will be looked into in further depth, together with the bilateral treaties ratified by Turkey for combating trafficking in human beings. These memberships and partnerships help Turkey to address this problem in a coordinated way. Despite their documented aims, this chapter argues that most of these partnerships do not devote their efforts to victim-oriented or preventative purposes. Promoting international cooperation (partnership) is one of the key elements in the '5P' model and the international legal instruments analysed in Chapter 4. Partnership is the fourth 'P' of the '5P' model. It has two different dimensions. First, it symbolizes the relationship between states in international, regional, and bilateral cooperation. Second, it refers to coordination between state agencies or NGOs. The role of partnership in the 5P model is to connect different aspects and needs of the approaches of various states, organizations, institutions, and NGOs.

In this regard, this chapter begins by attempting to demonstrate the connection between regional organizations' efforts towards combating trafficking in human beings and their influence over time on the legislative transformation with regard to trafficking in Turkey. This chapter mainly focuses on Turkey's regional and bilateral partnerships, to analyse the functioning of this 'P' in the case of Turkey. This chapter also argues that Turkey uses these partnerships to reach its political

aspirations, which are EU membership or visa liberalisation, and to become a regional power.

Before expanding upon the main element of this chapter, which is Turkey's regional and bilateral partnerships, it is helpful to identify the principles which will be used to classify them. Although no rigid functional distinctions are made in practice, I have classified the organizations based on functions which are mainly related to security, economy, and politics. In every section related to this classification, I will indicate their roles in anti-trafficking strategies in terms of the partnership, and the reflections of their partnership efforts on the other 'P's. As a result of these partnership efforts, Turkey has changed its domestic strategies related to prevention, prosecution, protection, and perception. The significant role of this classification for the organizations is to illustrate Turkey's efforts with regard to international partnership and to examine these partnerships' role in Turkey's main failures with regards to its anti-trafficking agenda.

5.2. Security-Based Partnerships and their Effects on Turkey's Anti-Trafficking Regime

If security-based organizations had unified their power in order to protect the violated human rights of trafficking victims, they would have produced regional solutions to the issue. However, they focus on their threat definitions, which, although they refer to human trafficking, do not regard this as a main threat concern. International and regional partnerships have significant roles in some of the elements of the 5P model. For instance, security-based partnerships are important for prevention. Sharing information and joint operations amongst members provide operational power. However, this operational power should be supported by a motivation which concentrates on the protection of victims' rights

and an unbiased perception of their partners' law enforcement officials. In this regard, Turkey is involved in the Organization for Security and Co-operation in Europe (OSCE), the North Atlantic Treaty Organization (NATO), Europol, and Interpol, with respect to various security matters, including trafficking in human beings.¹

The OSCE Permanent Council adopted the OSCE Action Plan to Combat Trafficking in Human Beings in 2003, which is the principal document against all types of trafficking in human beings.² Since then, the OSCE has also adopted numerous Ministerial Council decisions and declarations on human trafficking that reinforce the Action Plan and update OSCE commitments in this area.³ The key activities of the OSCE are the prevention of human trafficking, the prosecution of traffickers, and the protection of victims' rights, bolstering multi-disciplinary partnerships to facilitate dialogue and cooperation between public authorities, NGOs, trade unions, and other institutions.⁴

¹ Turkey has been a member of the OSCE since its inception in 1975, when it was formed as a standing conference (CSCE), and has actively supported its development and strengthening. Turkey has been a member of NATO since 1952. Between Turkey and Europol, there is a cooperation agreement which Turkey signed on 27 March 2000 (OJ 2000/C106/01). Created in 1930, INTERPOL Ankara is one of the first and oldest INTERPOL National Central Bureaus (NCBs)

² It was later endorsed by the Ministerial Council on 2 December 2003. OSCE Ministerial Council, Decision No. 2/03 Combating Trafficking in Human Beings

³ For instance, see: OSCE Ministerial Council, Decision No. 3/06 Combating Trafficking in Human Beings (21 June 2006); OSCE Ministerial Council, Decision No. 15/06 Combating Sexual Exploitation of Children (Brussels, 5 December 2006); OSCE Ministerial Council, Decision No.5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach (Helsinki, 5 December 2008); OSCE Ministerial Council, Ministerial Declaration on Combating All Forms of Human Trafficking, MC.DOC/1/11/Corr.1 (Vilnius, 7 December 2011. For detailed information about all documents see Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 'Combating Trafficking and Exploitation: Human Rights, Social Justice and the Rule of Law' (OSCE, 19 December 2013) SEC.GAL/195/13/Rev.1

<<http://www.osce.org/secretariat/109731?download=true>> accessed 21 November 2015

⁴ OSCE, 'Factsheet of Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings' <<http://www.osce.org/cthb/74755?download=true>> accessed 11 October 2014

Despite the aspirations of the OSCE and OSCE-ODIHR (Office for Democratic Institutions and Human Rights) with respect to trafficking in human beings, it is hard to find country reports which assess member states and their positions in the trafficking business. On 30 July 2002, the Permanent Mission of Turkey published a country report for Turkey.⁵ It provided a detailed assessment of Turkey's legislative and administrative weaknesses, and the anti-trafficking measures necessary for the country. Beyond this report, there are no further reports which evaluate Turkey's progress. On 7 October 2007, the Delegation of Turkey made a self-assessment in the 'Human Dimension Implementation Meeting'.⁶ In this assessment, Turkey placed greater emphasis upon what it had done in relation to trafficking, rather than what it should have done. In more recent documents from the OSCE, it is hard to find any relevant information that evaluates or examines the extent of trafficking in Turkey. In this regard, I do not think that the relationship between Turkey and the OSCE contributes significantly towards the creation of a beneficial partnership to combat human trafficking.

NATO began a zero-tolerance policy on trafficking in human beings, ratified by the Istanbul Summit in June 2004.⁷ Yet NATO does not see itself as the primary organization combatting trafficking in human beings, but is merely working to add value wherever it can.⁸ In this respect, its policies are designed to add value to anti-trafficking operations, rather than to pursue an active counter-trafficking strategy.

⁵ OSCE, 'Country Report on Trafficking in Human Beings: Turkey (PC.DEL/607/02)' <<http://www.osce.org/odihr/19483?download=true>> accessed 24 November 2015

⁶ OSCE 'Ongoing Efforts of Turkey in Fighting Against Trafficking in Human Beings' <<http://www.osce.org/odihr/27871?download=true>> accessed 24 November 2015

⁷ NATO, 'NATO policy on combating trafficking in human beings' <http://www.nato.int/cps/en/natolive/topics_50315.htm> accessed 28 July 2014

⁸ Ibid

With regard to human trafficking, the NATO School has developed three modules. Its students are informed about the issues of trafficking through a General Module, a Module for Military Commanders, and a Law Enforcement Module. All of these are accessible on a web version for advanced distributed learning purposes to NATO and Partnership for Peace (PfP) training institutions.⁹ The Turkish PfP Training Centre in Ankara developed a one-week course on Combating Smuggling and Human Trafficking as well; it disseminated this course by dispatching mobile training teams in 2005 to Albania, Azerbaijan, Georgia, Kazakhstan, Romania, the Former Yugoslav Republic of Macedonia, Tajikistan, Turkmenistan, and Ukraine.¹⁰ In terms of Turkey's anti-trafficking efforts, NATO has almost no impact. Despite the roles and purposes of NATO's Practice Plan,¹¹ NATO's contribution to Turkey's anti-trafficking policy is negligible.

Despite all these indirect efforts, and NATO's self-assessment, which underlines that it is not an organization primarily aimed at combating trafficking, NATO has an unhappy history in relation to the trafficking of women. During the Kosovo War, NATO soldiers, UN police, and western aid workers generated 80% of the income for pimps and human traffickers.¹² According to Traynor, the trafficking of women and girls for sexual exploitation in Kosovo parallels similar

⁹ Keith J. Allred, 'Combating human trafficking' (NATO Review, 2006)

<http://www.nato.int/docu/review/2006/Invocation-Article-5/Combating_human_trafficking/EN/index.htm> accessed 08 August 2014

¹⁰ U.S. Department of State, *The 2008 TIP Report* (Washington, U.S. Department of State) 248

¹¹ NATO, 'Policy on Combating Trafficking in Human Beings'

<<http://www.nato.int/issues/trafficking/index.html>> accessed 28 July 2014;

On 7 August 2004, the Plan was ratified. It required member states to take a variety of actions to reduce human trafficking; these include: reviews of national legislation; ratification, acceptance or approval of the UN Convention Against Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; training of all personnel taking part in NATO-led operations; contractual provisions that prohibit contractors from engaging or facilitating human trafficking; and a commitment to evaluate the implementation of their efforts as part of a set of ongoing reviews carried out by competent authorities

¹² Amnesty International, 'Kosovo (Serbia and Montenegro): "So does it mean that we have the rights?" Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo' (Amnesty International, 2004) <<http://dediserver.eu/hosting/ethnodoc/data/KO20040506-1.pdf>> accessed 16 November 2015

phenomena in Bosnia, where the arrival of thousands of NATO peacekeepers in 1995 fuelled a thriving forced prostitution industry.¹³ Notwithstanding this, Amnesty International has highlighted that there was no evidence of any criminal proceedings relating to trafficking against any military personnel in their home countries.¹⁴ NATO needs to disassociate itself from these dishonourable practices before it is able to resume its leadership role in relation to the crime of trafficking. Working on trafficking would help NATO atone for its dark history.

INTERPOL is an international organization that provides information and support to national police with regard to various issues. On the subject of human trafficking, it supports national police in tactical deployments in the field, aimed at breaking up the criminal networks behind trafficking in human beings. It provides training workshops to ensure that officers on the ground are trained in a range of skills, including specialist interview techniques. It also establishes links with local social services or relevant IGOs and NGOs to ensure that all victims are cared for and receive support, so as to encourage reintegration.¹⁵

Member countries are required to do all within their power to execute the decisions of the General Assembly.¹⁶ In this regard, Turkey has to be part of INTERPOL's responses to trafficking. In order to reduce the problem, it takes concrete action in the field to dismantle trafficking networks, utilizes technical tools and systems for sharing information globally, establishes partnerships to work across sectors, and brings together experts. INTERPOL has held an

¹³ Ian Traynor, 'Nato force "feeds Kosovo sex trade"' *The Guardian* (London, 07 May 2004) <<http://www.theguardian.com/world/2004/may/07/balkans>> accessed 16 November 2015

¹⁴ Amnesty International (n 12)

¹⁵ INTERPOL, 'Fact Sheet Trafficking in Human Beings' <<http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Trafficking-in-human-beings>> accessed 24 December 2015

¹⁶ Article 9 of the Constitution of the INTERPOL

international workshop in Turkey against people smuggling.¹⁷ The workshop highlighted training and education as the key components to successfully deter people smuggling and human trafficking. Building up a database for suspected cases, and establishing an information pool for international law enforcement, are necessary to solving the human trafficking problem.

Europol assists EU Member States in combating organized crime within the European Union, but because organized crime does not stop at international borders, it is also essential to have cooperation initiatives with non-EU countries and international organisations.¹⁸ Europol emphasizes that trafficking in human beings is one of the key international threats.¹⁹

The Justice and Home Affairs Council therefore adopted the Council decision of 27 March 2000, which authorises the Director of Europol to enter into negotiations on cooperation agreements with third states and non-EU related bodies.²⁰ The scope of the cooperation may vary, ranging from operational cooperation (including the exchange of personal data) to technical or strategic cooperation.²¹

¹⁷ The two-day International Workshop on People Smuggling from East Africa at the Police Education and Congress Centre (PEKOM), 30-31 March 2011, was organized in co-operation with the Center for Terrorism and Transnational Crime (UTSAM) of The Turkish National Police, with the support of INTERPOL's National Central Bureau in Ankara < <http://www.interpol.int/News-and-media/News/2011/N20110405>> accessed 24 December 2015

¹⁸ Europol, 'External Cooperation' <<https://www.europol.europa.eu/content/page/external-cooperation-31>> accessed 21 December 2015

¹⁹ EUROPOL-SOCTA, 'EU Serious and Organized Crime Threat Assessment' <<https://www.europol.europa.eu/content/eu-serious-and-organised-crime-threat-assessment-socta>> accessed 21 December 2015, 39

²⁰ The decision amended by the Council decision of 6 December 2001 and the Council decision of 13 June 2002

²¹ Europol (n 18)

There is a cooperation agreement between Europol and Turkey.²² This agreement is comprehensive and offers cooperation on various issues, ranging from exchange of expertise,²³ requests for assistance,²⁴ and confidentiality.²⁵ In the course of seeking full EU membership, Turkey is attempting to harmonize its legislative and administrative structures with the EU *acquis*.²⁶ In this regard, the Europol agreement has two specific outcomes for Turkey. Firstly, with this agreement, Turkey has taken steps towards one of the requirements of the EU *acquis*. Secondly, Turkey can benefit from Europol's assistance.

5.3. Economic Cooperation-Based Partnerships and their Effects on Turkey's Anti-Trafficking Regime

Economic cooperation-based partnerships can trace illegal monetary acts and illegal business actions in their regions. In this regard, these organizations can control and frustrate the traffickers' illicit trade. They can carry out joint operations against the financial infrastructure of human trafficking, such as money laundering, corruption, bribery, and terrorist financing.²⁷ Partnership in economic cooperation is one of the helpful contents of partnership. It may provide a wide range of information about the financial dimension of human trafficking for national mechanisms in Turkey. To effectively employ an economic cooperation-based partnership, Turkey needs to use its National Referral Mechanism. Every ingredient of the elements of the 5P model provides an opportunity to fill one of the gaps in Turkish procedures. Partnership for regional purposes helps state

²² Considering that the Council of the European Union has authorised Europol to conclude a cooperation agreement with the Republic of Turkey on 27 March 2000 (OJ 2000/C106/01)

²³ Ibid, Article 3

²⁴ Ibid, Article 5

²⁵ Ibid, Article 7

²⁶ Chapter 6 provides detailed information about the membership and *acquis* requirements for Turkey

²⁷ I will highlight the importance of fighting the financial side of human trafficking in section 7.2.

parties to achieve direct (tackling financial crimes) or indirect (combat human trafficking) aims. Due to the importance of economic cooperation, Turkey has many cooperative economic relationships with various organizations, such as the Black Sea Economic Cooperation (BSEC), the Organisation for Economic Co-operation and Development (OECD), and the Economic Cooperation Organization (ECO). In addition to their main functions, BSEC and the OECD take further steps against the negative effects of human trafficking.²⁸

The Black Sea region is a major transit route and target destination for the trafficking of women and children for the purposes of commercial sexual exploitation and forced labour.²⁹ According to the UNODC database on global trafficking patterns, these issues affect all BSEC member states.³⁰ On the issue of cooperation for combating organized crime, the BSEC has certain commitments amongst its members, and organisations such as the IOM, UNODC, and many other relevant bodies in the region, are cooperating with each other in the fight against human trafficking – one of the most prevalent forms of organized crime in the Black Sea area.³¹

In support of BSEC, Turkey has been involved in projects, reports, and meetings to combat trafficking in human beings in general, and specifically the

²⁸ Turkey was one of the founding members of BSEC (on 25 June 1992). Turkey, along with 19 other countries, signed the Convention founding the Organisation for Economic Co-Operation and Development on 14 December 1960, thereby pledged its full dedication to achieving the Organisation's fundamental aims

²⁹ BSEC, 'Statement by H.E. Ambassador DR. Victor Tvircun, Secretary General of the Organization of the Black Sea Economic Cooperation Permanent International Secretariat on the Occasion of the meeting of the Ministers of Interior of the BSEC Member States' <<http://www.bsecorganization.org/speeches/staff/Reports/20121123-Speech-Meeting%20of%20the%20Ministers%20of%20Interior-23%20November%202012-Istanbul.pdf>> accessed 23 October 2014

³⁰ Colette Beukman, Interview with Selcuk Colakoglu, Associate Professor of International Relations, USAK (Ankara, 06 March 2013) <<http://www.turkishweekly.net/news/147833/-turkey-and-russia-to-determine-the-future-of-the-black-sea-region.html>> accessed 11 October 2014

³¹ OSCE, 'Written Contribution by Ambassador Leonidas Chrysanthopoulos, Secretary General of the BSEC' <<http://www.osce.org/cio/40530>> accessed 29 July 2014

trafficking of women.³² These efforts are important to emphasize the nature and institution of human trafficking in the Black Sea region. However, for a more effective and comprehensive policy, BSEC should establish an institution which collects data and shares information with its members and relevant security organizations. This economic cooperative institution could then financially support its members' police forces and other related law enforcement agencies in terms of their education, capacity building, and awareness raising campaigns. In this respect, Turkey and other members could establish repatriation mechanisms, identification methods, prosecution guidance (in order to prevent re-victimization), and reduce the number of victims.

The OECD comprehensively focuses on the link between corruption and trafficking in persons. It has developed Guiding Principles on combating corruption related to human trafficking.³³ Tremblay states that trafficking in persons would not be as prevalent and widespread if it were not for its support from corruption.³⁴ Similarly, Holmes highlights that human trafficking could not occur on the scale it does were it not for the complicity and collusion of corrupt officials with criminal gangs.³⁵

³² For instance, the meeting of the Ministers of the Interior of the BSEC Member States in Istanbul, Turkey on the 23rd of November, 2012; A project named 'Combating Trafficking in Women: Turkey, BSEC Capacity Building for Data Collection' in June 2005; Further, Turkey held a joint conference named 'Trafficking in Human Beings in the Black Sea Region' in October 2007, in cooperation with the UNODC, Budapest Process, and BSEC

³³ The OECD's Guiding Principles are grouped under these headings: 1. International cooperation and agreements; 2. Jointly addressing and investigating trafficking in persons and corruption; 3. Transparency and integrity frameworks for public officials at risk; 4. Awareness-raising and prevention measures for Public Officials and the general public; 5. Improvement of data collection and systematic use of information; 6. Lift immunity in corruption and trafficking cases.

³⁴ Maryse Tremblay, 'Corruption and Human Trafficking: Unraveling the undistinguishable for a better fight' (IACC 2010 workshop report, 14th IACC, 10-13 November 2010, Thailand)

³⁵ Leslie Holmes, 'Human Trafficking & Corruption: Triple Victimization?' in *Strategies Against Human Trafficking: The Role of the Security Sector* (Vienna, National Defence Academy and Austrian Ministry of Defence and Sports), 84

In 2001, the OECD stated that organized prostitution networks and illicit immigration rackets are at the root of a modern form of slavery, affecting women in particular. International measures of cooperation need to be stepped up to counter and prevent such exploitation,³⁶ but it is hard to assess the scale of the problem. In this regard, the OECD Task Force on Charting Illicit Trade (TF-CIT) was set up to ‘co-ordinate international expertise in the quantification and mapping of illicit markets’.³⁷ It mainly focuses on: mapping the economic activities of transnational criminal networks; examining the conditions and policies that encourage or inhibit different sectors of illegal traffic (of people, drugs, arms, or anything else), whether at the level of production, transit or consumption; and developing visualisation tools to help decision makers better target prevention and mitigation efforts.³⁸

The OECD has published two reports, demonstrating the key findings on migration in Turkey, but these reports do not mention the problem of human trafficking.³⁹ Despite the economic characteristics of human trafficking, the OECD does not take into consideration the violation of human rights in the trafficking business, nor the social and political factors that fuel it. The term ‘development’ in the name of the OECD must not be read as regarding only economic transparency, agricultural production, or the balance between expenses and taxes. The OECD needs to produce national and regional data and analysis

³⁶ OECD, ‘More women in all forms of migration’

<<http://www.oecd.org/migration/mig/2072594.pdf>> accessed 17 November 2015

³⁷ Patrick Love, ‘Two hundred girls for sale, millions already sold’ (OECD Insights, 12 May 2014) <<http://oecdinsights.org/2014/05/12/two-hundred-girls-for-sale-millions-already-sold/>> accessed 18 November 2015

³⁸ The TF-CIT, ‘OECD Task Force on Charting Illicit Trade (TF-CIT)’

<<http://www.oecd.org/gov/risk/oecdtaskforceonchartingillicittrade.htm>> accessed 18 November 2015

³⁹ OECD, ‘Turkey’, in *International Migration Outlook 2014* (Paris, OECD Publishing, 2014), 304; OECD, ‘Migration policy and migration statistics: country notes’

<<http://www.oecd.org/turkey/imo2013countrynotes.htm>> 12 November 2015

regarding trafficking in human beings, and should also provide country-specific assessments to highlight the negative effects of human trafficking on both countries' economies and their development strategies.

Security and economic cooperation-based partnerships acts like an element of prevention. They can produce strategies for joint operations and for preventative methods in order to make human trafficking economically risky. In the 5P model, every 'P' has a transformative capacity. For instance, these regional partnerships act as a subsidiary element of prevention. Policy-based partnerships can help the formation of the prosecution, protection, perception, and prevention dynamics. In the case of Turkey, this shapes its legal norms, protection services, training for law enforcement officials, and awareness raising campaigns. However, these transformations are restricted by Turkey's political aspirations. These regional organizations clearly are not inactive against the trafficking phenomenon in their regions. However, they necessarily concentrate on the merely criminal aspects; partnership is important and a regional and comprehensive anti-trafficking strategy must be constructed. Despite their written rules about partnership with regard to human trafficking, most of them do not actually perform the necessities of partnership, which are about collecting and sharing data, operational intelligence, and annual or biennial meetings. In short, they are inadequate in addressing the importance of regional and bilateral partnership in the fight against human trafficking.

5.4. Policy-Based Partnerships and their Effects on Turkey's Anti-Trafficking Regime

In addition to organizations with security and economy-based functions, Turkey is party to political organizations such as the Council of Europe (CoE) as a

member, and the European Union (EU) as a candidate country. These two organizations play significant roles in the international arena. Article 1(a) of the Statute of the CoE states that '[t]he aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress.' The purposes of the EU could be described as to enact legislation in justice and home affairs, maintain common policies on trade, agriculture, fisheries, and regional development, and ensure the free movement of people, goods, services, and capital.⁴⁰

The CoE has emphasised the grave consequences of human trafficking. In this regard, it devotes considerable time and resources to the production of effective methods against trafficking in human beings. I mainly focus on two CoE conventions: the Convention for the Protection of Human Rights and Fundamental Freedoms,⁴¹ and the Convention on Action against Trafficking in Human Beings.⁴² Recommendations by the Committee of Ministers and the Parliamentary Assembly will also be assessed.

The Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force on 3 September 1953, does not contain a direct obligation to prohibit human trafficking. In this Convention, slavery and forced labour were prohibited, in a similar regard to the Universal Declaration of

⁴⁰ EU, 'The Founding Principles of the Union'

<http://europa.eu/scadplus/constitution/objectives_en.htm> accessed 21 December 2015.

⁴¹ The Convention for the Protection of Human Rights and Fundamental Freedoms was drafted in 1950, and entered into force on September 3, 1953. Council of Europe, 'European Convention of Human Rights' <http://www.echr.coe.int/Documents/Convention_ENG.pdf> accessed 14 July 2013

⁴² The Convention was opened for signature on May 16 2005, and entered into force on February 1 2008; Council of Europe, 'Convention on Action against Trafficking in Human Beings' <<http://conventions.coe.int/treaty/en/treaties/html/197.htm>> accessed 27 July 2014

Human Rights.⁴³ In general, inhuman acts and degrading treatment form part of the experiences of trafficking victims. However, this article does not reflect the acts and purposes of trafficking.

Despite the welcome achievements of these Recommendations, such as the attempt to define trafficking in women and forced prostitution,⁴⁴ trafficking for the purpose of sexual exploitation,⁴⁵ and explicitly expressing the view that the traffic in women is a violation of human rights and the basic principles of the rule of law and democracy, there are still inadequacies.

They have failed to produce solutions to address push factors at the borders of member states, for instance. Instead of encouraging members to prosecute offenders, they need to push members to use comprehensive, victim-oriented protection and preventative methods such as effective border controls, training for officials, awareness raising campaigns, criminalization of trafficking and trafficking related crimes, and standardizations in investigative and prosecutorial processes. Another failure is that, with the exception of Recommendation 1545 (2002),⁴⁶ there is no clear and consistent reference to partnership. This is the only provision to encourage member states to cooperate, to share information and produce solutions which address the causes of trafficking in women, and to implement relevant mechanisms such as prosecution and protection.⁴⁷

⁴³ Ibid, Universal Declaration on Human Rights, Article 4

⁴⁴ Recommendation 1325 (1997) para 2. Additionally at para 2, the Assembly defines the use of force as physical, sexual and/or psychological, and includes intimidation, rape, abuse of authority, or a situation of dependence

⁴⁵ Recommendation R (2000) 11, Appendix to Recommendation No. R 11 Basic principles and notions Paragraph 1

⁴⁶ Council of Europe, 'Recommendation 1545 (2002) Campaign against trafficking in women' < http://www.vlada.si/fileadmin/dokumenti/si/projekti/CE_recommendation_2002_EN.pdf > accessed 07 July 2013, para 1

⁴⁷ Ibid, para 9

The Council of Europe Convention on the Action against Trafficking in Human Beings was opened for signatures on 16 May 2005, and entered into force on 1 February 2008. It is a detailed treaty which aspires to prevent trafficking, protect the rights of victims, and prosecute traffickers.⁴⁸ It applies to all forms of trafficking, whether national or transnational, whether or not they are related to organized crime. The Convention also provides for the establishment of an independent monitoring mechanism, as well as guaranteeing parties' compliance with its provisions. In this context, the Group of Experts on Combating Human Trafficking was established as the monitoring mechanism on 1 February 2009.⁴⁹

Before examining the work of the Group of Experts, it is important to evaluate the Convention itself. The Convention seeks to produce effective solutions by addressing every single dimension of the trafficking issue; for example, it recommends an effective information network between its members,⁵⁰ and thus demonstrates the relationship between international relations and trafficking. The Convention also recommends a non-discriminatory principle in order to identify the issue with regard to normative approaches. It also emphasises the importance of research, information, awareness raising and education campaigns, social and economic initiatives, and training programmes.⁵¹ In addition to all of these issues, it recommends legislative, administrative, educational, social, and cultural avenues towards prevention, prosecution, and protection processes. Phrased differently, the Convention uses every possible means and discipline to provide permanent and effective solutions to the problem of trafficking in humans. The

⁴⁸ Council of Europe, 'Convention on Action against Trafficking in Human Beings' (no 42)

⁴⁹ Council of Europe, 'About GRETA – the Group of Experts on Action against Trafficking in Human Beings'

<http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/GRETA_en.asp> accessed 11 August 2014

⁵⁰ Preamble to the Convention

⁵¹ Article 5(2) of the Convention

Convention moves toward a holistic approach to combating human trafficking in order to reduce the harm caused. This approach has a dual purpose: to provide a secure environment for victims while establishing a hostile environment for traffickers.

The Convention also provides for the assistance and protection of victims. State parties are required to adopt a recovery and reflection period of at least 30 days in their internal law.⁵² This is only a lower limit, but the Convention needs to take better account of the harmful and traumatic nature of human trafficking, and provide a more substantial recovery and reflection period for state parties.

It is noteworthy that Turkey participated in the four major meetings of the Council before the Convention came into force.⁵³ In these meetings, Turkey's intention was to examine the internal legal and administrative changes proposed (by judges from the Ministry of Justice and senior officials from the Ministry of Foreign Affairs), rather than to expand new measures.⁵⁴

To ensure compliance with the Convention, Turkey has established a working group consisting of its ministries. In June 2009 the group came together to examine the articles under its ambit. Before ratification, this meeting helped to prepare a framework concerning necessary amendments to existing laws. In order to fully realise the inadequacy of the Turkish Penal Code on human trafficking and similar related crimes, the provisions of the Convention first had to be

⁵² Article 13 of the Convention

⁵³ "Regional Seminar on Action against Trafficking in Human Beings: Prevention, Protection and Prosecution" (Bucharest, 4 and 5 April 2006); "Regional Seminar on Action against Trafficking in Human Beings: Prevention, Protection and Prosecution" (Rome, 19 and 20 October 2006); "Regional Seminar on Action against Trafficking in Human Beings: Prevention, Protection and Prosecution" (Athens, 5 and 6 December 2006); "Regional Seminar on Action against Trafficking in Human Beings: Prevention, Protection and Prosecution" (Paris, 27-28 September 2007)

⁵⁴ Council of Europe, 'Turkey's Country Profile'

<http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Profiles/TURKEYProfile_en.asp>
accessed 11 August 2014

examined, as the basis for establishing an efficient legal mechanism against it.⁵⁵ Turkey ratified the Convention on 3 May 2016.

Particularly after the Syrian Refugee crisis, the EU wants to block the flow of refugees into Europe. As a natural consequence of Turkey's geo-political location, Turkey can stop or decelerate this flow. The EU has agreed to provide financial support for Turkey's efforts and visa liberalisation in return for Turkey's actions. For visa liberalisation, the EU lists a number of requirements. One of them is the ratification of the Council of Europe Convention on Action against Human Trafficking, and the adoption and implementation of legislation in line with it and with the relevant EU rules.⁵⁶ To fully comply with the minimum standards for the elimination of trafficking, this Convention provides two advantages for Turkey. Firstly, via its ratification, Turkey can demonstrate its commitment to combatting trafficking in human beings. In addition to this, Turkey can utilize the evaluation reports of the Group of Experts on Action against Trafficking in Human Beings (GRETA) as a supplementary tool with TIP and EU reports in its policy-making process.⁵⁷ Secondly, ratification would eliminate one of the EU's and the TIP reports' critiques of Turkey's anti-trafficking efforts.

The Council of Europe and the OSCE launched a joint two-day workshop (Promoting the Implementation of the Non-Punishment Principle for Victims of

⁵⁵ EU and IOM, 'Türk Hukukunda İnsan Ticareti Suçu El Kitabı- The Handbook of Human Trafficking in Turkey' (2009, Türkiye'nin İnsan Ticareti ile Mücadele Çabalarının ve Tüm İnsan Ticareti Mağdurlarının Adalet Erişimlerinin Desteklenmesi Projesi) <<http://www.countertrafficking.org/media/files/3/insanticaret.pdf>> accessed 01 August 2014

⁵⁶ European Council, 'Turkey's progress on the visa liberalisation roadmap' <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160504/turkey_progress_visa_liberalisation_roadmap_en.pdf> accessed 16 August 2016.

⁵⁷ GRETA is responsible for monitoring implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. Council of Europe, 'About GRETA – the Group of Experts on Action against Trafficking in Human Beings' <http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/GRETA_en.asp> accessed 12 January 2016

Human Trafficking; this was the Workshop for Judicial and Prosecutorial Officials) which was held on 9 October 2014, bringing together judges and prosecutors to discuss key challenges in supporting the legal rights of human trafficking victims. Turkey participated in this workshop with Tamer Soysal, a Rapporteur Judge of the Human Rights Department of the Ministry of Justice Directorate General for International Law and External Relations. As a regional organization, the Council provided comprehensive and victim-oriented perspectives for attending state parties.

The Council of Europe has promoted measures (which guarantee gender equality) based on the human rights of victims, their recovery processes, and member states' legislative and administrative progression. Despite all these positive reflections on the Council of Europe's efforts towards anti-trafficking acts, trafficking in human beings, especially in women, is still an important and increasing problem in the Council's 47 member states. Only eight of the 35 evaluated countries have set up comprehensive data collection mechanisms enabling the compilation of statistical information on victims of trafficking and allowing its disaggregation.⁵⁸

The EU began to address trafficking issues in the 1990s, as the European Parliament became aware of the rapidly growing scope of trafficking. In its early resolutions, it recommended taking steps against trafficking issues.⁵⁹ As a next step, the European Commission prepared two propositions regarding trafficking in women for the purposes of sexual exploitation. The first proposition was adopted

⁵⁸ GRETA, *4th General Report on GRETA's Activities* (March 2015, The Council of Europe), 34

⁵⁹ European Council, 'Decision No 293/2000/EC of the European Parliament and of the Council of 24 January 2000 adopting a programme of Community action (the Daphne programme) (2000 to 2003) on preventive measures to fight violence against children, young persons and women' para 6 <<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000D0293:en:HTML>> accessed 08 July 2013

on November 20 1996, in which the Commission proposed a multidisciplinary and cross-pillar approach⁶⁰ as a means of mobilising all instruments available to the European Union, by virtue of the Treaties.⁶¹ The second proposition provided a clear and harmonised definition of trafficking in human beings, covering all slavery-like practices, forced prostitution, and sexual exploitation, together with forced labour and forced marriage.⁶² It also provided a legal framework and effective preventive measures at the European level, along with protection and support for victims.⁶³

The *European Conference on Preventing and Combating Trafficking in Human Beings – Global Challenge for the 21st Century* was an important attempt to build up international cooperation and coordination, to establish a European Experts Group and assess national structures, to strengthen European networking on victim assistance, and to clarify the root causes.⁶⁴ An expert group was established in March 2003 to help the Commission develop new proposals, presenting a recommendation on December 22 2004. It called for cooperation and coordination

⁶⁰ 'There are five key pillars: of intervention needed to ensure an effective and comprehensive anti-trafficking response: prosecution, protection, prevention, national coordination and cooperation, and international cooperation and coordination.' UNODC, 'International Framework for Action: To Implement the Trafficking in Persons Protocol' <http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf> 17 July 2013, 1-13

⁶¹ EU, 'Commission communication of 20 November 1996 to the Council and the European Parliament on trafficking in women for the purpose of sexual exploitation' <http://www.europarl.europa.eu/comparl/libe/elsj/zoom_in/41_en.htm> accessed 08 July 2013

⁶² EU, 'Commission communication of 20 November 1996 to the Council and the European Parliament on trafficking in women for the purpose of sexual exploitation' <http://www.europarl.europa.eu/comparl/libe/elsj/zoom_in/41_en.htm> accessed 08 July 2013; EU, 'European Parliament resolution on the communication from the Commission to the Council and the European Parliament 'For further actions in the fight against trafficking in women' (COM(1998) 726 - C5-0123/1999 - 1999/2125(COS))' <http://contrelatraite.org/IMG/pdf/further_action_in_fight_against_trafficking_women.pdf> accessed 08 July 2014

⁶³ European Parliament, 'Adoption of a legislative arsenal to combat trafficking in human beings at European Union Level' <http://www.europarl.europa.eu/comparl/libe/elsj/zoom_in/41_en.htm> 07 July 2013

⁶⁴ Council of Europe, 'Brussels Declaration on Preventing and Combating Trafficking in Human Beings' <http://www.coe.int/t/dg2/trafficking/campaign/docs/ororg/Bruxdoc_en.pdf> accessed 05 July 2013

mechanisms at both the national and European level, and more preventive measures were to be made by European destination countries.⁶⁵ In this report, female victims were considered ‘more vulnerable to trafficking as many of the sectors in which they traditionally are engaged – for example the sex sector and domestic labour – are less likely to be regulated and more likely to be infiltrated by traffickers.’⁶⁶

In addition to these considerations, the European Council has outlined the conditions for residence permits of limited duration (for victims from third country nations) and their importance in the fight against trafficking in human beings.⁶⁷ The 2004 Council Directive Article 6(1) requires that victims be granted a reflection period during which the victim may consider whether or not they wish to cooperate with the relevant authorities. But it also states, ‘[t]he duration and starting point of the period referred to in the first subparagraph shall be determined according to national law.’ This is a primary reason for variation in actual reflection periods amongst different member states. The Directive is subject to criticism because of its lack of concern for a strict reflection period, and because it offers protection to victims only in exchange for cooperation with state authorities.⁶⁸ From another standpoint, whilst this Directive targets the growth in

⁶⁵ EU, ‘Report of the Experts Group on Trafficking in Human Beings’
<http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/EUDokumente/report_of_the_experts_group_on_trafficking_in_human_beings_2004.pdf
> accessed 05 July 2013

⁶⁶ Ibid, 20

⁶⁷ EU, Council Directive of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (2004/81/EC)

⁶⁸ Human Rights Watch, ‘Commentary on the European Commission Proposal for a Council Directive’ ‘on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities.’ (30 June 2002)

illegal immigration, human trafficking, and smuggling, it does not focus on victim protection.⁶⁹

The Hague Action Plan of 2005 was intended to put ten priorities forward for the next five years, one of them being ‘policy priorities in the fight against illegal immigration’.⁷⁰ This addresses the Commission’s current priorities: coordination and cooperation mechanisms; practices in identifying and supporting victims; guidelines for data collection; and supporting international and non-governmental organisations. In addition to these, the Commission was obliged to continue funding measures to address the factors that result in some people being vulnerable to trafficking, such as poverty, discrimination, and a lack of access to basic and higher education.⁷¹

On March 29, 2010, the European Commission presented a proposal for a new directive on trafficking in human beings and protecting victims. The directive, if approved, will replace current EU legislation dating from 2002. The Commission aimed to further approximate legislation and penalties, ensuring successful

⁶⁹ Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities. ‘COM(2002) 71 Final’ emphasized that: ‘This proposal for a Directive is concerned with a residence permit and defines the conditions for its issue. In this sense, and to the extent that certain provisions on the conditions of residence constitute protective measures (starting with the residence permit itself, which offers de facto "protection" against deportation), the proposal may appear to serve to protect victims. This is not, however, the case: the proposed Directive introduces a residence permit and is not concerned with protection of either witnesses or victims. This is neither its aim nor its legal basis. Victim protection and witness protection are matters of ordinary national or European law.’

⁷⁰ ‘The Hague Programme: 10 priorities for the next five years. Commission of the European Communities ‘*Communication from the Commission to the Council and the European Parliament of 10 May 2005 – The Hague Programme: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice*’ [COM(2005) 184 final – Official Journal C 236 of 24.9.2005].

⁷¹ ‘Policy priorities in the fight against illegal immigration.’ Commission of the European Communities, ‘*Communication from the commission on Policy priorities in the fight against illegal immigration of third-country nationals*’ (Com (2006),402)

prosecution, better protection of – and assistance to – victims, as well as the prevention of trafficking.⁷²

The European Union has produced a gradual progression in the establishment of anti-trafficking measures, which cover a wide range of provisions. In this respect, member states adopt the legislative and administrative elements of the EU into their national systems. As a regional organization, the EU follows the provisions of the 2000 UN Trafficking Protocol, and the 2005 CoE Trafficking Convention, and can expand upon these international obligations in a regional law (or directive) that provides more considerable protection. The European Parliament voted on this proposed directive in December 2010, and the Council of Ministers adopted a final text on 21 March 2011. The new directive covers criminal law provisions, as well as ‘measures for prosecuting the offenders; references for victim’s rights in criminal proceedings; victims’ support elements; prevention methods; and monitoring mechanisms.’⁷³ Contrary to the 2004 Council Directive’s less victim-centred and more functional methodology (in terms of securing border integrity), the 2011 Directive adopts a victim-centred approach (including a gender perspective) to cover measures across different areas, from criminal law provisions and prosecutorial processes, to victim support (and rights) in criminal proceedings. Furthermore, it assesses the prevention and monitoring of these implementations.⁷⁴

The EU adopted its current strategy against human trafficking in 2012.⁷⁵ This updated the 2005 EU Action Plan on best practices, standards, and procedures for

⁷² European Commission 2002/629/JHA

⁷³ Ibid

⁷⁴ Directive 2011/36/EU

⁷⁵ ‘The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016’ (Brussels, 19 June 2012) COM(2012) 286

combating and preventing trafficking in human beings. The strategy recommends the establishment of national law enforcement units specializing in human trafficking and the creation of joint European investigation teams to prosecute cross-border trafficking cases.

Steps against the institution of trafficking in human beings across the EU are important because they target all possible causes and effects of the problem. Indeed, EU measures contain multidisciplinary features and coherent policies against trafficking in human beings, and thus require the involvement of a more diverse group of actors in policy-making than before. According to the EU, the main responsibility for addressing trafficking in human beings lies with member states.⁷⁶ I would argue that despite this wide range of provisions, this policy means that the EU does not give enough consideration to trafficking in human beings. For instance, the European Commission spends most of its time working on the current migration crises. Instead of assessing individual member states' responsibilities, the EU works against migration as a body. For example, the EU gave appeasements to Turkey in order to protect its frontiers from migratory flows in a summit meeting on 29 November 2015.⁷⁷ This resulted in acceleration in visa liberalisation for Turkish citizens, 're-energised' talks on Turkey joining the EU, and provided an initial €3 billion of additional resources.⁷⁸ While the EU needs to expend more energy in the fight against trafficking, the numbers of victims have dramatically increased.⁷⁹ In addition to this summit, on 7 March 2016, Turkish

⁷⁶ COM(2012) 286, 5

⁷⁷ European Commission, 'Summit meeting re-energises EU-Turkey relations' <http://ec.europa.eu/news/2015/11/20151129_en.htm> accessed 1 December 2015

⁷⁸ Ibid

⁷⁹ 30,146 people were registered as victims of human trafficking across the 28-nation EU in the three years to 2013. 80% of the victims were women and 69% of all those trafficked were victims of sexual exploitation. EUROSTAT, Trafficking in Human Beings (Luxembourg, Publications Office of the European Union, 2014), 20-34

Prime Minister Davutoglu and EU Heads of State or Government met in order to discuss the migration situation, in particular as regards the Western Balkans route.⁸⁰ Like the previous summit, this meeting emphasized the Syrian migration flows to the EU. However, the issue is not about migration. The EU preferred to ignore traffickers' acts and the violated human rights of trafficked victims in this meeting. For example, early, child, and forced marriage, and forced prostitution all dramatically increased after the beginning of Syrian refugee crisis.⁸¹ The EU prefers to remain silent about these issues. In other words, the EU ignores the violated human rights of refugees in the human trafficking business. Moreover, there was no mention of Syrian refugees' trafficking related problems in the EU-Turkey Statement of 18 March 2016.⁸² The EU has produced provisions against human trafficking, but has failed to consolidate the outcomes of the different reviews from member states' rapporteurs or other relevant mechanisms, or to establish a multitude of reporting mechanisms in order to warn member states and provide a continuous information flow to Europol. To establish a joint response to assist countries to develop and implement effective responses to trafficking in persons, the EU and UNODC have launched the Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants. This is a four-year joint initiative between the EU and UNODC which will be implemented in partnership with the International Organization for Migration (IOM) and the

⁸⁰ European Council, 'Statement of the EU Heads of State or Government, 07/03/2016' <<http://www.consilium.europa.eu/en/press/press-releases/2016/03/07-eu-turkey-meeting-statement/>> accessed 09 March 2016

⁸¹ Dominique Soguel, 'In Turkey, Syrian women and girls increasingly vulnerable to exploitation' *The Christian Science Monitor* [Boston, Mass] <http://search.proquest.com.ezproxy.sussex.ac.uk/docview/1616382583?rfr_id=info%3Axri%2Fsid%3Aprimo> accessed 29 September 2016; Fulya Memisoglu and Asli Ilgit, 'Syrian refugees in Turkey: multifaceted challenges, diverse players and ambiguous policies' [2016] *Mediterranean Politic* 1

⁸² European Council, 'EU-Turkey statement, 18 March 2016' <<http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>> accessed 19 March 2016

United Nations Children's Fund (UNICEF) until 2019.⁸³ It will focus on providing assistance to governmental authorities, civil society organizations, and victims of trafficking. This initiative is important because it is the first comprehensive prevention and protection approach to addressing the issue of trafficking in persons.

Turkey has a long historical engagement with the EU which dates back to 1963. On the topic of trafficking in human beings, the main interaction began with the AKP government in 2002. The first regular report from the European Commission on Turkey's progress towards accession was published at the end of 1998, and subsequent reports were submitted from 1998 to 2005 by the Commission.⁸⁴ These reports set out a pathway for the negotiation process and full membership. In 2000, the Commission opened the chapter of the *acquis*. Trafficking in human beings was examined under Chapter 24, entitled 'Co-operation in the field of justice and home affairs', until the 2005 Progress Report.⁸⁵

The AKP was founded in 2001 by members of a number of existing conservative parties. The party won a landslide victory in the 2002 election and Abdullah Gül became Prime Minister of the 58th government of the Turkish Republic.⁸⁶ After that time, one of the main objectives of the government was to obtain EU membership in order to provide a standard for their transformative

⁸³ UNODC, 'New multi-year initiative launched to step up global response to trafficking in persons and the smuggling of migrants' <<http://www.unodc.org/unodc/en/frontpage/2016/January/new-multi-year-initiative-launched-to-step-up-global-response-to-trafficking-in-persons-and-the-smuggling-of-migrants.html?ref=fs1>> accessed 21 January 2016.

⁸⁴ EU, 'Turkey-Key Documents' <http://ec.europa.eu/enlargement/candidate-countries/turkey/key_documents_en.htm> accessed 18 December 2014

⁸⁵ European Commission, 2000 EU Regular Reports on Turkey's Progress towards Accession (Com (2000), 713), 63: European Commission, Turkey 2005 Progress Report (Sec (2005), 1426), 105 and 112.

⁸⁶ 58th Government of Turkey, 'Prime Minister Abdullah Gul' <<https://www.akparti.org.tr/english/yonetim/hukumetler/58>> accessed 27 December 2015

efforts. In this respect, the programme of the 58th government outlined this aspiration as follows: ‘EU membership is our primary goal to provide economic and democratic progress.’⁸⁷ This rhetoric was repeated in later AKP government programmes. In 2003, Recep Tayyip Erdoğan became Prime Minister, serving in that position until August 2014. During Erdoğan’s governing period, EU membership remained top of the government’s priorities. Erdoğan founded the 59th, 60th, and 61st governments of the Republic of Turkey. The programmes of these governments frame efforts for full EU membership as the process for Turkey’s second-most important modernization movement, next to the foundation of the Republic.⁸⁸

In August 2014, Erdoğan was elected Turkey’s 12th President. At the same time, Ahmet Davutoglu, who was the new leader of the AKP, founded the 62nd government. In the programme of the 62nd government, EU membership was indicated as a strategic aim for supporting the reform process in Turkey, to provide high living standards for its citizens.⁸⁹ Despite hostility from some European conservative political parties and their leaders against Turkey’s membership, such as the Austrian People’s Party, and Miloš Zeman who is the President of the Czech Republic, these five AKP governments indicate that EU membership is one of their main targets for modernization, democratization, and development. In this respect, the EU published regular reports until 2005, and progress reports from 2005 to the present day. As mentioned in previous chapters,

⁸⁷ Justice and Development Party (AKP), ‘58. Hukümet Programı- The Program of the 58th Government’ <<http://www.akparti.org.tr/upload/documents/58inci-hukümet-programı.pdf>> accessed 15 December 2014

⁸⁸ The detailed information about the AK Party Governments’ Programs are listed and published in Turkish. For the Programs <http://www.akparti.org.tr/site/dosyalar#!ak-parti-hukümet-programları> accessed 15 December 2014

⁸⁹ Justice and Development Party, ‘62. Hukümet Programı- The Program of the 62nd Government’ <<http://www.akparti.org.tr/upload/documents/62nciHukümetProgramı.pdf>> accessed 15 December 2014

the main reason for changing the name of the reports was to allow the EU and Turkey to begin full membership negotiations.

As a critical response to the AKP governments' policy relating to the EU, Haynes has suggested that some governments are motivated merely by a desire to meet EU entrance requirements.⁹⁰ I would also argue that although Turkey has implemented several steps in its national system, these progressions are attached to the provisions of the EU, rather than related to their necessity.⁹¹ In this regard, Haynes emphasises that without serious political will, legislation – no matter how meticulously it conforms to international standards – will not be fully or adequately implemented at the local level. In addition to this, despite the passing of recommended legislation and the pursuit of real efforts to stem the flow of trafficking, there remains no real commitment to eradicating the practice.⁹² Despite this argument, Turkey has made visible progress in combating human trafficking, as recognised by the US Department of State, which places each country into one of three tiers⁹³ in its annual Trafficking in Persons reports (TIP), based on the extent of their governments' efforts to comply with the 'minimum standards for the elimination of trafficking', found in Section 108 of the TVPA,⁹⁴ with the TIP reports being published every year since 2001. Between 2001 and 2003 Turkey was considered a Tier 3 country, and was then assessed under a watch list in 2004. In 2005, due to progress made through anti-trafficking measures, Turkey was promoted to Tier 2 status.

⁹⁰ Dina Francesca Haynes, 'Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers' [2004] 26(2) Human Rights Quarterly 221, 233

⁹¹ To provide solid grounds to my argument, I will critically evaluate Turkey's transformation with the EU reports in later sections

⁹² Haynes (n 91) 233

⁹³ Tier Classification is available in Appendix 1

⁹⁴ The Trafficking Victims Protection Act's (TVPA) minimum standards are available in Appendix 2

From the perspective of the process-tracing methodology, the EU's requirements for membership are the inputs of the transformation of Turkey's domestic legal and political structures. These inputs have affected Turkey's legal system (new criminal law for the crime of human trafficking) and political system (regulation of governments and government agencies). These changes are the outputs of the process. The main problem is the mechanical relationship between the inputs and the outputs. The EU provides the requirements and Turkey accepts them. This kind of relationship may cause implementation-related problems. For instance, the motivation of the adaptation process should be the main outcome of the output. In the case of trafficking, the main outcome or main purpose should be to protect the violated rights of trafficked victims. However, Turkey uses these inputs to obtain its political objectives. As a result of this approach, Turkey cannot be successful either in its relationship with the EU or in its anti-trafficking strategies.

5.5. Bilateral Agreements, Protocols and Treaties: Their Effects on Turkey's Anti-Trafficking Regime

Turkey has signed many security and cooperation protocols, together with treaties against organized crime activities and terrorism, and all of these partnerships contain rules with regard to migrant smuggling and human trafficking. In this respect, Turkey has signed and ratified bilateral protocols to enhance the operability of those protocols and treaties.⁹⁵ The provisions of these

⁹⁵ The Ministry of the Interior of the Republic of Turkey signed a Memorandum of Understanding with the Ministry of Internal Affairs of the Republic of Belarus on the 28th of July, 2004. For the cooperation between the Republic of Turkey and the Republic of Slovenia on 20 October 2004, a protocol was signed on the Implementation of the Ninth Article of the Agreement on Combating Terrorism between the Republic of Turkey and Georgia, with another being signed by them and the Republic of Azerbaijan on organized crime and other major crimes; both protocols were signed on 10 March 2005. The Additional Protocol on the Implementation of Article 1 of the Cooperation

instruments were facilitated in the following areas: information exchange on traffickers and victims; investigative procedures (including joint operations); entitlement of victims to support services; general awareness raising; and information on the development of the legislative framework in the field of trafficking in human beings and related areas.⁹⁶ Despite these provisions, there are some significant limitations to these bilateral efforts, as states refuse any intervention into their internal legislative and political system in real life. This kind of act might be treated as a violation of sovereignty. In addition to this, parties are reluctant to provide financial support for joint projects against trafficking.

Turkey signed and ratified these documents with (most of) the core source countries of trafficking victims towards Turkey. Despite the numbers of the partnerships and the detailed contents of the treaties or protocols, human trafficking remains one the major problems faced by state parties. Indeed, in 2013, 531 of a total of 826 identified victims arrived in Turkey from signatory states.⁹⁷ This suggests that the provisions need further amendment or enforcement in order to work effectively. State parties should establish a database for sharing information related to traffickers and victims, implement preventative efforts to

Agreement against Crime, between the Government of the Republic of Turkey and the Government of the Ukraine, was signed on 7 June 2005. The Republic of Moldova and the Republic of Turkey also signed a protocol concerning bilateral cooperation in combating human trafficking on 8 February 2006. Further agreements have been made between the Republic of Turkey and the Kyrgyz Republic (for providing bilateral cooperation in combating trafficking in human beings, as of 5 September 2006); between the Bulgaria Ministry of Justice and the Ministry of Justice of Turkey (on judicial cooperation on 8 April 2009); and between Romania and Turkey, on judicial cooperation and repatriation (law no 5249 – 21 October 2004 – law no 5704 25 October 2007). Furthermore, Turkey and Spain signed and ratified co-operation agreements for combating crime, which entered into force (with decision number 2009/1544 of the Official Gazette of the Republic of Turkey) on 5 October, 2009. The latest treaty, signed in 2009 and ratified on 4 August 2011, is between the Republic of Turkey and the Republic of Kazakhstan.

⁹⁶ Sueda Elif Dundar, 'Turkey' in Human Rights Defence Centre (ed), *Combating Human Trafficking: Problems and Prospects* (Ant. N. Sakkoulos Publishers 2007)

⁹⁷ 'Statistics of trafficking cases IOM Turkey 01 January 2013- 31 December 2013' <<http://www.countertrafficking.org/2013.html>> accessed 31 December 2015

warn potential victims and prevent their re-victimization, and cooperate in tackling trafficking-related crime. In addition to such measures, state parties (including Turkey) must work to provide a quick and reliable flow of information to other states, as well as Europol and INTERPOL, to construct a collective anti-trafficking movement not only in the region but in the international arena as well.

In addition to these bilateral instruments, there are a number of other important steps to be taken. One possible step in the right direction was the 13th Meeting of National Institutions and Communication Officials, organized by the Van Provincial Directorate of Security on 4 April 2010,⁹⁸ which attempted to produce a collective anti-trafficking measure. The outcome of this attempt provided a joint action capacity in every level, such as investigation and information exchange for state parties. Furthermore, the General Directorate of Security, at the Academy of Combating International Narcotics and Organized Crimes (Department of Anti-smuggling and Organized Crime) hosted the 2nd Regional Meeting of the Routes of Migrant Smuggling and Human Trafficking on 19-20 August 2013.⁹⁹ It was emphasised at this meeting that a relationship amongst law enforcement agencies from different countries against human trafficking was of crucial importance. This meeting took some decisions regarding the provision of advice for participants. The outcomes of the meeting can be categorised as Integrated Border Management,¹⁰⁰ regional cooperation, consistency between international

⁹⁸ The United Kingdom, Austria, Germany, Holland, Italy, Spain and Greece sent representatives from their Embassies. TNP, 'Göçmen Kaçakçılığı ve İnsan Ticareti Rotaları 2. Bölgesel Toplantısı- The 2nd Regional Meeting of the Routes of Migrant Smuggling and Human Trafficking' <<http://www.egm.gov.tr/Haberler/Sayfalar/gocmek-kacakciligi-toplantisi.aspx>> accessed 11 November 2014

⁹⁹ Ibid

¹⁰⁰ Integrated Border Management requires that all competent authorities work together in an effective and efficient manner. Cooperation should not be established exclusively within each country, but also across its borders, with relevant agencies of neighbouring States. Integrated Border Management seeks to address three levels of cooperation and coordination: intra-service cooperation, inter-agency cooperation and international cooperation. IOM, 'IOM and Integrated

instruments and domestic tools, and the establishment of a database. Integrated Border Management can be used to prevent trafficking, as sharing experiences and making inferences from others' experiences helps countries to train their border officials. This may raise officials' awareness about potential victims and increase international victim protection opportunities. The outcomes of cooperation between national police forces may enhance harmonization between national institutions and international instruments, and help them to design effective, quick, and reliable monitoring mechanisms. If these aims are prioritized by both national/regional and international institutions, existing problems concerning the increasing numbers of victims will be gradually eradicated.

5.6. Conclusion

This chapter has discussed Turkey's regional and bilateral partnership efforts in the light of the fourth 'P' of the 5P index, partnership. As I highlighted in the introduction section to this chapter, partnership has two different sides. It is important that Turkey has been a part of wide range of regional and bilateral partnerships in terms of the 5P model. The element of partnership acts in a preventative way.¹⁰¹ As discussed in section 5.4, the outputs of partnership supplement Turkey's prevention, protection, perception, and prosecution related steps. The main problem is that Turkey's political aspirations push the beneficial outputs of these partnerships into the background.

This chapter argues that Turkey and most of these regional organizations and bilateral treaties do not devote their efforts to victim-oriented and preventative

Border Management'

<https://www.iom.int/sites/default/files/our_work/DMM/IBM/updated/05_FACT_SHEET_Integrated_Border_Management_2015.pdf> accessed 21 January 2016

¹⁰¹ In chapter 5, particularly in the sections 5.2. and 5.3.

purposes. Another core discussion surrounds the focal points outlined in anti-trafficking legislation by these organizations. The focus of legislation, which covers a wide range of issues, such as border integrity, immigration control, and judicial partnership, should be shifted from a state-centred approach to a victim-oriented approach.¹⁰² As I highlighted above in earlier parts of this thesis, states are the main victims of migration flow in accordance with migration-related approaches. However, the subjects of migration are human beings. Even in legislation related to trafficking, deportation is still treated as the outcome of trafficking in destination countries. Real victims are ignored by the state-centred approach of destination countries.¹⁰³ This could have significant results in both restoring victims and securing communities.¹⁰⁴ The reason behind this proposed transformation is that trafficking in human beings makes victims vulnerable, rather than states.

This chapter has also argued that the position of Turkey in regards to human trafficking is of a complex nature. Despite the aforementioned steps, Turkey is still one of the main destination countries for vulnerable victims; the reasons for this are twofold. Firstly, most destination countries cannot establish a mechanism for guidance, monitoring, and adequate cooperation between state parties. In other words, a systematic and coordinated response against trafficking cannot be

¹⁰² ‘Victims have a whole range of needs that should be addressed to help them recover: to be recognised and treated with respect and dignity; to be protected and supported; to have access to justice; and to obtain compensation and restoration.’ European Commission, ‘Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision (2001/220/JHA)’ <http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf> accessed 31 December 2015, 4

¹⁰³ In Chapter 4, section 4.6, I indicated ways to restore victims’ rights such as non-refoulement status and temporary or permanent residence permit.s

¹⁰⁴ Amy Farrell, Colleen Owens and Jack McDevitt, ‘New laws but few cases: understanding the challenges to the investigation and prosecution of human trafficking cases’ [2014] 61 Crime Law Social Change 139, 165

produced. As a consequence of this, every country utilizes the tools that help to reflect their own aspirations. Secondly, migratory flows and other organized crime on the agenda of regional organizations leave the brutal realities of human trafficking in the shade. In the current crisis, the numbers of Syrian migrants in Turkey have pushed many other issues (such as the violation of human rights and human trafficking) into the background. The comprehensive and victim-oriented features of the partnerships surrounding the trafficking issue are more important than the number of partnerships. Regional powers are using their participation in these agreements and organisations as a pretext for doing nothing. In other words, quality is more important than quantity, in this regard.

In short, partnership against human trafficking means harmonization of purposes and actions towards a bigger aim. Turkey as a state party of these regional organizations and bilateral treaties pushes the main issue, which is anti-human trafficking action, into the background, desiring to earn a more respectful place in regional politics. I argue that the intentions of some state parties are to reduce political pressure and to obtain the evident political beneficial outcomes associated with these instruments.

The next chapter will chronologically examine the legal and administrative transformation of Turkey by exploring regional and international instruments, and examining their reflections on domestic strategic policies and tools. Furthermore, it will critically examine the weak points of Turkey's national anti-trafficking approaches from the view of the 5P model, within the context of the EU Regular and Progress Reports and the US Trafficking in Persons Reports.

6. Turkey's Legal and Policy Responses to the Trafficking of Human Beings

6.1. Introduction

This chapter will focus solely on Turkey's domestic practices, and will serve as the final evaluative section of this study. This chapter provides examples of practice for all elements of the 5P model. It evaluates Turkey's efforts regarding the relationship between the regional and bilateral initiatives examined in Chapter 5, the international efforts addressed in Chapter 4, and Turkey's domestic legal and administrative strategic human trafficking reforms from 1992 to today in terms of the 5P model. This chapter analyses every 'P' in the 5P model in order to evaluate the failures of Turkey in respect of the model. In particular, it underlines the point about the critical importance of the extra 'P' relating to specific cultural practices and perceptions.

This chapter chronologically analyses the transformation of Turkey's domestic legal and administrative approach to the problem of trafficking in human beings, especially women and girls. Legal developments and their causes will be addressed. The role of this chapter is to provide a comprehensive answer to the question of why Turkey is failing in regards to the human trafficking problem. In Chapter 2, the thesis gave the basics of this question, but this chapter analyses the answers from various approaches, such as legal, administrative, and social. This chapter mainly argues that, from 1992 to 2002, Turkey ignored all aspects of the problem and did not take steps to prevent trafficking or to protect victims. The reasons for the failure were a lack of clear understanding of what a victim is in the law and the mind, and with regards to perspectives at the 'operational' level. Since

2002, the government has pursued its anti-trafficking agenda to further its political aspirations, rather than to prevent violations of human rights or to tackle organized crime.

6.2. Turkish Legal Responses in Relation to Trafficking in Human Beings

The legal provisions surrounding human trafficking in Turkey have developed considerably since 2002, before which time there were no specific legal regulations. Before this time, Turkey had ignored the existence of human trafficking and preferred to utilize a victim-blaming approach. In this context, I can easily say that Turkey's policies on various issues such as human trafficking and migration have changed considerably since the early 2000s, motivated by a desire to fulfil EU membership criteria. At this point, the discussion in the previous chapter appears again. The process-tracing methodology is important to understand the distinction between inputs and outputs. However, the relationship between inputs and outputs provides only a narrow basis for the analysis of the process. In trafficking cases, the EU requirements (inputs) provide background domestic changes (outputs) for protection of victims and their violated rights (the purpose of the inputs). In short, Turkey concentrates on its strategic objectives and not the purpose of the inputs.

According to Article 2 of the Turkish Constitution,

The Republic of Turkey is a democratic, secular and social state governed by rule of law, within the notions of public peace, national solidarity and justice, respecting human rights, loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the preamble.

Despite this emphasis in the Constitution on respecting human rights, Turkey has not produced adequate solutions to protect the violated human rights of

trafficked victims; for example, there is a lack of institutional and social attention, shelters, and appropriate visa regimes. In addition to this regulation, although Article 17 of the Constitution highlights the importance of human dignity, law enforcement officials have insulted the female victims of trafficking.¹

Since 2002, law enforcement officials have begun to behave more carefully towards victims of trafficking. It is hard to say that Turkey has taken a lot of steps for the standardisation of human rights for everyone, but for trafficked victims, it has taken many important steps.²

In 2001, the EU Regular Report for Turkey and the US TIP Report highlighted a problem. According to both reports, Turkey did not devote enough effort towards, or budget sufficiently to interrupt, human trafficking, or protect its victims. Because of the lack of specific legal documents, law enforcement agencies and prosecutors could not fully investigate these crimes. There was no specific information concerning male victims in either report; all identified victims were female and came from CIS countries.³

There are two main reasons for this: firstly, the similarities between sexual exploitation and prostitution played an inhibitive role in the development of a concrete definition; secondly, the victims of trafficking had, in practice, been perceived as perpetrators of crime for a long time by lawmakers and law

¹ U.S. Department of State, *The 2016 TIP Report* (Washington, U.S. Department of State) 376

² The ECtHR has condemned Turkey as having violated general principles of human rights in various cases. Because of the theme of this research, I only focus on positive steps taken for trafficking victims. For further information, I consider two sample decisions from the ECtHR: *İrmak v Turkey* App no. 20564/10 (ECHR, 12 January 2016); *Akkoyunlu v Turkey* App no. 7505/06 (ECtHR, 13 October 2015)

³ European Commission, 2001 EU Regular Reports on Turkey's Progress towards Accession (Sec (2001), 1756) page 82; U.S. Department of State, *The 2001 TIP Report* (Washington, U.S. Department of State) 99

enforcement agencies.⁴ Therefore, trafficking was perceived as a victimless crime. In 2002, trafficking in human beings was recognized as a crime in Turkey for the first time, by Article 201/b of the Turkish Penal Code no. 765, which was added by Law no. 4771. Through investigation, prosecution, and conviction, the courts had previously used other laws to punish traffickers or even victims.

6.2.1. The Transition of Turkish Criminal Law: Criminal Chamber of the High Court of Appeals and Verdicts

Turkey ratified the United Nations Convention against Transnational Organized Crime (Palermo), and its two additional Protocols (Trafficking in Human Beings and Smuggling of Migrants) on 18 March 2003. Article 90 of the Constitution of the Republic of Turkey states that ‘the ratification of treaties concluded with foreign states and international organisations on behalf of the Republic of Turkey shall be subject to adoption by the Turkish Grand National Assembly by a law approving the ratification.’ In this regard, provisions of the UN Trafficking Protocol have been consolidated into the Turkish legal system. In 2004, the new Turkish Criminal Law was adopted by the Grand Assembly.⁵ This law has brought about a new approach towards human trafficking in the Turkish criminal justice system. For the first time, trafficking in human beings was recognized as a crime in Turkish law.⁶ The 2005 EU Progress Report emphasized the importance of this transformation in the Turkish Criminal Code.⁷

Despite this constitutive regulation, Law no. 5237 and the UN Protocol are not compatible. There are two main inconsistencies in this respect. Firstly, Article

⁴ Bersu Renk and Oguzhan Omer Demir, ‘İnsan Ticareti ve Yasal Düzenlemeler: Eski Sorunlar, Yeni Çözümler- Human Trafficking and Legislative Measures: Former Problems, Current Solutions’ [2011] 13(1) Polis Bilimleri Dergisi 51, 53

⁵ Law No. 5237. Ratified on 26 September 2004

⁶ Under Article 80 of the new Criminal Code, which was put into force on 1 June 2005

⁷ European Commission, Turkey 2005 Progress Report (Sec (2005), 1426), 105 and 114

3(a) of the Protocol outlines a two-step relationship for trafficking, recognising that those who give payments or benefits to persons who have control over other persons, where such persons are being exploited, may be considered as engaging in trafficking. In contrast, Article 80(1) recognises only a one-step relationship (between the victim and the trafficker). Thus, only those ‘executing acts of enticement or taking advantage of control power on helpless persons’ would be considered as engaging in trafficking under Article 80(1).

Secondly, Article 3(a) places emphasis upon ‘the exploitation of the prostitution of others or other forms of sexual exploitation’. In contrast to this inclusive usage, Article 80(1) regulates human trafficking in terms of the exploitation of prostitution, and does not mention other forms of sexual exploitation.

The courts have assessed the acts regulated by Article 201/b under Article 179, (which refers to ‘crimes against personal liberty’), Article 188 (‘conditional threats’) and Article 456 (‘felonious injury’) before the amendments in Law 765. Perpetrators are sentenced to imprisonment from anywhere between one to five years, and punished with fines of no less than five thousand Turkish lira. In *Case 2007/1862 Verdict No. 2008/5276*, the decision of the court in the first instance with respect to the crime of human trafficking was reversed for two reasons by the 8th Criminal Chamber of the Supreme Court. Firstly, the 8th Chamber declared that the actions of the defendants did not constitute the crime of human trafficking under Article 201/b of the Turkish Penal Code (Law no.765), since there was no forceful employment or servitude, captivity, or any similar treatment. However, it would have constituted a breach of articles relating to the forceful procurement of prostitution (Article 436/1(2) of the Turkish Penal Code (Law no. 765)) and the

restriction of freedom (Article 179 of Law no. 765). Secondly, the Chamber underlined that the actions of the defendants could not be covered by Article 80 of the Turkish Penal Code (numbered 5237), which came into effect on December 19 2006, since this article was not in force at the time at which the crime was committed. Therefore, the 8th Criminal Chamber decided that the defendants' conviction for human trafficking should be reversed. However, when the victim arrived in Turkey, she was forced into prostitution and was later sold to another person for the purpose of sexual exploitation. This was, however, clearly more than 'sexual exploitation'. This act is obviously an example of slavery, which was outlawed in Turkey in 1955, through the Convention to Suppress the Slave Trade and Slavery. In this case, the 8th Criminal Chamber failed to correctly identify the thin line between prostitution and human trafficking. Here, the victim was deceived, transported, and forced into sexual exploitation. The court gave its decision regarding prostitution and unlawful restriction on personal freedom, but it missed the important fact that these are elements of the crime of human trafficking as well.⁸

In another example, the 2nd Aggravated Felony Court of Bakırköy sentenced the defendants to imprisonment with respect to the crime of human trafficking, under Article 201/b of the Turkish Penal Code.⁹ The 8th Criminal Chamber of the High Court of Appeals reversed the decision of the Court for two reasons. Firstly, the actions of the defendants did not constitute the crime of human trafficking under Article 201/b of the Penal Code. Secondly, the actions of the defendants could not be covered by Article 80 of Turkish Criminal Law (no. 5237, which

⁸ In *Case No. 2013/15232 Verdict No. 2014/2112*, the 8th Criminal Chamber of the Supreme Court uses to reverse the First Instance Court's decision Article 179 and 436 of the Criminal Code

⁹ *Case No. 2006/10550, Verdict No. 2008/1364*

came into effect on December 19 2006), since the article was not in force at the time of crime. Article 201/a-b did not cover acts relating to sexual exploitation and prostitution. Accordingly, the High Court of Appeals decided that the defendants should be sentenced to imprisonment with respect to the procurement of a human for prostitution by fraud under Article 436(1), and restriction of freedom under Article 179 of the Turkish Penal Code. This demonstrates that Turkey did not use the definition from the UN Trafficking Protocol to solve the legal procedural problem. Despite the fact that Article 201 was adopted in 2002, the ratification of the UN Trafficking Protocol occurred later, on 18 March 2003. The High Court of Appeals could nonetheless have utilized the elements of human trafficking from the Protocol, in interpreting Article 201, and punished the offenders as traffickers.

Apart from those crimes mentioned above, offenders may be prosecuted for committing more than one crime in a single act. In other words, in the process of trafficking, offenders may commit a number of crimes, such as the deprivation of life, unlawful violence, forgery of documentation, bribery, etc. In this situation, the rule of lesser included offences is used.¹⁰ Because of the greater sentences available for certain crimes in the Turkish Criminal Code, offenders are punished for their more serious actions in human trafficking, which tend to be violence, threats of force, and abduction; they are not punished for the lesser matters of menace, unlawfully restricting the freedom of a person, or injury. If the courts could take into consideration all the relevant crimes and punish the perpetrators, more effective deterrence would be provided. According to Article 80 (Law no.

¹⁰ “Joinder of ideas” Article 44 of Turkish Criminal Code- A person who is considered to have committed more than one offense through performance of an act, is punished from the offense which requires imposition of heavier punishment

5237), offenders are sentenced to imprisonment anywhere from eight to twelve years and punished with a fine of up to ten thousand lira. According to Article 66/1-d of the Turkish Criminal Code (Law no. 5237), the limitation period for the crime of human trafficking is 15 years. Even in the current Criminal Law, there are some controversies among different rules relating to the crime of human trafficking. Lack of training for law enforcement officials ensures that prejudice and ineffective enforcement measures are prevalent.

6.2.1.1. Crimes Analogous to Trafficking in Human Beings and Their Investigation under the Turkish Criminal Code

In the Turkish Criminal Code (Law No. 5237) there are three main crimes that cause confusion, not only in local courts' practices but also in appellate processes. Article 79 ('unlawful transfer of immigrants to a country'), Article 117 ('violation of freedom of work and labour'), and Article 227 ('prostitution') will be examined and compared with the offence of trafficking in human beings, mentioned above, to show similarities and differences.

Article 79 regulates the crime of migrant smuggling. There are various methods of differentiating between migrant smuggling and human trafficking.¹¹ The first criterion for demonstrating the difference in the case of Turkey relates to 'victims'. The victims of human trafficking are human beings; in contrast, the victims of migrant smuggling are both the state of Turkey and the smuggled persons. In addition, there is no condition of consent for trafficking victims, while migrants are considered to have given consent to being smuggled.¹² The second criterion demonstrating the difference is that of *actus reus*. The *actus reus*

¹¹ See Chapter 3, section 3.2.2, in which differences between these two crimes were highlighted

¹² The UN Trafficking Protocol emphasises that 'consent' is no more than a relevant element in trafficking process. See section 4.6.

requirements of human trafficking are listed in Article 80 as ‘kidnap or shelter or transfer’ and ‘unlawfully and by force, threat or violence or misconduct of power or by executing acts of enticement or taking advantage of power over helpless persons’. The *actus reus* requirements of migrant smuggling in Article 79 are determined as ‘unlawful entry of a foreigner in the country or facilitating his stay in the country’ and ‘unlawful transfer of Turkish citizens or foreigners abroad’. For the crime of human trafficking, an essential element is the violation of victims’ rights. Distinct from human trafficking, the *actus reus* requirements of migrant smuggling emphasise the sovereign structure of a state.

Article 117 of the Turkish Criminal Code (Law no. 5237) regulates four crimes under the title of ‘Violation of freedom of Work and Labour’.¹³ Two of these crimes have similar features within the context of human trafficking. In this section, each of the crimes defined by Article 117 is compared with the crime of human trafficking.

The first paragraph of the article deals with the violation of freedom of work and labour by using violence or threats, or performing an act contrary to the law, whereas human trafficking is about forcing victims to work or to serve others, or to send them away where they are effectively treated like slaves. Another difference in the first paragraph of the Article is that the violation of freedom of

¹³ Defined by Article 117 of Turkish Criminal Code (Law no. 5237) provides that: ‘(1) Any person who violates freedom of work and labour by using violence or threat or performing an act contrary to the law, is sentenced to imprisonment from six months to two years and imposition of punitive fine upon complaint of the victim. (2) Any person who employs helpless, homeless and dependent person (s) without payment or with a low wage incomparable with the standards or forces him to work and live inhumanly conditions, is sentenced to imprisonment from six months to three years or imposed punitive fine not less than hundred days. (3) The same punishment is imposed also to a person who provides or transfers a person from one place to another to have him live and work under the above mentioned conditions. (4) Any person who unlawfully increases or decreases the wages, or forces employees to work under the conditions different than that of agreed in the contract, or causes suspension, termination or re-start of the works, is sentenced to imprisonment from six months to three years’

work and labour must be investigated upon the complaint of the victim. However, human trafficking is investigated on the motion of the public prosecutor.

The second paragraph of the Article mentions certain actions that exist within the scope of human trafficking, such as force and inhumane conditions. This paragraph shares similarities with the *actus reus* and the *mens rea* of the crime of trafficking in human beings. To prove the crime of human trafficking the two fundamental legal requirements of *actus reus* and *mens rea* must be fulfilled, as for any other criminal offence.¹⁴ The second paragraph of this Article provides one of the *actus reus* requirements, which is the use of force, but it does not give any detail of the offence's terms, such as transferring or recruiting persons. The *mens rea* of the crime of trafficking in human beings is also different.¹⁵ For human trafficking, the 'acts' and 'means' of the perpetrator must aim to exploit the victim. In cases related to the second paragraph of Article 117, prosecutors and judges must be careful to assess the perpetrators' intentions.

Article 227 of the Turkish Criminal Code addresses crimes such as prostitution, encouraging persons to become prostitutes, and enabling prostitution. The third paragraph of the article, which states that 'any person who brings people into the country, or sends groups abroad for prostitution purposes is punished according to the provisions of the above subsection', was removed in 2006. This change shows that these acts are now considered as constituent parts of the

¹⁴ UNODC, *Anti-human trafficking manual for criminal justice practitioners* (UN, 2009), 5. In the case of the crime of trafficking (as defined in the Trafficking Protocol), the *actus reus* requirement is split into two parts. The offence must include any one of the following: recruiting, transporting, transferring, harbouring, and receiving a person. It must also contain at least one of the following means: use of force, threat of force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, and giving or receiving of benefits

¹⁵ The requisite mental element required in a trafficking in persons case is that the perpetrator committed the material act(s) with the intention that the victim be 'exploited'. The 'purpose of exploitation' is a *dolus specialis* mental element: *dolus specialis* can be defined as the purpose aimed at by the perpetrator when committing the material acts of the offence. It is the purpose that matters, not the practical result attained by the perpetrator.

offence of human trafficking for sexual exploitation. Despite this change, the fourth paragraph of Article 227, which is one of the main reasons for the confusion, remains unchanged. It covers ‘using threats or force, or malice, or taking advantage of one’s vulnerable situation’. These can be constituent parts of human trafficking. However, the law surrounding this subject has proven to be confusing in practice. In one particular case,¹⁶ the defendants were found guilty of human trafficking but not guilty of the organized crime of ‘procurement for prostitution’, under Article 227/2-6 of Turkish Criminal Law (Law No. 5237). However, the assessment of the 8th Criminal Chamber was that the defendants should be acquitted of human trafficking, as the elements of the crime were not satisfied (e.g. threat, use of force, deception, etc.), but should be convicted of the organized crime of procurement for prostitution.

There are two crucial ambiguities surrounding this case. The first relates to the victims’ purpose for travelling to Turkey and the second to the characteristics of trafficking in human beings as an organized crime. The decision of the local court was correct if the victims had been bought to Turkey to conduct sexual business without their consent, while the 8th Criminal Chamber was correct if the victim had intended to engage in prostitution. The key point in this case is the purpose of travelling, and the elements and characteristics of trafficking clearly influenced each court’s legal interpretation. The 8th Chamber was wrong because Richard states that whether a trafficked woman was initially willing or unwilling when she entered into sex work should make no legal difference when the outcome is

¹⁶ *Case No. 2008/12977, Verdict No. 2009/9829* of the 8th Criminal Chamber of the High Court of Appeals

enslavement or forced servitude; a person cannot consent to enslavement or forced labour of any kind.¹⁷

The age of the victims is one of the main distinctive elements in assessing the crime. In the case of adult victims, the *actus reus* of human trafficking is required. However, if the victim is a child, the judge does not need to assess the ‘means’ part of the *actus reus* during the trial, due to the higher penalty rate.¹⁸

6.2.1.2. Old and New Problems in the Investigation Process

There are six main problems in analysing the investigation and trial processes in relation to human trafficking. The first significant problem is that there is an insufficient number of law enforcement officials (in terms of national police, prosecutors, and judges) with expertise in this area. In some cases, law enforcement professionals find it difficult to decide whether the victim is the subject of prostitution or trafficking; as a result, the gathering of evidence and ensuing investigations are inadequate. Even if the police have gathered enough evidence, prosecutors who do not have enough experience and knowledge about human trafficking may not assess the case within the context of human trafficking. This problem has been mitigated by the effect of planned anti-trafficking operations and the efforts of non-governmental and international organizations.¹⁹

In this regard, training programs for all relevant law enforcement officials are

¹⁷ Amy O’Neill Richard, ‘U.S. Department of State Centre For the Study of Intelligence: International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime’ (1999) <<https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/trafficking.pdf>> accessed 02 January 2016

¹⁸ The reason for this practice is the consequences of article 44 of Law no. 5237; this article regulates the principle of lesser included offences

¹⁹ EU and IOM, ‘Türk Hukukunda İnsan Ticareti Suçu El Kitabı- The Handbook of Human Trafficking in Turkey’ (2009, Türkiye’nin İnsan Ticareti ile Mücadele Çabalarının ve Tüm İnsan Ticareti Mağdurlarının Adalet Erişimlerinin Desteklenmesi Projesi) <<http://www.countertrafficking.org/media/files/3/insanticareti.pdf>> accessed 01 August 2014

important. Although the Second National Action Plan²⁰ targeted anti-trafficking training projects and programs in 2006, there remains a lack of expertise, which leads to misjudgements across every level of investigation, from identification to prosecution.

The second main problem is that the victims of human trafficking are also witnesses of human trafficking. As a consequence, it is important that the statements of victims should be taken carefully, with as much detail as possible. Article 211/1-c of the Turkish Criminal Procedure Law (Law no. 5271) holds that ‘(t)aking into account the degree of his testimony, the presence of the witness during the main hearing is not considered as necessary, then, instead of hearing these individuals, the records that were produced during a previous hearing and documents written by them may be read out.’ If there is no other evidence in the case file, a victim’s previous statements are not enough to be considered primary evidence, and can only be accepted as subsidiary evidence.²¹ In parallel with these practices, in the case of *Trampevski v. the Former Yugoslav Republic of Macedonia*, the European Court of Human Rights (ECtHR) stated that the testimony and evidence against offenders in pre-trial processes were circumstantial in nature and, at best, could only provide indirect support for the applicant’s guilt.²² However, Haynes has suggested that traffickers must be identified and prosecuted, even where relying solely on the testimony of victims.²³

²⁰ It has been prepared within the context of the EU Twinning Project ‘The Project of Strengthening Institutions in the Fight against Trafficking in Human Beings’. It aims to support the Turkish project partners in reviewing and amending the existing Turkish National Action Plan so that it will cover all areas of prevention, protection of victims, and prosecution of traffickers, relevant in the Turkish context and based on international commitments

²¹ EU and IOM (n 19) 165

²² *Trampevski v the Former Yugoslav Republic of Macedonia* App no. 4570/07 (ECHR, 10 October 2012)

²³ Dina Francesca Haynes, ‘Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers’ [2004] 26(2) Human Rights Quarterly 221, 253

In practice, victims' testimony in the pre-trial process will be circumstantial. Otherwise, without solid evidence to support a victim's testimony, the courts cannot provide a fair trial.²⁴

The third problem is that victims are accused of violating passport laws in some cases, meaning that these people are victimized a second time.²⁵ The fourth problem is that courts are technically inadequate, which means that the most of the courts do not have video-conference facilities or video players to enable them to observe victims' first testimonies, to implement article 52/3-b of the Criminal Procedure Law (Law no. 5271), which states that 'the witness is an individual, who cannot be brought before the court because of some impossibility, but their testimony is indispensable for revealing the factual truth'. The fifth problem is that courts often make these decisions when they have very little experience of this kind of offending, and incorrectly assess the crime under Article 227 of the Criminal Code. As a result of this, lower-level criminal courts process such cases, instead of higher-level criminal courts.

In addition to Article 234 of the Criminal Procedural Law, victims can benefit from rights which are regulated in the other articles of the procedural law. For example, a translator can be appointed by a judge or public prosecutor during the investigation and by the court during prosecution, if the victim cannot speak Turkish to express themselves.²⁶ The State Treasury covers both the translation costs for the non-Turkish speaker and the expenses of handicapped victims.²⁷ An interpreter appointed by the court shall translate the essential points of the

²⁴ Article 6 of Human Rights Act 1998

²⁵ Janie Chuang, 'Redirecting the debate over trafficking in women: definitions, paradigms, and contexts' [1998] 11 Harvard Human Rights Journal 65,69-73

²⁶ Criminal Procedural Law of Turkey, Article 202

²⁷ Ibid, Article 324/5

accusation and the defence.²⁸ In this regard, Turkey has repeatedly been condemned by the ECtHR for failing to provide interpreters for defendants. In the Case of *Baytar v. Turkey*,²⁹ the ECtHR declared the application admissible in respect of a complaint concerning the absence of an interpreter in police custody.³⁰ In this regard, the Court declared its attitude on the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings, as a necessary element for a fair trial in *Luedicke, Belkacem and Koç v. Germany*.³¹ In these cases, Turkey did not provide interpreters for its own citizens. In trafficking cases, however, it is hard to expect Turkey to appoint interpreters for victims throughout their encounter with the state, from the pre-trial process to the victims' rehabilitation and recovery period.

6.3. Administrative Responses of Turkey to the Trafficking in Human Beings

Amendments to Turkey's policy structure in relation to human trafficking have begun since 1997 with the Illegal Migration Office in the Bureau for Foreigners, Borders, and Asylum.³² In 2001, the Ministry of Foreign Affairs established the Unit for Combating Illegal Immigration. These two institutions can be recognized as the earliest elements of Turkey's anti-trafficking policies.

As a result of these policy progressions, the 2003 TIP Report emphasized that Turkey had implemented programs such as a new anti-trafficking criminal article and further law enforcement efforts (including strengthening immigration laws),

²⁸ Ibid, Article 202/1

²⁹ *Baytar v Turkey* App no. 45440/04 (ECHR, 14 October 2014)

³⁰ *Saman v Turkey* App no. 35292/05 (ECHR, 05 April 2011). In this case, the Court highlights the same points about violation of Article 6(3)(e) as in the case of *Baytar*, ibid

³¹ *Luedicke, Belkacem and Koç v Germany* App nos. 6210/73, 6877/75, 7132/75 (ECHR 28 November 1978)

³² The Ministry of the Interior established it to assess and monitor the increase in the number of illegal immigrants.

which were made within a relatively short period of time. However, it stressed that the government's progress had been slow in the past year, particularly in the areas of prevention and protection. In addition to these evaluations, the TIP report underlined that the government did not have a system for victim identification and protection.³³ Further, the 2003 EU Report recognised the foundation of an inter-ministerial task force established in October 2002 (under the coordination of the Ministry of Foreign Affairs) as a positive step towards combating human trafficking.³⁴ These are the first administrative efforts of Turkey's anti-trafficking agenda. Later sections concentrate on more comprehensive administrative efforts and analyse their deficiencies as a victim oriented anti-trafficking policy.

6.3.1. National Coordinator Mechanism and Turkey

The National Referral Mechanism (NRM) is a governance tool that has been developed on the basis of existing best-practice models throughout Europe.³⁵ The core components of the NRM include identification procedures for victims, and the elaboration and implementation of cooperation models between law enforcement agencies and civil society.³⁶

The institutional framework of the National Referral Mechanism provides a forum for coordination and cooperation among relevant state authorities and non-governmental organisations.³⁷ The main aims of the institutional framework are to

³³ U.S. Department of State, *The 2003 TIP Report* (Washington, U.S. Department of State) 152

³⁴ European Commission, 2003 EU Regular Reports on Turkey's Progress towards Accession (Sec (2003), 1212), pages 9, 36, 60 and 113-114. In section 6.3, the National Task Force and its effect will be evaluated.

³⁵ See Appendix 3 for an outline of the NRM hierarchy

³⁶ OSCE ODIHR, *National Referral Mechanisms Joining Efforts to Protect the Rights of Trafficked Persons A Practical Handbook* (OSCE/ODIHR, 2004) 31

³⁷ Angelika Kartusch, Gabriele Reiter and Bärbel Uhl, 'An analysis of the National Referral Mechanism in Turkey: Activity No. 3.1 of the EU Twinning Project "Strengthening Institutions in the Fight Against Trafficking in Human Beings"' (Ludwig Boltzmann Institute of Human Rights, April 2006), 10

coordinate anti-trafficking work on the national level, monitor the implementation of the national anti-trafficking strategy, and to review and adapt the national anti-trafficking strategy.³⁸

Under the auspices of the Ministry of Foreign Affairs, a National Coordinator for international cooperation and national coordination has been appointed. The National Coordinator and National Task Force continuously shape and review their anti-trafficking strategies. They meet regularly in different circumstances, which may include bi-lateral meetings or *ad hoc* working groups, in order to examine acute topical issues.³⁹ The National Task Force is comprised of experts from various ministries and non-governmental organisations, and was established and convened for the first time in October 2002.⁴⁰

The Head of the General Directorate for Consular Affairs (within the Turkish Ministry of Foreign Affairs) is appointed by the National Coordinator. Together with the Ministry's Department for Asylum and Migration, the National Coordinator organises the meetings of the National Task Force. The Turkish Ministry of the Interior plays a crucial role in coordinating operational issues with regard to identification, referral of victims, and investigation of traffickers. The Turkish National Police and the Gendarmerie work closely together with non-governmental and international organisations.

6.3.2. National Task Force to Combat Trafficking in Human Beings

The National Task Force to Combat Trafficking in Human Beings is a multi-disciplinary and cross-sector forum, which monitors and reviews the

³⁸ OSCE ODIHR (n 36) 47

³⁹ Kartusch and others (n 37) 10

⁴⁰ Turkish MFA, 'Turkey on Trafficking in Human Beings' <<http://www.mfa.gov.tr/turkey-on-trafficking-in-human-beings.en.mfa>> accessed 01 January 2016

implementation of anti-trafficking action in Turkey. It meets twice a year.⁴¹ The main purposes of this group are to understand the contents of this multi-disciplinary and cross-sector crime, to find effective and preventative methods, and to monitor and review the implementation of anti-trafficking measures in Turkey.⁴² Despite the fact that the task force does not meet regularly, it prepared a National Action Plan on 3 March 2003. The action plan was approved by the Office of the Prime Minister in April 2003.⁴³

6.3.3. National Action Plan

The Action Plan consists of eleven points of action to prevent and combat trafficking in human beings.⁴⁴ Despite major changes, especially in the legislative field, the Action Plan was not amended until the Turkish National Action Plan of 2009. The 2015 TIP report emphasized this weakness and recommended that Turkey provide comprehensive law enforcement statistics to demonstrate such efforts against trafficking.⁴⁵

It is important to note that the 2003 Action Plan has covered some important parts of the referral mechanism, such as shelters, training programs for law enforcement officials, and awareness raising. However, these efforts could not cover all the relevant referral mechanism tools because of the complex and ever-changing nature of the crime of human trafficking.⁴⁶

⁴¹ Kartusch and others (n 37) 11

⁴² Turkish MFA (n 40)

⁴³ U.S. Department of State, TIP 2003 (n 34) 152

⁴⁴ These points are: shelters; safe return; a 'hotline'; citizenship; training projects; witness protection; work permits; cooperation with NGOs; monitoring, treatment and rehabilitation of victims; financial support; and public awareness campaigns.

⁴⁵ U.S. Department of State, *The 2015 TIP Report* (Washington, U.S. Department of State) 341

⁴⁶ Kartusch and others (n 37) 15

I would argue that such a plan, having no timeline or budget, has had little effect. For example, the Government of Turkmenistan launched its ‘National Action Plan – Comprehensive Approach to Combat Human Trafficking’ on 23 March 2016.⁴⁷ There are two significant aims of this plan. First, it covers the strategic steps between 2016 and 2018. This time limitation makes the plan more realistic and achievable. Second, it emphasizes the collective efforts of the Turkmen ministries, departments, local bodies, and NGOs. Another recent example is Bangladesh, which has launched its ‘National Action Plan for Combating Human Trafficking 2015-17’. This plan also contains a timeline to make its aspirations more viable.⁴⁸ To solve the problem with a single plan is not a rational way to combat human trafficking. Turkey should have formulated an action plan in a systematic way. This action plan has shown that proposed aims such as shelters, safe return, a ‘hotline’, citizenship, and training projects require a suitable, organized, and priority-driven planning process, alongside a budget for further plan(s). In this regard, I argue that one of the main problems of Turkey’s approach is the implementation of its plans and projects against human trafficking.

⁴⁷ IOM, ‘National Action Plan on Combating Human Trafficking Launched in Turkmenistan’ <http://www.iomtkm.org/assets/files/2016_03/press-release_NAP%20launch2016.pdf> accessed 11 October 2016; Huseyn Hasanov, ‘Turkmenistan approves national action plan to combat human trafficking’ Trend News (20 March 2016) <http://search.proquest.com.ezproxy.sussex.ac.uk/docview/1774490097?rfr_id=info%3Axri%2Fsid%3Aprimo> accessed 11 October 2016.

⁴⁸ ‘Bangladesh launches three year national drive to combat human trafficking’ BBC Monitoring South Asia (01 July 2015) <http://search.proquest.com.ezproxy.sussex.ac.uk/docview/1692222624?rfr_id=info%3Axri%2Fsid%3Aprimo> accessed 11 October 2016

6.3.4. Circular No. 74 and its Directory for Combating Trafficking in Human Beings

In 2006 the Ministry of the Interior distributed Circular no. 74 (which concerns measures against human trafficking), in order to raise awareness amongst public officials who work in central and provincial organizations. This circular mentioned the detection and protection of trafficked victims, their rehabilitation, social support processes, and the investigation and prosecution of trafficking crimes.⁴⁹

Circular 74 gives advice on detecting and identifying trafficked victims, especially with regards to trafficking in human beings for sexual exploitation, the most prevalent mode of human trafficking in Turkey. To detect potential victims, it suggests that it is important to carefully evaluate the presence of foreigners. Investigation and prosecution processes should begin without the victims' complaint, following the identification of potential victims. Law enforcement agencies also provide trafficked victims with one month of reflection time to obtain their testimony, in order to aid the prosecution process.⁵⁰ The National Action Plan and this circular are signs of a comprehensive domestic strategy. Both can be considered a first step by the Minister of Interior's Directorate General for Migration Management and the Law of Foreigners and International Protection.⁵¹

In addition to these initiatives, the Turkish National Police (TNP) prepared a Directory to Combat Trafficking in Human Beings in 2006. This directory

⁴⁹ Murat Sever, Oguzhan Omer Demir and Yavuz Kahya, *Turkiyede Insan Ticareti Magduru Tespit Sureclerinin Degerlendirmesi- Evaluation of Trafficked Victims' Detecting Processes in Turkey* (Polis Akademisi Uluslararası Terorizm ve Sinirasan Suclar Arastirma Merkezi (UTSAM), 2012)

⁵⁰ Circular no 74, which concerns combating human trafficking

⁵¹ The Law of Foreigners and International Protection (Law no. 6458) entered into force on 11 April 2013

contains three sections that emphasize the rules to be followed by law enforcement agencies. These are ‘Detecting the victim’, ‘Detailed investigation’, and ‘Communication with the victims’.

‘Detecting the victims’ addresses the specific clues that signify a potential victim, such as age, gender, or nationality. The main objective of observing these details is to provide a victim profile to aid in successful detection. In addition, this section outlines the qualifications of the officials who should conduct interviews with potential victims. According to this, officials should have a detailed knowledge of human trafficking and know how to listen to – and show empathy with and respect towards – victims. Officials should also be familiar with the culture of a victims’ hometown, be able to appropriately analyse the information they obtain, and otherwise be patient, responsive, and good observers.⁵²

The Directory stipulates the crucial questions for victims in order to identify them as actual victims of trafficking.⁵³ The answers to these questions, it is hoped, will help officials to identify whether the person is a victim or not. In some cases, potential victims refrain from establishing communication with officials, in which case the Directory recommends that officials establish contact via NGOs. This is because, during the rehabilitation process offered by NGOs, victims may change their minds and choose to cooperate with law enforcement agencies.⁵⁴

⁵² Turkish National Police, ‘İnsan Ticaretiyle Mucadele Rehberi- Directory to Combat Trafficking in Human Beings’ (Emniyet Genel Müdürlüğü, 2006) [hereafter ‘TNP Directory’] 17-19

⁵³ How does the first contact between traffickers and a potential victim occur? How has the victim been brought to Turkey? What kind of job opportunity has been offered to the victim? Who paid the travel costs? Was the victim’s passport kept? Who had the victim met when they passed the border? How much time did the victim spend between their first arrival and being exploited? How has the trafficker forced the victim into the commercial sex industry/forced labour? Has the victim earned any money during this period? Is there any debt bondage contract established between the trafficker and the victim? How are the working conditions of the victim?

⁵⁴ TNP Directory (n 52) 19

The section entitled ‘Communication with the victims’ draws attention and empathy to the possible psychological conditions of victims, and requires that the officials who conduct interviews should be sensitive and attentive to the victims’ psychological standing. Before an interview, the officer should inform the victim about their rights and attempt to instil them with confidence. The Directory lists ten basic principles,⁵⁵ which have been drafted by psychology experts on trauma and human behaviour, and by NGOs, in order to aid the officers assigned to identification.⁵⁶

The Directory is one of the most important regulations in the fight against trafficking. Both the Circular and the Directory have developed a holistic approach to identify, protect, and support victims (both socially and psychologically). It is important to emphasize that both documents had humanitarian origins. In this regard, they were early examples of contemporary investigation, interrogation, and prosecution tools. The problem is with the implementation of these two tools. Even today, despite these ambitious aims, law enforcement officials still have problems, particularly in investigation and identification. For example, in contrast to the Directory’s aims, it is almost impossible to find any official records which show training programs for law enforcement officials aimed at helping them understand the processes. As I highlighted above, Turkey still encounters problems related to the early stages of the process in respect of identification. In addition, law enforcement officials clearly have problems in communicating with the victims of trafficking.

⁵⁵ The officers should avoid any potential for harm to victims through the questioning; should evaluate risk; guide the victim; work with an experienced interpreter and investigation team; protect the victims’ identity and privacy; obtain the consent of the victim in all operations to be performed; provide respect for the self-evaluation of the victims; avoid traumatic questions; work with emergency services regarding any hazardous situations; and collect data to combat trafficked victims in the future

⁵⁶ Sever, Demir and Kahya (n 49) 47

6.3.5. National Action Plan for Enhancing Institutional Capacity Against Trafficking in Human Beings

This action plan was prepared within the context of ‘The Project of Strengthening Institutions in the Fight against Trafficking in Human Beings’. The Ministry of the Interior executed this project from January 2006, under the EU-Turkey Financial Assistance Programme 2003.⁵⁷

The National Action Plan for Enhancing Institutional Capacity was published on 18 June 2009. The plan established ‘short term’, ‘medium term’, and ‘long term’ plans for enhancing institutional capacity. In addition, the plan regulates the role of NGOs in psychological and social support processes for victims.

Like the 2003 Action Plan, the Turkish Ministry of the Interior has been the main organ in coordinating operational issues. The main aim of the action plan is to provide a map for complying with minimum standards for the elimination of trafficking, to enhance the capacity for inter-institutional cooperation, and to formulate anti-trafficking strategies.⁵⁸

Despite its comprehensive and victim-oriented approach, Turkey is still criticized for failing to fully comply with the minimum standards for the elimination of trafficking.⁵⁹ In this regard, the 2014 EU Progress Report stressed that enhanced coordination was particularly necessary in the fight against human trafficking.⁶⁰ In the course of Turkey’s transformation process, there have been some serious responses to human trafficking. However, these efforts remain

⁵⁷ Kartusch and others (n 37) 15

⁵⁸ TNP, ‘2. Ulusal Eylem Planı (İnsan Ticareti ile Mücadelede Kurumsal Kapasitenin Geliştirilmesi Projesi)- The National Action Plan for Enhancing Institutional Capacity’ <<http://www.egm.gov.tr/Sayfalar/2.-Ulusal-Eylem-Plani.aspx>> accessed 11 December 2015

⁵⁹ U.S. Department of State, TIP 2015 (n 45) 340

⁶⁰ European Commission, Turkey 2014 Progress Report (COM(2014)700 final of 8.10.2014), 67

distant to the target. Today, in 2016, Turkey continues to be subjected to criticism for failing to achieve action plans and strategies which were implemented and prioritised almost a decade ago. I would argue that Turkey's action plans and anti-trafficking strategies have been largely implemented as an obvious consequence of Turkey's political aspirations. Turkey needs to concentrate on the violations of human rights committed in the course of human trafficking, if it is to not only realise its political aspirations (which mainly concern membership of the EU), but also achieve a serious reduction in the numbers of victims.

6.4. The Foreigners and International Protection Law

Turkey's Law on Foreigners and International Protection plays a significant role in combating human trafficking. It is an accumulative legal provision for all efforts against human trafficking. In this regard, we can say that Article 80 of the Turkish Criminal Law constitutes the normative frame. However, this law forms a systematic structure to regulate policies surrounding the victims of trafficking. From the victim-oriented viewpoint, this law fills the gaps in victim protection issues that cannot be rectified by the criminal law, criminal procedural law, or administrative efforts.

*The Foreigners and International Protection Law makes some plans true to combatting trafficking in human beings. For instance, it evaluates victim protection as a focal point and establishes an institution in order to collect all duties in one hand.*⁶¹

Articles 48, 49, 55, and 108 of the Foreigners and International Protection Law play significant roles in regulating victim protection provisions.⁶² On this point,

⁶¹ Interview with Serra Belenli, Migration Expert, Migration Policy and Projects Department, Ministry of Interior (Ankara, Turkey, 06 April 2015)

⁶² Article 48 (Residence permits for victims of human trafficking); Article 49 (Renewal and cancelation of residence permits for victims of human trafficking); Article 55(d) (Exemption from

Articles 48 and 49 show a devoted effort to protect victims and provide them with real recovery and reflection time. Under these articles, a residence permit is valid for thirty days, and in cases where the victims' health or safety are at risk (or special circumstances are present), such residence permits may be renewed for a period of six months at a time (although the total duration of residence cannot exceed three years). Contrary to the EU Council Directive (2004/81/EC), the recovery and reflection period in the Foreigners and International Protection Law prioritizes victims' health and safety, rather than their cooperation with the competent authorities.⁶³ Article 55 also adopts a humane approach, protecting victims from the distress of removal decisions. It highlights that removal decisions shall not be issued to victims of human trafficking until the end of their recovery and reflection periods.⁶⁴ It is important that the significance of recovery and reflection periods is considered by the law. However, the problem is the implementation of the law related to removal decisions, which are far from being victim-oriented. Instead of making a removal decision, the courts may implement a temporary or permanent resident permit or non-refoulement statute for the identified victims, in order to protect them from re-victimization and social and legal pressures in their home countries. In this respect, the European Court of Human Rights in *L.R. v. the United Kingdom* decided to strike the application out of its list of cases, in accordance with Article 37 (striking out applications) of the Convention, as it found that the applicant and her daughter had been granted refugee status in the United Kingdom and that there was no longer any risk that

removal decision); Article 108(c) duties of the Department of Protection of Victims of Human Trafficking

⁶³ See Chapter 5, section 5.4 (Policy based Partnerships and their Effects on Turkey's Anti-Trafficking Regime)

⁶⁴ Article 55 (d) of the Law

they would be removed to Albania.⁶⁵ In the case of *D.H. v. Finland*, the Court struck the application out of its list of cases as it noted that the applicant had been granted a continuous residence permit in Finland and that he was no longer subject to an expulsion order.⁶⁶

The Law establishes the Department of Protection of Victims of Human Trafficking, which consolidates all duties relating to the prevention of the crime and protection of the victims within a single organization.⁶⁷

*In addition to purposes and duties listed under this article, the Director General took over the responsibility of the 157 Helpline from Ministry of Foreign Affairs. Furthermore, the Director General assembled the National Task Force to provide co-ordination among relevant institution in 2014.*⁶⁸

The Department is responsible for carrying out activities and actions related to combating human trafficking and protecting victims of trafficking.⁶⁹ This means that Turkey, finally, has established an institution to accumulate all duties in one place. This provides not only for greater operational control, but also an active institutional structure. In this respect, the 2015 EU Report highlights the importance of the Department and emphasizes its effectiveness with regard to regulatory and institutional matters.⁷⁰ The Department also needs to implement projects related to combating human trafficking and protecting victims of

⁶⁵ *L.R. v. the United Kingdom* Application no. 49113/09 (ECHR 14 June 2011) ; *O.G.O. v. the United Kingdom* Application no. 13950/12 (ECHR 18 February 2014). In this case, the Court again decided to strike the application out of its list of cases, in accordance with Article 37 (striking out applications) of the Convention, noting that the applicant was no longer at risk of being removed as she had been granted refugee status and an indefinite leave to remain in the United Kingdom. Moreover, the United Kingdom authorities had accepted that she had been a victim of trafficking.

⁶⁶ *D.H. v. Finland* Application no. 30815/09 (ECHR 28 June 2011)

⁶⁷ *Ibid*, Article 108(c)

⁶⁸ Belenli (n 61)

⁶⁹ Article 108(c)-1 of the Law

⁷⁰ European Commission, Turkey 2015 Report (SWD(2015) 216 final), 70

trafficking.⁷¹ With regard to this duty, it is hard to maintain that the Department performs its responsibilities. International and regional cooperation, training programs, and monitoring mechanisms are the key elements of an active anti-trafficking strategy.⁷² Although these are responsibilities of the Department, it is unrealistic to consolidate these duties under its jurisdiction. In this regard, Belenli also highlights the Department's inadequate efforts in international cooperation and training programs.⁷³

The Foreigners and International Protection Law systematizes victims' residence permits, their renewal and cancellation procedures, and exemptions from deportation, without prejudice to visa and residence permit fees for a leave permit. The Department of Protection of Victims of Human Trafficking has become the new actor of the National Referral Mechanism. Despite this, the Department needs to implement its duties in order to establish a preventative and victim-oriented link among actors of the national referral mechanism, and build up bilateral and multilateral partnerships. It needs to develop projects to raise awareness of human trafficking, not only amongst the public but also amongst law enforcement officials.

6.5. The Treatment of Victims

A victim of crime is a person who has suffered harm such as physical injury, emotional trauma, or financial loss because of a criminal act.⁷⁴ The victims of

⁷¹ Article 108(c)-2 of the Law

⁷² Haynes (n 23) 253-271

⁷³ Belenli (n 61)

⁷⁴ John Brian Griffin, 'Participation of The Public and Victims in Criminal Justice Administration' UNAFEI Resource Material Series No:56 (December 2000), 39
<http://www.unafei.or.jp/english/pdf/RS_No56/No56_07VE_Griffin3.pdf> accessed 02 January 2016

trafficking are not only the victims of crime but also the witnesses to the crime.⁷⁵ In this regard, they have rights both in the investigative and prosecutorial processes.

The Turkish Criminal Procedural Law (5271) regulates the rights of the victim in Articles 233-236. Article 234 outlines victims' rights not only in the investigation, but also the prosecution, phases.⁷⁶ I will critically examine the victims' rights under the Turkish legal system, from the identification process onwards.

Identification:

Identifying victims is one of the most challenging tasks in human trafficking.⁷⁷ In most cases, local police officers identify victims.⁷⁸ Identifying victims is the most important issue for investigative and prosecutorial processes. Furthermore, identification is important in terms of rights. Although there is no written rule to the effect, when someone is identified as a victim of trafficking, law enforcement

⁷⁵ Jo Goodey, 'Sex trafficking in women from Central and East European countries: promoting a "victim-centred" and "woman-centred" approach to criminal justice intervention' [2004] 76 *Feminist Review* 26, 28

⁷⁶ During Investigation: 1. A motion for evidence to be collected; 2. In cases where it would not jeopardize the secrecy and aims of the investigation, to demand from the public prosecutor copies of documents; 3. In cases of sexual assault and in crimes that carry imprisonment of five years at the lower level and less, if he has no representative, to demand the appointment of a lawyer on his behalf by the Bar Association; 4. In cases where it is in accordance with Article 153, ask his representative to review the documents of investigation and items that have been seized and taken under protection; 5. To utilize his right of opposition against the decision of the public prosecutor to not prosecute as laid down in the Code.

During prosecution: 1. To be notified about the main trial; 2. The right to intervene in the public claim; 3. To demand copies from the records and documents via his representative; 4. To demand the witnesses to be summonsed; 5. In cases of sexual assault and in crimes that carry imprisonment of five years at the lower level and less, if he has no representative, to demand the appointment of a lawyer on his behalf by the Bar Association; 6. Under the condition to have taken the position of an intervening party in the lawsuit, to attack decisions that end the lawsuit by legal remedies

⁷⁷ David Okech, Whitney Morreau and Kathleen Benson, 'Human trafficking: Improving victim identification and service provision' [2011] 55(4) *International Social Work* 488, 497

⁷⁸ Mark J. Kappelhoff, 'Federal Prosecutions of Human Trafficking Cases: Striking a Blow Against Modern Day Slavery' [2008] 6(1) *University of St. Thomas Law Journal* 9, 20

officials must treat victims considerately, with honour and dignity.⁷⁹ Law enforcement officials must be careful to examine the presence of ‘free will’ in the course of policing illegal acts such as prostitution and undocumented labour. In this regard, law enforcement agencies determine the victim typological approach used during the identification process.

As a result of the official victim typology, law enforcement officials construct boundaries around the definition of a trafficking victim, determined by previous victim experiences. As such, a victim who falls outside the perceived boundaries of ‘the trafficking victim’ is not treated as a victim. Based on these anecdotal experiences, there are specific indicators⁸⁰ that determine who is a victim and who is not. Indicators show that victims mostly come from abroad, they work in the commercial sex industry, and are generally in a desperate and vulnerable position. However, law enforcement agencies ignore the reality that any Turkish citizen could be a victim and forced to work in the labour market. Victims may fall outside the documented indicators as they may not appear desperate. Indeed, a greater argument is that the indicator model is reductionist, in that it draws upon anecdotal evidence to reduce a complex set of circumstances down to a simple identifiable model, which may leave many victims unidentified. There are many other types of exploitation outlined in the above section by international and national legal instruments which are wholly different from those in the commercial sex industry.⁸¹ With regard to this problem, TIP reports between 2005 and 2015 observed that Turkey needed to ensure that all potential victims were

⁷⁹ EU and IOM (n 19) 168

⁸⁰ These indicators are influenced by media broadcasts and limited reports prepared by academics.

⁸¹ M. Cokar, ‘Insan Ticaretiyle Mucadelede Sivil Toplum Kuruluslarinin Rolu ve Insan Kaynagi Gelistirme Vakfi Deneyimi-The Role of NGOs in combating Human Trafficking: The Case of Human Resource Development Foundation’ in Osman Seyhan and Alper Akgul (eds), *Turkiye’de Insan Ticareti Magdurlari- Victims of Human Trafficking in Turkey* (Adalet Yayinlari 2014) 133-134

identified through a mechanism that provides cooperation between Turkey, NGOs, and international organizations.⁸² In particular, the 2015 TIP highlighted that although the Government of Turkey began cooperation with the EU to improve victim identification measures, update the national referral mechanism, and expand anti-trafficking training, it did not provide funding for these efforts.⁸³ Turkey's ignorance of identification, which is the hardest – and most important part – of an efficient and victim-oriented anti-trafficking strategy,⁸⁴ shows that Turkey's implementations are simply paying lip service to the EU. Looking beyond such ideological objectives, the practical impact of failures in identification may well result in lifelong trauma for victims.

Protection:

It is important to protect victims in order to prevent re-victimization and to provide protection to encourage them to cooperate with law enforcement officials as witnesses of crime. The EU Framework Decision regulates the rights of protection for victims. In this regard, state parties should provide protection to victims at the various stages of procedure.⁸⁵ As a further form of protection, the

⁸² U.S. Department of State, *The 2006 TIP Report* (Washington, U.S. Department of State) 247-248; U.S. Department of State, *The 2007 TIP Report*, (Washington, U.S. Department of State) 199-200; U.S. Department of State, *The 2008 TIP Report* (Washington, U.S. Department of State) 248; U.S. Department of State, *The 2009 TIP Report* (Washington, U.S. Department of State), 286; U.S. Department of State, *The 2010 TIP Report* (Washington, U.S. Department of State), 327; U.S. Department of State, *The 2011 TIP Report* (Washington, U.S. Department of State) 361; U.S. Department of State, *The 2012 TIP Report* (Washington, U.S. Department of State) 348; U.S. Department of State, *The 2013 TIP Report* (Washington, U.S. Department of State) 368; U.S. Department of State, *The 2014 TIP Report* (Washington, U.S. Department of State) 383; U.S. Department of State, TIP 2015 (n 45)

⁸³ U.S. Department of State, TIP 2015 (n 45), 341

⁸⁴ David R. Hodge, 'Assisting Victims of Human Trafficking: Strategies to Facilitate Identification, Exit from Trafficking, and the Restoration of Wellness' [2014] *Social Work* 1, 3

⁸⁵ Article 8 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)

EU Committee of Ministers recommends that, in special circumstances, such as organized crime, protection should be provided to victims and their families.⁸⁶

In this regard, Turkey's Witness Protection Law (Law no. 5726)⁸⁷ provides witness protection for victims and their family members.⁸⁸ However, the law does not provide any witness protection rights to victims unless they are witnesses in a case. Despite Turkey adopting such a law, the 2010 TIP Report emphasized that Turkey needed to take more comprehensive and assertive measures to improve witness protection.⁸⁹ The goal of this advice was to provide victims with the motivation to cooperate with law enforcement.

In addition, as a protection tool, Turkey provides shelters for trafficking victims. Shelters play a significant role in victim protection, providing sheltering, psychological counselling services, facilitating access to free medical services, legal assistance, translation, personal counselling, visa applications for Turkey or a third party, and/or assistance in the repatriation of victims. In addition, they provide accommodation during the victim's recovery process and help victims to adapt to a normal social life after their traumatic experiences.⁹⁰ Depending on their psychological condition, victims generally stay 3-4 weeks in the shelter.⁹¹

Despite the high prevalence of trafficking cases, there are only three shelters providing assistance to female victims of trafficking in Turkey. One is located in

⁸⁶ Recommendation No. R (85) 11 of the Committee of Ministers on 28 June 1985 at the 387th meeting of the Ministers' Deputies, Section G, para 16

⁸⁷ It entered into force on 5 January 2008

⁸⁸ Article 4 of the Witness Protection Law

⁸⁹ U.S. Department of State, TIP 2010 (n 82) 328

⁹⁰ Rachel Shigekian, 'Rehabilitation and Community Integration of Trafficking Survivors in the United States' [2007] 29(1) Human Rights Quarterly 112, at 114 and 128

⁹¹ Y.S. Akilli, 'Kadin Ticaretiyle Mucadelede Siginmaevi Deneyimi: Kadin Dayanisma Vakfi Ornegi-The Experience of Shelters in the combating human trafficking: The Case of the Foundation for Women's Solidarity' in Osman Seyhan and Alper Akgul, *Turkiye'de Insan Ticareti Magdurlari- Victims of Human Trafficking in Turkey* (Adalet Yayinlari 2014) 155-158

Istanbul, established in 2004 by the Human Resource Development Foundation (HRDF), another in Ankara, established in 2005 by the Foundation for Women's Solidarity (FWS), and one in Antalya, established in 2009 by the Antalya Family Therapists Association. When the Turkish Police consider someone a trafficked person, the victim is settled into one of the shelters, which have confidential addresses that are only known to a limited number of people, for the security of the victims.

The HRDF is the first Turkish NGO which was able to develop a program to combat trafficking. This occurred in 2003, after which the Foundation established its shelters in 2004. From October 2004 to September 2012, the shelters served 495 female victims of trafficking.⁹² From 2004 to 2013, 750 female victims were identified.⁹³ The Foundation uses powerful connections with other NGOs and international organizations to provide a coordinated strategy against trafficking in women. It is a member of the GAATW, the ARIADNE Network against trafficking in human beings in South-Eastern and Eastern Europe, and the Network against Child Commercial Sexual Exploitation (known in Turkey as ÇTCS).⁹⁴

From November 2005 to the beginning of 2014, 227 victims were able to take advantage of the services of the FWS's shelter in Ankara. The shelter provides services solely to the victims of female trafficking,⁹⁵ and Ankara Metropolitan Municipality has allocated the shelter building to the Foundation. The shelter has 5 bedrooms with a 10 bed capacity. The average age of victims in the shelters is

⁹² Cokar (n 81) 129

⁹³ See Section 2.4.1 ('Geographical Features of Turkey and its Place(s) in the Country Classification')

⁹⁴ Cokar (n 81) 131

⁹⁵ Akilli (n 91) 150

25 and 42% of them graduated from secondary school, and 26% of them graduated from high school. 57% of the victims describe themselves as unemployed in their hometowns.⁹⁶

There are significant deficiencies surrounding shelter programmes; indeed, these shelters are only for female victims of trafficking. To provide a comprehensive and victim-oriented anti-trafficking strategy, Turkey needs to open new shelters and support NGOs' shelters. In addition to these steps, Turkey needs to support new shelters for male and underage victims.⁹⁷ Economic pressures and insufficient capacity (compared with the considerable numbers of victims) represent the largest problems faced by existing shelters. There is no regular cash flow for their operations. Indeed, shelters in Turkey work with project-based finance and their financial problems have pushed them to the brink of closure.⁹⁸ The Turkish government should support these shelters with regular financial aid. Furthermore, Turkey should open new shelters for female victims and underage victims, and allow them to be operated under the authority of expert NGOs, experienced in dealing with trauma and violence against women.⁹⁹ Turkey should prepare a legal framework to solve the shelters' financial, security, maintenance, and repair issues. Lastly, three shelters are not adequate for a country as large as Turkey, which is one of the main destinations for trafficked victims. Under the custody of protective laws and regulations, Turkey should establish shelters to protect, rehabilitate, and support trafficked victims. With regard to the funding issues faced by shelters, the EU report remarked that the General Directorate of

⁹⁶ Ibid, 151

⁹⁷ U.S. Department of State, TIP 2015 (n 45) 342

⁹⁸ The report states (ibid, 342) 'these shelters were also closed during part of the reporting period while the NGOs waited for an international donor project to fund them. These shelters continued to be underutilized due to law enforcement's inability to proactively identify and refer victims to shelter services.'

⁹⁹ Ibid

Social Solidarity and Assistance provided financial support to victims' shelters in Istanbul, Antalya, and Ankara, and the functioning of the anti-trafficking helpline 157.¹⁰⁰

The Ministry of Health has also implemented legislative and administrative regulations to provide medical treatment at state-owned hospitals free of charge for victims of trafficking.¹⁰¹ The Ministry of the Interior has empowered provincial administrative authorities to issue humanitarian visas and temporary residence permits to victims, permitting them to stay in Turkey for free rehabilitation and treatment. The duration of the recovery period is up to six months and can be extended.¹⁰²

As another prevention tool, in its collaboration with the IOM, Turkey has established a free helpline service for potential and current victims of trafficking, within the concept of the Project for Helping the Victims of Human Trafficking in Turkey. This helpline came into use in 2005, and all mobile devices and landline phones can reach it 24 hours a day, 7 days a week, from all parts of Turkey. Operators can answer calls in the Russian, Romanian, English, and Turkish languages, and in April 2007 it became open to receiving international calls (+90312 157 11 22). Calls related to trafficking are reported to the Turkish National Police (TNP) or the Gendarmerie. Additionally, there are two other helplines in Turkey: the police helpline (155) and the gendarmerie helpline

¹⁰⁰ European Commission, Turkey 2014 (n 60) 4-14, and 66-67

¹⁰¹ Ministerial Cabinet Decision 2003/6565 (05 December 2003)

¹⁰² See Section 6.4 (Law no. 4804). With regard to the recovery process, Turkey has used the UN Trafficking Protocol's regulations in Article 6/3-5. Humanitarian visa applications are the responsibility of the state party according to the Article. In this regard, Turkey can provide humanitarian visas for 6 months (Circular no.14581 of the Ministry of Interior-09 January 2003) without any application fee (Turkish Act of Fees Law no.492 Article 88, regulated by Circular 108 of the Ministry of Interior- 03 July 2003)

(156).¹⁰³ Despite the long history of trafficking in women, Turkey has been very slow in developing its helpline project and has provided services in languages other than Turkish and English only in the last two years. This failure is particularly crucial, given the importance of helplines in identifying victims.

In order to promote public awareness regarding the helpline, the IOM has published 500,000 brochures in the Russian, Romanian, English, and Turkish languages, and has distributed them at Atatürk and Sabiha Gökçen Airports, the Karaköy Seaport in Istanbul, Antalya Airport, and in Trabzon Seaport. Meanwhile, the distribution process of brochures continues to raise public awareness and passenger attention, and between 2012 and 2013 the government provided the equivalent of approximately US\$150,000 to fund the 157 helpline for trafficking victims. These efforts are important, but not even close to addressing the problem at such an early stage. Indeed, most of the trafficking victims come from Commonwealth Independent States. Every year, between 2012 and 2014, almost thirteen million women arrived at the various border gates of Turkey.¹⁰⁴ 500,000 brochures mean that Turkey can reach a total of only 1 in 25 female arrivals.

Between 2005 and 2014, the helpline took 12,469 calls. 31% of the total numbers of calls were rescue requests from victims. The rest of the calls were not directly related to human trafficking cases.¹⁰⁵ 167 victims were rescued from traffickers between 31 December 2004 and 31 October 2013 by law enforcement

¹⁰³ Sueda Elif Dunder, 'Turkey' in Human Rights Defence Centre (ed), *Combating Human Trafficking: Problems and Prospects* (Ant. N. Sakkoulos Publishers 2007) 238

¹⁰⁴ TURSAB, '2012-2014 Yıllarında Ülkemize Gelen Yabancıların Milliyetlerine Göre Karsılaştırılması' <<http://www.tursab.org.tr/tr/istatistikler/milliyetlerine-gore-gelen-yabanci-ziyaretci>> accessed 21 November 2015

¹⁰⁵ 'Statistics of Trafficking Cases IOM Turkey' <<http://countertrafficking.org/2013.html>> 06 November 2014

agencies. Most of the rescued victims came from Moldova, Ukraine, and Russia. Victims from these countries constitute more than two-thirds of the total number of rescued victims.¹⁰⁶

Prevention:

Long-term prevention measures are one of the solutions to the chronic and growing problem of human trafficking.¹⁰⁷ The UNODC found three interdependent and complementary components for the implementation of the UN Trafficking Protocol.¹⁰⁸ The first complementary element is research and awareness raising, in order to develop a more effective and evidence-based response, and to mobilize the international community to prevent and combat human trafficking.¹⁰⁹ The second recommendation is the promotion of the Protocols (alongside the promotion of the consequences of such primary international legal instruments through community capacity building), accompanied by the delivery of high-quality, specialized technical assistance, to enable member states to prevent and combat human trafficking.¹¹⁰ The third recommended element is the strengthening of partnerships and education, in order to provide links with the broader anti-trafficking community, and to alleviate factors such as poverty and the lack of equal opportunity.¹¹¹ In this respect,

¹⁰⁶ Ibid

¹⁰⁷ Janie Chuang, 'Beyond a Snapshot: Preventing Human Trafficking in the Global Economy' [2006] 13(1) *Indiana Journal of Global Legal Studies* 137, 156

¹⁰⁸ UNODC, 'Human Trafficking' <<http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>> accessed 07 July 2013

¹⁰⁹ UNODC, 'Comprehensive Strategy to Combat Trafficking in Persons and Smuggling of Migrants' (UNODC, 29 February 2012) <http://www.unodc.org/documents/human-trafficking/UNODC_Strategy_on_Human_Trafficking_and_Migrant_Smuggling.pdf> accessed 17 December 2015

¹¹⁰ UNODC, *Toolkit to Combat Trafficking in Persons Global Programme against Trafficking in Human Beings* (United Nations, 2008) 418-423

¹¹¹ OHCHR, 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' (2002) Text presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1)

Turkey has utilized some preventative methods relating to several issues such as bilateral and international partnership¹¹² and awareness campaigns. In this section, I will concentrate on awareness campaigns.

Turkey's first public awareness campaign was entitled 'Have You Seen My Mother?',¹¹³ and was launched on 2 February 2006, with contributions from IOM and coordinated by the Turkish government.¹¹⁴ The largest effort went into TV and radio commercial broadcasts by national and local Turkish TV channels, with support from the Radio and Television Supreme Council (RTUK). These same commercials were aired on TV channels in the countries from which victims had predominately originated. In addition, IOM fitted five buses travelling across Turkey with visual material specifically designed to advertise and promote the 157 Helpline, to increase the general public's awareness of the issue. These buses travelled to the main provinces and regions in Turkey where human trafficking is the most prevalent. Huge advertising banners were displayed, stating 'Call the 157 Hotline to Stop Human Trafficking', on several occasions during football matches being played by Turkey's top professional teams.¹¹⁵ There have been no substantial awareness campaigns since 2006, despite continuous recommendations within the TIP reports.¹¹⁶

The protection of victims and the prosecution of traffickers are crucial elements of an anti-trafficking strategy. However, to reduce the number of

<<http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>> accessed 01 December 2013 paras 4-6

¹¹² Chapter 5 focuses on regional and bilateral cooperation and their reflections on Turkey's domestic structure

¹¹³ Thirty-second commercials run on 27 Turkish TV channels and 20 theatres and cinemas

¹¹⁴ Under the Ministry of Foreign Affairs

¹¹⁵ IOM, 'Counter Trafficking in Human Beings' <<http://www.turkey.iom.int/pa2.htm>> accessed 07 November 2014

¹¹⁶ U.S. Department of State, The 2005 TIP Report (Washington, U.S. Department of State) 215; U.S. Department of State, TIP 2008 (n 82) 250; U.S. Department of State, TIP 2009 (n 82) 288

victims, awareness campaigns can spread the messages of anti-trafficking strategies to the general public. Despite these campaigns, trafficking in human beings remains a relatively obscure issue amongst the public. Because of the campaigns' inadequate strategy, Turkey utilized only visual elements in its campaigns. However, in collaboration with different groups (such as scholars and religious institutions), the preparation of posters, postcards, and other media campaigns can be helpful. Public awareness campaigns should target Friday *Jumu'ah* prayers which are attended by most Turkish male citizens. During this prayer, Imams give speeches about important social and religious issues, and the Presidency of Religious Affairs could prepare a special speech explaining the trafficking problem and its religious and social aspects. Turkey needs to enhance its public awareness campaigns in order to address the high level of offending and to encourage victims to use the hotline.

Awareness raising campaigns have two targets relating to 'demand', namely traffickers and employers.¹¹⁷ Shelley highlights that trafficking is a criminal business and exhibits differences from region to region.¹¹⁸ However, offenders, abettors, and beneficiaries are all part of the same problem. In this regard, Haynes suggests governments should prosecute traffickers and those who aid and abet traffickers, in order to make trafficking less economically appealing to those who wilfully participate.¹¹⁹ In summary, the Turkish Government needs to utilise its criminal justice system to break the flow from supply to demand.

¹¹⁷ Rutvica Andrijasevic and Bridget Anderson, 'Anti-trafficking Campaigns: Decent? Honest? Truthful?' [2009] 92 *Feminist Review* 151, 152

¹¹⁸ Louise Shelley, *Human Trafficking: A Global Perspective* (Cambridge University Press 2010) 188

¹¹⁹ Haynes (n 23) 258-259

The supply-demand chain begins with finding victims, and continues to their delivery into businesses such as brothels and nightclubs. To break the chain, Turkey must apply effective visa policies, particularly for potential victims from former Soviet republics.¹²⁰ Turkey has a visa-free or lenient visa regime for the Turkic republics. The main consequence of this is that traffickers use cultural similarities as an advantage for their brutal business. When on duty at the border, law enforcement agents should be careful and vigilant; this can be accomplished through establishing effective training programs. The ECtHR emphasizes that states are required to provide relevant training for law enforcement and immigration officials.¹²¹ These law enforcement officials can assess the circumstances of potential victims, and warn them about the trafficking business in advance. Through this measure, the supply chain would be threatened and the cost-benefit analysis by traffickers begins to appear less favourable. In addition to these measures, Turkey needs to punish officials who aid and abet traffickers (by allowing them to escape border controls and/or by receiving bribes). For instance, the 2015 TIP Report states that the government prosecuted three officials complicit in human trafficking under Articles 227 (prostitution) and 80 (trafficking in human beings) of the Turkish Criminal Law. While NGOs claimed that some officials were complicit in the trafficking of Syrians, the government's investigation of such claims found no evidence of trafficking crimes.¹²² Deterrent punishments operate as supplementary measures to break the supply chain, as these punishments are the most effective part of the cost-benefit analysis. In short, punishments need to persuade traffickers that 'this business is too risky', with the highest cost for traffickers being their own freedom. Ironically, traffickers take

¹²⁰ See Chapter 2, section 2.4.4

¹²¹ *Rantsev v. Cyprus and Russia*, Application no. 25965/04 (ECHR 10 May 2010) para 287.

¹²² U.S. Department of State, TIP 2015 (n 45) 341

their victims' freedoms to make a profit, but are afraid of losing their own freedom for a long period of time. They nonetheless take this risk in order to satisfy their demand for profit.¹²³ In this regard, Piotrowicz highlights that anti-trafficking obligations should concentrate on making the trafficking business difficult to carry out, and approach the crime by using a well-funded, competent legal regime.¹²⁴ In line with Piotrowicz, Haynes emphasizes that one of the duties of these obligations is to make trafficking less economically appealing to traffickers.¹²⁵ In parallel with this argument, Article 4 of the ECHR holds that, in addition to criminal law measures to punish traffickers, member states must put in place adequate measures regulating businesses often used as a cover for human trafficking.¹²⁶

Furthermore, awareness raising campaigns should be designed in ways that will be understood by victims, using material in appropriate languages adapted for, and relevant to, the target audience.¹²⁷ For instance, the only well-organized anti-trafficking campaign in Turkey, 'Have You Seen My Mother?', focused on mothers who were victims of trafficking. The aims of this campaign were to raise awareness of the impact of human trafficking on children and families, to change the perceptions of trafficked persons, to address broader social consequences of human trafficking, and to make people wonder 'what happens to the children of victims?'¹²⁸ In terms of its aims, this campaign was successfully formulated.

¹²³ In section 3.3.2.3., I highlighted how governments can make this business too risky as a part of criminological evaluation of deterrence.

¹²⁴ Ryszard Piotrowicz, 'Human security and trafficking of human beings: the myth and the reality' in Human Security and Non-Citizens Law, Policy and International Affairs (eds) Alice Edwards and Carla Ferstman, (Cambridge University Press 2010) page 410

¹²⁵ Haynes (n 23) 258

¹²⁶ *Rantsev v. Cyprus and Russia* (n 121) para 284

¹²⁷ UNODC, *Toolkit* (n 110) 470

¹²⁸ National Institute of Justice, 'Interview with Turkish Judge Altuntas on Human Trafficking' <<http://nij.ncjrs.gov/multimedia/audio-altuntas.htm>> accessed 11 December 2015.

However, it was not a continuous effort. Trafficking in human beings, especially women, did not cease after this commercial. Turkey should continue to plan and formulate new campaigns, especially in the media, because existing perceptions (or misconceptions) surrounding the trafficking problem are presented by the media.¹²⁹ Media campaigns should include a clear explanation of the phenomenon, accompanied by a realistic portrayal of its victims, formulated by media professionals to maximize public knowledge and awareness.

6.6. Conclusion

The Turkish Government has taken many legal and administrative steps to prevent this crime, to prosecute offenders and to protect victims in line with its international, regional, and bilateral responsibilities. However, it is hard to say that Turkey pays sufficient attention to the problem of human trafficking, particularly female trafficking, or to the condemnation expressed in the EU and TIP Reports on the subject. According to the 2016 EU Turkey report, 122 victims of human trafficking were detected in 2016, compared with 108 in 2015. The number of victims staying in special shelters increased from nine in 2013 to 107 in September 2016.¹³⁰ These figures reflect the increasing numbers of trafficked victims.

This chapter argues that Turkey's political aspirations are the main triggers of this transformation in the human trafficking agenda. Indeed, being a member of the EU is one of the main political aspirations in Turkey. In this regard, Turkey has taken further steps on various issues such as migrant smuggling, organized crime, and human trafficking. Despite these steps, EU Progress Reports continue

¹²⁹ UNODC, *Toolkit* (n 110) 471

¹³⁰ European Commission, *Turkey 2016 Report* (SWD(2016) 366 final) 84

to criticize Turkey because of its failures to give practical effect to the necessary requirements.

Since 2002, the government's approaches, accompanied by political and practical support from many organizations, have led to a huge transformation in anti-trafficking legislation and policies in Turkey. Across every area of the anti-trafficking issue in terms of the 5P model, Turkey has implemented significant changes in order to satisfy the requirements of membership in the international community.¹³¹ However, unless Turkey puts all of its present legal and administrative efforts to use, it is doomed to suffer from trafficking in human beings, especially in women. Female victims from the former Soviet states are shown as a majority of such victims in the US TIP reports.¹³² However, Turkey ignores Syrian refugee girls and women. Particularly in south-eastern Turkey, early, child, and forced marriages have become one of the main sociological problems. Turkey's efforts concentrate merely on following international trends. The perception, which is the fifth 'P' of the 5P index, of law enforcement officials and local people may provide evidence of the vulnerable situation of Syrian refugee girls and women.

Turkey's efforts for prosecution and protection are better, relatively speaking, than its prevention, partnership, and perception-related efforts. Awareness raising campaigns and training for law enforcement officials are the key elements for prevention and perception. Turkey ignores the importance of these actions. For instance, there has been no public awareness campaign since 2006 and there is no regular training program for law enforcement officials. In addition to these

¹³¹ See Chapter 5, section 5.4. Turkey was considered a Tier 3 country between 2001 and 2003, and in 2004 was assessed under a watch list. In 2005, because of the progression made on anti-trafficking measures, Turkey was promoted to a Tier 2 country

¹³² U.S. Department of State, The 2016 TIP Report (n1) 377

deficiencies, to highlight problematic issues in the 5P model, Turkey evaluates its partnerships at the international, regional, and bilateral levels as a box-ticking process for its main political desires. Turkey should change its motivations, while taking further steps to combat trafficking. The ratification of international treaties and conventions could serve as an appropriate opportunity to implement new approaches towards the current anti-trafficking strategy, rather than mere box-ticking in pursuit of political motivations towards harmonization. Recent promising steps, such as the addition of the Foreign and International Protection Law and the Department of Protection of Victims of Human Trafficking, have taken into account the human rights violations occurring around human trafficking.

7. Settling the Deficiencies: Configuration of the Principles of a Proposed Anti-Trafficking Strategy for Turkey

7.1. Introduction

International documents such as the UN Trafficking Protocol, and the Recommended Principles and Guidelines of the OSCE-ODIHR, propose various anti-trafficking obligations.¹ These proposed obligations attempt to build up a comprehensive and victim-oriented anti-trafficking approach. Despite their problems in practice, these obligations are important to provide a road map for states. The key reason for the practical failures in anti-trafficking strategies lies in their conflicting aims. While states prioritize investigation and prosecution processes, they forget, or otherwise ignore, victim protection measures.

This chapter argues that the adoption of the 5P (prevention, protection, prosecution, partnership, and perception) model by the Turkish government is a holistic way to compensate for the shortcomings of the current anti-trafficking methods mandated by international documents and theoretical considerations related to human trafficking. This chapter seeks to provide answers to the question: ‘How can international obligations be translated into the Turkish system?’

This chapter has two sections. In the first section, various anti-trafficking obligations proposed by international documents, international legal scholars, and the verdicts of the ECtHR will be examined. These obligations will exemplify some of the most influential and representative issues in anti-trafficking methodologies. Several alternative solutions, which may be regarded as

¹ See Chapters 4 and 5 for the tools and their practical problems

suggestions or recommendations towards these obligations, will be proposed. In the second section, the practical successes and failures of Turkey's anti-trafficking obligations will be evaluated. Because the key changes behind proposed anti-trafficking obligations are closely associated with state practice, it is essential to examine the elements of anti-trafficking obligations from Turkey's perspective. In this regard, several alternative anti-trafficking obligations will be proposed, in accordance with Turkey's failures in the prevention, prosecution, protection, partnership, and even perceptions, surrounding trafficking.

7.2. Configuration of the Proposed Anti-Trafficking Measures for Turkey: The Application of the 5P model

There are a wide range of measures in relation to human trafficking and it will be helpful to examine them under six proposed anti-trafficking models offered by international obligations and scholars.² These proposed measures were evaluated in previous chapters.³ However, to make them explicit, it is important to highlight them again. States should admit that human trafficking is a violation of human

² Dina Francesca Haynes, 'Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers' [2004] 26(2) Human Rights Quarterly 221; Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective, Towards a Holistic Approach* (Martinus Nijhoff 2006); Ryszard Piotrowicz, 'Human security and trafficking of human beings: the myth and the reality' in *Human Security and Non-Citizens Law, Policy and International Affairs* (eds) Alice Edwards and Carla Ferstman, (Cambridge University Press 2010); Anne T. Gallagher and Nicole Karlebach, 'Prosecution of Trafficking in Persons Cases: Integrating a Human Rights-Based Approach in the Administration of Criminal Justice' Expert Meeting of the UN Special Rapporteur on trafficking in persons, especially women and children, (Background paper, 4 July 2011, Geneva, Switzerland) <http://works.bepress.com/anne_gallagher/18/> accessed 10 January 2016; Heather J. Clawson, Nicole Dutch and Megan Cummings, 'Law Enforcement Response to Human Trafficking and the Implications for Victims: Current Practices and Lessons Learned' Document Number: 216547 (December 2006) <<https://www.ncjrs.gov/pdffiles1/nij/grants/216547.pdf>> accessed 11 January 2016; Jenna Shearer Demir, 'The Trafficking of Women for Sexual Exploitation: A Gender-Based and Well-Founded Fear of Persecution?', 21-23 <<http://sites.tufts.edu/jha/files/2011/04/a115.pdf>> accessed 21 October 2013

³ In Chapter 3, section 3.3.2.4, Human Trafficking as a Violation of Human Rights; in Chapter 6, section 6.5, Discourage Trafficking in Human Beings; in Chapter 4, section 4.6, Protection and Assistance for Trafficked Victims; in Chapter 6, section 6.5, Prosecution for Traffickers and Those Who Aid and Abet; in Chapter 3, section 3.5, National Coordination for Law Enforcement Institutions and NGOs; in Chapter 3, section 3.5, International Cooperation against Trafficking in Human Beings

rights, discourage the crime, provide protection and assistance for victims, prosecute the traffickers and those who aid and abet them, establish a national interagency network and coordination with NGOs, and take part in international and regional organizations against trafficking.

Despite Turkey's significant efforts with regard to the aforementioned issues, such as prosecution, protection, prevention, and partnership, Turkey still does not fully comply with the minimum standards for the elimination of trafficking. In this section, I will propose answers to the two following questions: 'What has been achieved in connection with anti-trafficking efforts by Turkey so far?' and 'How can international obligations be translated into Turkish law?'

Before answering these questions, it is important to say that Turkey needs a comprehensive approach which evaluates all beneficial parts of the related theoretical considerations concerning human trafficking. For instance, human trafficking is a brutal business that violates human rights. It means that this business has supply and demand chains. As a destination and a transit country, Turkey has limited power to interfere with the supply chain. It should focus on the demand side of the business. In addition to this, criminalization of human trafficking and coherent legal and political practices make this business dangerous for traffickers. Another important issue is that human trafficking needs to be evaluated as a different crime from migration. In other words, victims are trafficked as a result of economic matters and other social and political problems. Consent is the main differentiation point for the two cases. For example, millions of Syrian migrants have tried to reach Europe because of security-based problems, and they have consented to attend this migration and to pay migrant smugglers in order to reach more secure areas. As noted above, traffickers benefit from

trafficked victims' vulnerable situation to sell them into the trafficking business, which covers various violation methods, such as forced marriage, organ removal, and forced labour.

To answer the first question, I focus on Turkey's progress from 2002 to 2015⁴ and I examine Turkey's efforts in the context of the 5P model, with particular emphasis on the 'missing P's (partnership⁵ and perception) in Turkey's current anti-trafficking agenda.

⁴ There are two main reasons for this time period. Firstly, the TIP Reports and the EU Reports cover this period to reflect Turkey's efforts in the international arena. Secondly, Turkey's first step towards tackling human trafficking was taken in 2002 by the AKP Government.

⁵ Jennifer A.L. Sheldon-Sherman, 'The Missing "P": Prosecution, Prevention, Protection, and Partnership in the Trafficking Victims Protection Act' [2012] 117 Penn State Law Review 443

Prevention

- 1-) In 2005, 100,000 Turkish, 25,000 English, and 25,000 Russian ‘Fighting Against THB’ brochures were prepared and circulated to police stations throughout Turkey and to cities with high rates of human trafficking.
- 2-) A toll free/tip off emergency helpline (157) became operational in May 2005.
- 3-) ‘Have You Seen My Mother?’ was launched on 2 February 2006 with contributions from IOM and the coordination of the Turkish Government.
- 4-) National Action Plans in 2003 and in 2009.
- 5-) The Department of Protection of Victims of Human Trafficking (11.04.2013).

Protection

- 1-) Shelters were established in 2004 in Istanbul, in 2005 in Ankara, and in 2007 in Antalya for victims of THB.
- 2-) Medical, legal, and psychological assistance.
- 3-) Temporary and Permanent Resident Permits (Law no. 4804) Article 6/3-5.

Prosecution

- 1-) Turkey has adopted the United Nations Convention Against Transnational Organized Crime (Palermo) (Law no 4800 – Official Gazette 04.02.2003/25014) and its two additional Protocols Trafficking in Human Beings and Smuggling of Migrants (Law no. 4804 – Official Gazette 04.02.2003/25015).
- 2-) Law no. 4771 (03.08.2002) Turkish Criminal Code Article 201/b Law no. 5237 (accepted 26.09.2004 – entered into force 01.06.2005) Turkish Criminal Code Article 80.
- 3-) Law no. 5271 (04.12.2004) Criminal Procedure Law Article 133 and 234.
- 4-) Law no. 5726 (05.01.2008) Witness Protection Law Article 4.
- 5-) Law No. 6458 (04.04.2013) Foreign and International Protection Law Articles 48, 49, 55, and 108.

Partnership

- Bilateral**
The Republic of Belarus on the 28 July, 2004; The Republic of Slovenia on 20 October 2004; The Republic of Georgia and Azerbaijan on 10 March 2005; the Government of the Ukraine on 7 June, 2005; The Republic of Moldova on 8 February, 2006; The Kyrgyz Republic on 5 September, 2006; The Republic of Kazakhstan on 4 August 2011; the Bulgaria Ministry of Justice on 8 April 2009; Spain on 5 October, 2009.
- Regional**
The Organization for Security and Co-operation in Europe (OSCE); the North Atlantic Treaty Organization (NATO); Europol; Interpol; the Black Sea Economic Cooperation (BSEC); the Organisation for Economic Co-operation and Development (OECD); Economic Cooperation Organization (ECO); the Council of Europe (CoE); and the European Union (EU).
- International**
The United Nations (UN); The International Organization for Migration (IOM); and the International Labour Organization (ILO).

Table 8: All relevant legislative and administrative changes related to human trafficking from 2002 to 2016

As has been highlighted in previous chapters, Turkey has taken many significant steps towards an effective anti-trafficking strategy. Table 8 shows all

Turkey's relevant efforts. Despite these facts, it is still deemed a destination and transit country, particularly for female victims from the former Soviet states.⁶ In this respect, Turkey needs to evaluate its capacity-building power in terms of anti-trafficking measures. Parallel with the recommendations of the TIP and EU reports, I point out the deficiencies in Turkey's anti-trafficking policy. At this point, the answers to the second question become important.

Before answering the second question, it is important to clarify the relationship between this thesis's findings and the TIP and EU reports. Most of Turkey's governmental actions have been shaped by its political aspirations. Being a member of the EU is top of these political ambitions. During this period, climbing from a country classified among Tier 3 countries to Tier 1 has become another aspiration. In these respects, there are significant consistencies between this thesis's findings and the recommendations of the reports. However, this thesis has a different focus and does not accept their recommendations uncritically. It criticizes their deficiencies and analyses the crime of trafficking in the context of the 5P model. In section 3.5, I highlighted that the TIP reports have begun to utilize the 'fourth P' – partnership – since 2009. As I noted in section 5.4, the EU reports do not have any systematization about human trafficking in Turkey and do not use any classification for the identification of the problem's elements. This thesis utilizes these reports as a road map in order to illustrate the transformation in Turkey's domestic structure. In addition to this, this thesis uses Turkey's domestic values (culture, tradition, and religion) as significant elements in order to establish its own model, which includes institutional and sociological perceptions. Both reports emphasize the importance of public awareness campaigns and

⁶ U.S. Department of State, The 2015 TIP Report (Washington, U.S. Department of State) 340

training programs for law enforcement officials. Although this is welcome, this thesis by contrast asserts that perception should be the key point for Turkey's anti-trafficking agenda. I believe that the idea of perception at both the public and institutional levels may help state parties at the operational level. In addition to this, perception at a public level may damage the relationship between supply and demand. Perception at an institutional level may prevent re-victimization in every stage of the process, from identification to protection.

As noted in previous chapters, Turkey needs to implement some significant rules. For instance, it should focus on every criminal purpose of human trafficking, not just sexual exploitation. It should also treat every victim with the same tools, such as shelters (there are no shelters for male or underage victims). Turkey needs to concentrate on the violated rights of persons. In this regard, the TIP and EU reports emphasize the same issue in a similar tone: 'Turkey should establish a comprehensive multidisciplinary and victim-oriented approach to combat trafficking in human beings.'⁷

In addition to these general issues, the latest recommendations of the TIP report highlight the future work needed in Turkey. I examined these issues in terms of the 5P index, together with the supplementary advice from the EU reports, in Chapters 5, 6, and 7. In contrast to the common application of 3P and 4P models, or Haynes's model/a human rights-based (victim-oriented) approach, the 5P index provides a comprehensive approach to the different elements of the indexes. Perception is an element that can be utilized as a preventative method or an early warning mechanism for the prosecution process, and a protection method for victims. Increased public perception may reduce demand. The most important

⁷ Ibid, 341; European Commission, Turkey 2015 Report (SWD(2015) 216 final), 21

element of building public perception is that awareness raising campaigns should accommodate relevant elements of the society in question's concerns and moral values.⁸ These elements are conscience, tolerance, and innocence. Awareness raising campaigns can be carried out in mosques to tell people about victims' desperation, on public transportation to show the consequences of human trafficking for victims and their families, in the media to inform people about 'what human trafficking is' and 'how human trafficking affects society's dynamics (family and morality)', and in academia to discuss and analyse this crime from different perspectives in order to produce an academic understanding of human trafficking.

As a preventative effort, the first priority in formulating a comprehensive anti-trafficking strategy should be to assess the perceptions of relevant officials. The 2015 TIP Report emphasizes two problems: firstly, Turkey still denies that children and Turkish nationals are among trafficking victims; secondly, some officials, including the police, downplay the seriousness of trafficking crime.⁹ To provide adequate progression, it is important to train law enforcement officials and other first-responders in victim identification.¹⁰ For instance, without adequate training to identify cases of trafficking, law enforcement officials may mistakenly identify potential victims of trafficking as 'prostitutes', arresting them or charging them with prostitution-related offenses.¹¹ In another study, the perceptions of law enforcement officials were deemed an obstacle to the

⁸ The Advocates for Human Rights, Working with the Justice Sector to End Violence against Women and Girls (Justice Sector Module, December 2011) 269

⁹ U.S. Department of State, TIP 2015, (n 6): EC Turkey 2015 Report (7)

¹⁰ U.S. Department of State, TIP 2015, (n 6) 341

¹¹ Michelle Madden Dempsey, 'Decriminalizing Victims of Sex Trafficking' [2015] 52 American Criminal Law Review 207, 213

implementation of human trafficking laws.¹² Training programs should focus on the main problematic issues, such as the dynamics of trafficking and its impacts on victims, as well as detecting the differences between consent and coercion, or between unfair labour practices and labour trafficking.¹³ In addition to the effects of training programs on institutional perceptions, Turkey needs to operate campaigns in order to tackle public perceptions about the brutal practices of trafficking. In anti-trafficking efforts, public support and vigilance play significant roles during both the investigation process and the victims' recovery period. For instance, if the public perceives victims negatively, then all relevant institutions have an additional obstacle to overcome when combating trafficking.¹⁴

Both reports note that the lack of statistics on human trafficking impedes progress. The 2015 TIP Report emphasizes that the government needs to provide law enforcement statistics.¹⁵ The EU 2015 Report also highlights this problem with regard to combined data sharing. According to the report, despite the different types of databases available to law enforcement agencies for monitoring passports and human trafficking, Turkey struggles to use and share statistical and solid data to establish a clear procedural database with mutual access.¹⁶ Statistical data is useful for showing where the Government needs to concentrate its efforts – in particular, where there could be a need for legal reform.¹⁷ In this regard, the

¹² Amy Farrell, Rebecca Pfeffer and Katherine Bright, 'Police perceptions of human trafficking' [2015] 38(3) *Journal of Crime and Justice* 315, 317

¹³ Amy Farrell and Rebecca Pfeffer, 'Policing Human Trafficking: Cultural Blinders and Organizational Barriers' [2014] 653(1) *Annals of the American Academy of Political and Social Science* 46

¹⁴ Jill Robinson, 'Public Perceptions of Human Trafficking in Moldova' [2011] 20(3) *Psychosocial Intervention* 269, 270; Sergio Herzog, 'Lenient Social and Legal Response to Trafficking in Women: An Empirical Analysis of Public Perceptions in Israel' [2008] 24(3) *Journal of Contemporary Criminal Justice* 314, 316-317

¹⁵ U.S. Department of State, TIP 2015 (n 6) 341

¹⁶ European Commission, Turkey 2015 Report (n 7) 19-20

¹⁷ Chris Lewis, 'Crime and Justice Statistics Collected by International Agencies' [2012] 18 *European Journal on Criminal Policy and Research* 5, 10

Department of Protection of Victims of Human Trafficking needs access to all relevant databases and to collect all relevant data, in order to critically examine what it has done (or not done) and to vigorously produce new action plans for the following year.

On the subject of prosecution, the 2015 TIP Report points out the numbers of trafficking offenders (whether traffickers, complicit officials, or forced labour offenders), and the deficiencies encountered in the investigation and prosecution of such cases. On a par with the 2015 TIP, the 2015 EU Report outlines the numbers of case files and convictions.¹⁸ The number of cases is high, but there are only three cases related to complicit officials, and there are no cases relating to forced labour.¹⁹ Another key problem for investigative and prosecutorial processes lies in Turkey's inadequate efforts to investigate the financial dimensions of trafficking. Gallagher and Karlebach emphasize that legislative and policy attacks on the financial dimensions of human trafficking help to prevent future trafficking by driving up the risks and lowering profits.²⁰ I conducted an interview with a finance expert of the Financial Crimes Investigation Board (MASAK), to evaluate Turkey's capacity to conduct investigations of human trafficking in connection with financial crimes such as money laundering and financing terrorism. The interviewee points out that 'regarding trafficking, it is apparent that the Board has taken part in three cases in 2010, and 3 in 2011. In addition, the Board provided intelligence on 10 human trafficking and smuggling

¹⁸ 71 criminal files were opened against 749 suspect traffickers in 2014, while 25 defendants received sentences. Sanctions were applied to 44 traffickers. European Commission, Turkey 2015 Report (n 52) 73

¹⁹ U.S. Department of State, TIP 2015 (n 6) 341

²⁰ Gallagher and Karlebach (n 2) 20

cases after analysis and evaluations in 2014 as a part of its duties.’²¹ However, in the first three quarters of 2014, the Ministry of Justice reported prosecuting 749 suspects in 71 sex trafficking cases.²² Ten cases – most of them unrelated to human trafficking – are not enough to tackle this considerable form of criminal activity. Another problem is that the Board is not regarded as a lead agency, but operates closely with the Turkish National Police, the Chief Public Prosecutor’s Office, the Ministry of Customs and Trade, the National Intelligence Organization, and the Tax Inspection Board. According to the interviewee, this situation decreases the capacity of the Board to deal with financial crimes relating to human trafficking.²³ In this regard, Turkey needs to give either ‘power’ or ‘precedence’ to finance experts of relevant institutions to analyse the financial activities of suspected persons or businesses in the national referral mechanism (NRM) in order to prevent crime.

In recognising the significance of protection, both reports highlight the importance of existing efforts, such as shelters and victim assistance. However, the TIP Report places particular emphasis upon deficiencies such as funding for shelters, detection problems, and the ignorance of the government surrounding child and domestic victims of trafficking.²⁴ Turkey’s main obstacle to comprehensive protection is victim identification. Indeed, both reports point out that Turkey’s capacity to detect victims of trafficking remains limited, as a

²¹ Interview with Sermet AYDIN, Finance Expert, MASAK, Ministry of Finance (Ankara, Turkey, 05 April 2015)

²² U.S. Department of State, TIP 2015 (n 6) 341

²³ AYDIN (n 21)

²⁴ U.S. Department of State, TIP 2015 (n 6) 342

consequence of its failure to utilize the NRM in order to increase victim identification.²⁵ Another protection tool might be public perception.

Partnership – with different agencies sharing various interests – serves as one of the key means for producing solutions to the trafficking problem. The 2016 TIP Report emphasizes the importance of Turkey’s ratification of the Council of Europe’s anti-trafficking Convention.²⁶ Both reports highlight the importance of inter-agency partnerships and the connection with NGOs in policy-making processes.²⁷ To produce effective practices, collaboration between states, law enforcement agencies, and NGOs is a crucial component of anti-trafficking efforts.²⁸ The main aim of an anti-trafficking strategy should be to protect victims. To reach this aim, Turkey needs to address the problem of trafficking by involving NGOs in the front-line processes of investigating and prosecuting trafficking, and prioritizing victims’ services amongst law enforcement. At this point, the issue of government co-option becomes significant. Governments prefer to work with NGOs because NGOs have experience in the field. This makes it easier for the government not to get directly involved or take responsibility for problems.²⁹ However, this type of co-option raises questions about whether NGOs are actually helping or hurting citizens.³⁰ Nabacwa mentions that once the government has co-opted NGOs on to its technical committees, it tends to neutralise the critical stance that such NGOs might adopt in relation to the topic at

²⁵ Ibid; European Commission, Turkey 2015 Report (n 6) 73

²⁶ U.S. Department of State, The 2016 TIP Report (Washington, U.S. Department of State) 377

²⁷ U.S. Department of State, TIP 2015 (n 6) 342

²⁸ Geneva Brown, ‘Women and Children Last: The Prosecution of Sex Traffickers As Sex Offenders and the Need for a Sex Trafficker Registry’ [2011] 31(1) Boston College Third World Law Journal 1

²⁹ Pareena G. Lawrence and Sheila Nezhad, ‘Accountability, transparency, and government co-option: A case study of four NGOs’ [2009] 4(3) International NGO Journal 76, 79

³⁰ Adil Najam, ‘The Four-C’s of Third Sector— Government Relations Cooperation, Confrontation, Complementarity, and Co-optation’ [2000] 10(4) Non-profit Management and Leadership 375, 388; Claire Mercer, ‘NGOs, civil society and democratization: a critical review of the literature’ [2002] 2(1) Progress in Development Studies 5, 16

hand.³¹ This means that governments can direct NGOs to work in accordance with their perspectives.

In the case of Turkey, NGOs' opportunities to obtain first-hand information from victims make them different from law enforcement officials. However, there is an issue of accountability, because the government financially supports NGOs and provides other related sources such as maintenance. In most cases, victims may be reluctant to help investigation or prosecution processes because of their fear or trauma. In this regard, NGOs' volunteer attorneys and psychologists can collect necessary information from victims to minimise the high risk of further harm or traumatization. Sandick notes that appropriate interviewing techniques have been shown to decrease victims' Post-Traumatic Stress Disorder (PTSD) symptoms and to decrease the likelihood of victim retraumatization.³² However, people who have traumatic experiences can react and interact in ways that the humanitarian workers can find frustrating and bewildering. This can contribute to humanitarian workers experiences of vicarious trauma (secondary trauma).³³ In other words, there is always a danger of secondary traumatization, whoever is conducting an interview with victims.³⁴ At this point, the issue of the accountability of NGOs become relevant. To reduce the risk of secondary traumatization, NGOs should provide some basic considerations, including: salary and leave policies; professional development programs; management practices;

³¹ Mary Ssonko Nabacwa, 'Relations between gender-focused NGOs, advocacy work, and government: a Ugandan case study' [2010] 20(3) *Development in Practice* 395, 401

³² Philip A. Sandick, 'Speechlessness and Trauma: Why the International Criminal Court Needs a Public Interviewing Guide' [2012] 11(1) *Northwestern Journal of International Human Rights* 105, 106

³³ Laurie Anne Pearlman and Lisa McKay, *Understanding and Addressing Vicarious Trauma* (Headington Institute, California, 2008) page 15

³⁴ Jan Coles, Jill Astbury, Elizabeth Dartnall and Shazneen Limjerwala, 'A Qualitative Exploration of Researcher Trauma and Researchers' Responses to Investigating Sexual Violence' [2014] 20(1) *Violence Against Women* 95, 96

plans for staff safety; access to medical and mental health support services; and family support services.³⁵

Despite all of these efforts, Turkey still faces practical problems in preventing human trafficking, prosecuting traffickers (and those who aid and abet them), and protecting victims. To produce comprehensive and victim-oriented solutions, Turkey must bring into force the national referral mechanism and evaluate the problem under both short- and long-term plans. The most crucial element of these anti-trafficking plans is Turkey's relationship with NGOs and civil society. In every further step against human trafficking, government institutions should be able to benefit from these organizations' collective field experience.

Short-term projects need to concentrate on awareness raising campaigns in order to build a public perception against all the purposes of human trafficking. As has been noted, these kinds of campaigns have not been conducted since 2006. There is a supplementary relationship between public and institutional (academic, governmental, and NGO) perceptions. Combining these perceptions provides an opportunity to establish a better understanding of trafficking in all its complexity.³⁶

Long-term plans should be designed carefully. These plans need to concentrate on training for law enforcement officials, the funding and establishment of shelters, and assistance for victims. In compliance with institutional perceptions, law enforcement training comes into prominence to build up both institutional perceptions and personnel perceptions. In addition to all these recommendations, Turkey should establish an independent and

³⁵ Pearlman and McKay, *Understanding* (n 33) p. 33

³⁶ Jill Robinson (n 14) 270

interdisciplinary commission to publish annual self-assessment reports, in order to provide statistics regarding prevention, prosecution, protection, and partnership, and to evaluate the performance of its anti-trafficking measures. Turkey should aim to protect victims' violated rights rather than its own sovereignty (which has so far led to preventative efforts against international criticism in advance of its political aspirations). Furthermore, to protect victims, Turkey needs to share information regarding trafficking cases within its national borders with international organizations, and to benefit from their experiences.

7.3. Conclusion

The six proposed obligations discussed above (Human Trafficking as a Violation of Human Rights, Discourage Trafficking in Human Beings, Protection and Assistance for Trafficked Victims, Prosecution for Traffickers and Those Who Aid and Abet Them, National Coordination for Law Enforcement Institutions and NGOs, International Cooperation against Trafficking in Human Beings) outline the successes and failures of international instruments. Most of the instruments focus on the prosecution of traffickers and those who aid and abet them, rather than producing effective victim-oriented protection related tools. Despite the targeted purposes of the proposed obligations, they cannot reduce the numbers of victims. Due to a number of ongoing concerns (including conflicts between international law and national law; 'insincere ratifications' of international documents; the lack of data sharing and training; together with national worries surrounding outside criticism and state sovereignty), human

trafficking remains the third most profitable crime of today (after drug and firearm trafficking).³⁷

This chapter illustrates how Turkey can adopt the most common anti-trafficking obligations and methods into its domestic strategy in connection with the 5P model. Turkey has been a party to almost all international and regional human trafficking instruments.³⁸ In addition to these, it has signed and ratified bilateral treaties concerning human trafficking. Despite all these efforts, Turkey's progress could be described as inadequate for various reasons. I recommend that Turkey strengthen its efforts by improving public and institutional perceptions surrounding trafficking. Difficulties in identification, investigation, and prosecution processes can be solved by improving institutional perceptions. Law enforcement officials need training programs to teach them to detect the signs by which victims may be identified, and to protect victims from traumatic elements of the investigative and prosecutorial processes. Turkey should utilize awareness raising campaigns to alter public perceptions. If people believe that trafficked persons are real victims of serious crime, they can help to support policies designed to combat trafficking in human beings. Despite the duties of the Department of Protection of Victims of Human Trafficking, another problematic issue is that Turkey has not utilized its national referral mechanism. The proposed obligations (alongside additional obligations for Turkey) would, if implemented, move Turkey's anti-trafficking strategy from its currently inadequate position, towards a comprehensive and victim-oriented approach.

³⁷ Stephen Platt, *Criminal Capital* (Palgrave Macmillan 2015) 122

³⁸ See Chapters 4 and 5

8. Conclusion

This thesis has examined several research questions in connection with its two main arguments, which are that ‘Turkey’s anti-trafficking efforts fail to tackle human trafficking because of their focal point, which is Turkey’s political desires rather than the protection of the victims’ violated rights’, and ‘the adoption of the 5P (prevention, protection, prosecution, partnership, and perception) model by the Turkish Government is a comprehensive way to compensate for the shortcomings of the presented anti-trafficking methods by international documents and theoretical considerations related to human trafficking’. In this regard, it utilizes female victims of trafficking from the former Soviet states as an illustration in order to examine Turkey’s anti-trafficking measures.

As has been noted several times, human trafficking is a lucrative business with various purposes. However, focusing on just the outcomes of this crime is not enough to produce effective solutions. Today, human trafficking has become the subject matter of various theoretical approaches and much multi-disciplinary research (across fields such as criminology, politics, law, migration, gender studies, and human rights).¹ The UNODC has observed that almost all countries are affected by trafficking, whether as a country of origin, transit, or destination for victims.² To understand the current phenomenon of human trafficking, this thesis elaborates upon, and critically analyses, the following concerns: theoretical approaches to human trafficking; legal responses to the trafficking problem, both

¹ June J.H. Lee, ‘Human Trafficking in East Asia: Current Trends, Data Collection, and Knowledge Gaps’ [2005] 43 *International Migration* 165, 167

² UNODC, ‘Human Trafficking’ <<http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>> accessed 07 July 2013

at national/regional and international levels; and the development of a comprehensive and victim-oriented anti-trafficking approach for Turkey.

My research set out to explore the issue of trafficking in human beings from a global perspective down to the national level in Turkey. The trafficking phenomenon has built upon the brutal history and institution of slavery. From antiquity to the present day, many individuals, groups, and races have been a part of this business.³ Despite the increasing social, political, and legal awareness (both in the domestic structures of states and on the international community agenda), trafficking in human beings still exists throughout the world.

The scope of human trafficking ranges from sexual exploitation, to forced labour, illegal organ removal, and other types of exploitation such as forced marriage, trafficking of children, and slavery-like practices. Within these practices, and across the entire trafficking industry, sexual exploitation holds a prominent place. According to the International Organization of Labour, forced sexual exploitation is a US\$99 billion per year industry worldwide.⁴ UNODC states that 58% of victims are trafficked for commercial sexual servitude and women are the main, albeit not exclusive, victims of the trafficking business, with 98% of sexual trafficking victims being female, and 75% of recorded human trafficking victims being women and girls.⁵

Based on the analysis conducted in the above chapters, the following significant arguments, which are breakdowns of the aforementioned arguments, can be summarised:

³ Kevin Bales, *Ending Slavery* (University of California Press 2007) 9-10

⁴ ILO, 'Profits and Poverty: The Economics of Forced Labour' (2014) <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf> accessed 01 March 2015, 13

⁵ UNODC, *Global Report on Trafficking in Persons* (UNODC, 2012)

Firstly, human trafficking has been examined by various theoretical approaches. However, most of them suffer from severe deficiencies in identifying: what trafficking is; which elements are important to detect trafficking; what the rights of victims are (or should be); and what states should do to diminish the negative effects of trafficking, both on victims and on society. In Chapter 3, I argued that unidirectional approaches to the elaborate problems raised by human trafficking do not provide sufficient opportunity to analyse all the elements and outcomes of trafficking. As was emphasized, trafficking in human beings is a multi-purpose and multi-dimensional crime, and needs a comprehensive and multi-disciplinary theoretical approach that focuses on victims' rights rather than trafficking purposes or means. For instance, migration-related theories focus on states' victimhood rather than the violated rights of victims, and rely too heavily upon the economic triggers behind trafficking crime.⁶ However, economic considerations, such as poverty, the feminization of poverty, and unstable economic state infrastructures, serve as one of the 'push factors', alongside discrimination, unstable political structures, and armed conflicts.

Like migration approaches, sex work approaches are limited in their capacity to understand human trafficking. According to Barry, the fight against trafficking is a fight against all prostitution.⁷ I argue that this narrow aspect is not enough to identify all trafficking crime. Sexual exploitation is one of the purposes of trafficking, not the one and only aim. These approaches are important, with their

⁶ Nadejda K. Marinova and Patrick James, 'The Tragedy of Human Trafficking: Competing Theories and European Evidence' [2012] 8(3) *Foreign Policy Analysis* 231, 234; Saskia Sassen, *The Mobility of the Labour Capital: A Study in International Investment and Labour Flow* (Cambridge University Press 1990) 1-12; Douglas S. Massey, 'International migration and economic development in comparative perspective' [1988] 14(3) *Population and Development Review* 383, 386-89; Ernest George Ravenstein, 'The Laws of Migration' [1885] 48(2) *Journal of the Statistical Society of London* 167, 174-189

⁷ Kathleen Barry, *Female Sexual Slavery* (NYU Press 1979) 7

reliance on victim blaming and political and legal ignorance, but they are incapable of explaining the entire system of human trafficking.

To find a comprehensive and victim-oriented basis for my research on Turkey, I critically examined Shelley's Business Model Approach. Shelley establishes prototypes to highlight regional differences. In particular, Shelley's Natural Source and Violent Entrepreneur Models provide the most relevant features of analysis in assessing the trafficking business in/to Turkey. For instance, both these models, and the main characteristics of trafficking to Turkey, build their businesses with the purpose of sexual exploitation, target women and girls, and benefit from source countries' unstable economic, social, and political conditions. Despite these similarities, I argue that this approach is inadequate to elaborate upon human trafficking with regards to Turkey. Shelley assesses human trafficking as a business, with its high profits, risks, and networks.⁸ My main critique is that human trafficking is not simply a business, but a crime which violates the rights of vulnerable individuals. In harmony with these theoretical approaches, some criminology theories, such as rational choice theory and demand theory, concentrate on the crime and its triggers (such as choices and profit). The main weakness of these theories is their ignorance with regard to the violated rights of victims. Further, they do not produce any humanitarian solutions against the trafficking business. Pease and Hayward emphasize that these theoretical approaches lack reflexivity, and fail to focus on the array of criticisms of rational choice theory that have emerged from other disciplines (such as behavioural psychology, political science, and sociology), many of which centre around the simple alternative hypothesis that 'not all actors are economically self-

⁸ Louise Shelley, 'Trafficking in Women: The Business Model Approach' [2003] 10(1) The Brown Journal of World Affairs 119, 121

interested'.⁹ In these regards, the use of the 5P model, which was explained in Chapter 3, has clear advantages in any analysis of the Turkish system. In this model, Haynes's approach and a human rights-based approach have a critical role. The 5P model utilizes the well-known structure of Haynes's Model and its significant focus on human rights, which is important in my analysis. However, in addition to these approaches, the 5P model highlights the role of social perception regarding human trafficking crime. Perception is closely related to the elements of prevention, but the 5P model gives it a particularly significant role in Turkey's anti-trafficking action. As I highlighted in the chapters above, trafficking in human beings has very different characteristic features from country to country. In the case of Turkey, the perception of society and law enforcement agencies has various roles to play in areas such as a detection or the warning and assistance system.¹⁰

Secondly, I would suggest that the complexity of human trafficking in the realm of international documents has not been elaborated on clearly, from a holistic victim-oriented approach. Various international and regional instruments, both hard (treaties) and soft law (declarations, resolutions, and other non-treaty obligations) have recognised human trafficking.¹¹ I have examined the legal history of human trafficking, from the white slave trade to the Transnational Organized Crime Convention and the Trafficking Protocol. Chapters 4 and 7 discussed the role of these documents in the prevention of trafficking, the

⁹ Keith Hayward, 'Situational Crime Prevention and its Discontents: Rational Choice Theory versus the 'Culture of Now' [2007] 41(3) *Social Policy & Administration* 232, 233; Ken Pease, 'Rational choice theory' In E. McLaughlin and J. Muncie, *The Sage Dictionary of Criminology* (Sage 2006) 253

¹⁰ Section 6.5 in Chapter 6 highlighted the different role of perception

¹¹ Alex Balch, 'Assessing the international regime against human trafficking' in Leila Simona Talani and Simon McMahon (eds), *Handbook of the International Political Economy of Migration* (Edward Elgar 2015) 99

prosecution of traffickers, and the protection of victims. Rather than protecting victims, international instruments concentrate on criminalizing human trafficking, and investigating and prosecuting human trafficking.¹² I argue that, due to the criminalisation of human trafficking, the Trafficking Protocol seeks to strengthen effective prosecution and suppression measures, whilst protection related obligations are merely regarded as optional by state parties. In addition to the arguments relating to the theoretical approaches in Chapter 3, international documents have deficiencies in their approaches towards human rights. Andreatta notes that the adoption of a holistic and multi-disciplinary approach must place the protection of victims' needs at the centre of any anti-trafficking measures.¹³

I have argued that regional organizations have failed to produce victim-oriented measures. For instance, the Recommendations of the Council of Europe failed, until the Convention on the Action against Trafficking in Human Beings, to provide efficient solutions to address push factors in the borders of member states, preferring to emphasize the importance of prosecuting traffickers. With the Convention, the CoE has begun to create a holistic approach to combating human trafficking, in order to reduce the harm it causes. In addition to the Council, the EU has also concentrated on creating a victim-centred approach, including a gender perspective, to cover actions in different areas, such as criminal law provisions, the prosecution of offenders, victims' support and rights in criminal proceedings, in prevention, and monitoring of the implementation thereof.

¹² Chapter 7, section 7.2.1

¹³ Cristina Andreatta, 'Protection, assistance and social (re)integration of human trafficking survivors: a comparative analysis of policy approaches and practices in the UK and in Italy' London: University of East London Centre for Social Justice and Change Working Paper No 2 <<http://www2.uel.ac.uk/csje/documents/no2CristinaAndreattaJan2015.pdf>> accessed 03 January 2016, 9

However, I argue that despite several directives and strategy plans, the EU has preferred to adopt stricter immigration rules.¹⁴

As an overview, Iselin and Adam point out that human trafficking is ‘one of the world’s most serious crimes and human rights violations’.¹⁵ International and regional documents must focus on rectifying the damage caused by violations of human rights in the human trafficking process. Provisions relating to victim protection must be prioritized and implemented by international and regional organizations and their member states. We must bear in mind that human trafficking is a crime which targets its victims’ expectations, dreams, and human rights. In this regard, the ECtHR produces useful explanations of best-practices based on actual cases. Its judgements and case comments are important to help determine the elements of a human rights-based approach. All international and regional instruments have obligations regarding victim protection. However, the important point is the focal points of these obligations. They need to concentrate on a comprehensive and victim-oriented solution for the violated rights of victims, rather than merely the prosecution of the crime.

Thirdly, this thesis argues that, from 1992 to 2002, Turkey ignored the existence of such a crime and did not take steps to prevent trafficking or to protect its victims, while after 2002, the government has pursued its anti-trafficking agenda to further its political aspirations rather than to prevent violations of human rights or to tackle organized crime. I have examined the transformation of Turkey’s domestic anti-trafficking strategy from the early 1990s to today. Turkey

¹⁴ Chapter 5, section 5.4, concerned a detailed discussion surrounding the provisions of the CoE and the EU

¹⁵ Brian Iselin and Melanie Adams, ‘*Distinguishing between Human Trafficking and People Smuggling*’ (Bangkok, UN Office on Drugs and Crime, Regional Centre for East Asia and the Pacific, 2003) 7

has been chosen as a destination and transit country.¹⁶ This study has elaborated upon Turkish law and policies pertinent to the trafficking in human beings, especially women. In connection with the anti-trafficking framework under domestic laws, the study has concentrated on two successive periods: firstly, the political and legal ignorance period from the early 1990s to 2002; secondly, the legal and political provisions against human trafficking from 2002 to today.

This thesis has evaluated Turkey's main problems in this area against the standards developed in Chapter 3, section 3.5. In this part, these problems were identified in relation to the 5P (prevention, protection, prosecution, partnership, perception) model. From the prosecution side of the 5P model, Turkey should utilize the obligations for compensating the violated human rights of the victims. In particular, to alleviate the pressure on female victims from not only the former Soviet states but also, nowadays, Syria and Iraq, Turkey needs to concentrate on these issues, rather than the political opportunities which arise as a result of the trafficking problem.¹⁷ In terms of protection, the number of shelters is inadequate. There are only three shelters for women and there are no shelters for male and minor victims. Turkey still uses deportation after a recovery and reflection period as a method of combatting trafficking. Turkey's practices are mainly in breach of the standards of a human rights-based approach. From the partnership side of the model, despite Turkey's cooperation and coordination efforts, which focus on their political benefits at the international, regional, and bilateral levels, there is still a lack of communication amongst governmental institutions, and between NGOs and governmental institutions. The prevention and perception related tools

¹⁶ U.S. Department of State, *The 2015 TIP Report* (Washington, U.S. Department of State) 340

¹⁷ Section 5.4. in Chapter 5 evaluated how the victims are seen an opportunity to advance Turkey's political aspirations.

are intertwined within the context of international obligations and the most common trafficking-related theoretical approaches. As I highlighted in section 3.5, different from the training for law enforcement officials and awareness raising campaigns mentioned in international obligations, the perception element of the 5P model emphasizes that sociological, traditional, and religious elements are important for the efficacy of training programs and campaigns. To build up perception, Turkey needs to concentrate on training programs and awareness raising campaigns. In section 6.5 I underlined that there have been no public awareness campaigns since 2006. To control and regulate the functioning of each individual ‘P’, Turkey should actively use the National Referral Mechanism.

This study concludes that, to tackle all forms of trafficking in human beings, Turkey takes a criminalistic approach, rather than a human rights approach, as the dominant discourse under its legal system, and has placed greater emphasis on the prosecution and suppression of human trafficking than the human rights of victims. Despite this, Turkey does not pay the same degree of attention to human trafficking as it does to migrant smuggling. I argue that Turkey has failed to address and promote a comprehensive and effective human rights framework in its domestic legislation.

Until 2002, there were no specific regulations concerning human trafficking. I argue that this legal and administrative ignorance caused severe pain for both victims and members of society. Victims were treated as criminals, prostitutes, and ‘homewreckers’. After 2002, Turkey attempted to develop a comprehensive framework on human trafficking, through measures of prosecution. Firstly, Turkey adopted Article 201/b of the Turkish Penal Code (Law no. 765), which was augmented by Law no. 4771, and subsequently amended as Article 80 of the

new Criminal Code (Law no. 5237), which entered into force on 1 June 2005. In addition to these two main changes in its legal system, Turkey has introduced legislative instruments for witness protection, legal and health assistance, and safe return. However, I argue that despite the criminal features of human trafficking, the most important part of a comprehensive and victim-oriented anti-trafficking strategy is victim protection, which still remains hidden behind the prosecutorial approach to trafficking in Turkey.¹⁸

In this regard, this thesis has analysed Turkey's anti-trafficking strategies in accordance with the theoretical and methodological approach outlined in earlier chapters. This doctrinal methodology provided the normative basis for an evaluation of the law and its implementation in respect of trafficking in human beings in Chapters 4 and 6. Socio-legal methodology helped to conduct interviews and analyse Turkish policy in order to find out what Turkey should do to achieve a comprehensive and victim-oriented anti trafficking strategy, in Chapters 5 and 6. The process-tracing methodology offered a means of analysing not only the transformation in international law but also the transformation of Turkey's domestic structure. The thesis also focuses on the EU's requirements for full membership. These requirements are the inputs of the transformation process. The legal norms, such as Article 80 of the Criminal Law (Law no. 5237 – 1 June 2005) and the Foreigners and International Protection Law (Law no. 6458 – 4 April 2013), and administrative regulations such as the establishment of the Department of Protection of Victims of Human Trafficking (11 April 2013), the shelters and the toll-free helpline, are the main outputs of the process. The most important

¹⁸ See Chapter 6, section 6.5 (the treatment of the victims). In this section, I highlighted the problematic issues in identification and protection processes, which are part of a human rights approach for trafficking victims.

problem is that Turkey has taken these steps as a means of achieving its political aspirations and not for the protection of victims. As a result of this deviation in the main purposes of the inputs, the outputs have not provided the potential benefits for Turkey's anti-trafficking strategy.

Turkey has recently attempted to produce more victim-oriented obligations in order to protect the violated human rights of trafficking victims. In this regard, the Department of Protection of Victims of Human Trafficking has an important role in constructing a human rights approach towards Turkey's anti-trafficking strategy. However, the Department must first take further steps in assembling the national referral mechanism, and implement coordinated efforts to collect data from trafficking cases, in order to assess the operational capabilities of relevant institutions.

Since 2002, legal and administrative transformations around human trafficking have occurred, attempting to strengthen international, regional, and bilateral partnerships. On an international level, Turkey has ratified the Transnational Organized Crime Convention and the Trafficking Protocol. At the regional level, as a result of its political aspirations, Turkey has taken steps to meet the requirements of the EU *acquis*. In this regard, I have argued that Turkey has intended to tick off procedural requirements, rather than genuinely working to comply with EU provisions. Furthermore, various scholars have recognised that governments may become party to international instruments to escape criticism and to obtain political benefit.¹⁹ Turkey has also established many security-related

¹⁹ Seo-Young Cho and Krishna Chaitanya Vadlamannati, 'Compliance with the Anti-trafficking Protocol' [2012] 28 European Journal of Political Economy 249, 250; Oona A. Hattaway, 'Do human rights treaties make a difference?' [2002] 111 Yale Law Journal 1935, 1939-1945; James Raymond Vreeland, 'Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture' [2008] 62(1) International Organization 65, 72; Dina

and economic-based partnerships to share statistical data and establish a general policy against trafficking. Yet most of these partnerships have not had a level of influence equal to that of the EU. To support its domestic operational power, Turkey has signed bilateral treaties and agreements around various issues, such as information sharing, judicial support, and anti-trafficking operations.²⁰ In Chapter 5, I focus on two specific problems surrounding Turkey's relations with international and regional organizations, and the causes of their failures in the fight against human trafficking. Despite their intentions to tackle human trafficking, most of the regional organizations and bilateral treaties do not devote their efforts to victim-oriented and preventative approaches. This means that these organisations follow the main stream (which is criminalization) to combat trafficking. Also, they prefer to combat riskier crimes such as migrant smuggling, in order to protect their borders. However, human trafficking has been described as the nexus between irregular migration, forced labour, and prostitution.²¹ In addition to these main arguments, I argue that the current framework of proposed obligations in relation to trafficking is relatively weak, and ill-equipped to create a victim-oriented anti-trafficking approach.²² To improve and develop a more comprehensive approach to protection-related obligations, there is an urgent need to consider amending the Trafficking Protocol in line with international human rights instruments. I argue that trafficking is a human rights issue which must be

Francesca Haynes, 'Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers' [2004] 26(2) Human Rights Quarterly 221, 232

²⁰ See Chapter 5, sections 5.2, 5.3, and 5.5, which concern Turkey's partnerships with regional organizations and states

²¹ Jyoti Sanghera, 'Unpacking the Trafficking Discourse' in Kamala Kempadoo, Jyoti Sanghera and Bandana Pattanaik (eds), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work and Human Rights* (Taylor and Francis 2012) 3-12

²² See Chapter 7, section 7.2, which outlined the weaknesses of proposed anti-trafficking obligations

regarded as a serious threat to the promotion and protection of human rights.²³ National practices are shaped by the adoption of the obligations within the Trafficking Protocol, which stipulates protection measures in Articles 6 to 8 of the Trafficking Protocol, and Articles 24 and 25 of the Transnational Organized Crime Convention.

I offer a number of positive steps to facilitate best practice to prevent trafficking and to assist and protect victims of trafficking. Firstly, states need to accept that human trafficking is a violation of human rights, and impose sufficient deterrence to decrease its supply and demand.²⁴ Secondly, coordination amongst national institutions and international organizations is crucial to diminishing the prevalence of trafficking.²⁵ In addition to such official coordination, national law enforcement institutions need to further establish coordination with NGOs in order to develop and implement programmes and measures against trafficking.²⁶ Last, but not least, states should ensure that trafficked victims have the right to access legal, psychological, and medical assistance from governments in destination countries. States should consider and guarantee the examination of the principle of non-refoulement in cases of human trafficking, where victims may

²³ Tom Obokata, 'A human rights framework to address trafficking of human beings' [2006] 24 *Netherlands Quarterly of Human Rights* 377, 380

²⁴ Ryszard Piotrowicz, 'Human security and trafficking of human beings: the myth and the reality' in *Human Security and Non-Citizens Law, Policy and International Affairs* (eds) Alice Edwards and Carla Ferstman, (Cambridge University Press 2010) 410; Haynes (n 17) 258

²⁵ Anne T. Gallagher and Nicole Karlebach, 'Prosecution of Trafficking in Persons Cases: Integrating a Human Rights-Based Approach in the Administration of Criminal Justice' Expert Meeting of the UN Special Rapporteur on trafficking in persons, especially women and children, (Background paper, 4 July 2011, Geneva, Switzerland) <http://works.bepress.com/anne_gallagher/18/> accessed 10 January 2016, 23; Piotrowicz, 'Human security' (n 22) 410; Haynes (n 17) 260

²⁶ UNODC, *Toolkit to Combat Trafficking in Persons Global Programme against Trafficking in Human Beings* (United Nations, 2008) 54

face torture, or inhuman or degrading treatment, by both traffickers and their host country.²⁷

In addition to what Turkey has done so far, I offer a number of constructive steps to move its practices in line with a more comprehensive and victim-oriented perspective. I argue that Turkey's failure to establish an adequate anti-trafficking strategy (across every aspect of the national, regional, and international response to trafficking) within a human rights approach, is anchored in the rights and obligations established by international human rights law.²⁸

First and foremost, Turkey must concentrate on victims and their needs. Despite the high prevalence of trafficking in women, Turkey needs to produce victim-oriented solutions for every dimension of human trafficking, such as sexual exploitation, forced labour, child trafficking, and domestic trafficking. A holistic approach will be helpful to reduce the numbers of victims. In this regard, to provide a human rights approach, Turkey must facilitate psychological, medical, and legal assistance, alongside investment in shelters designed to meet the needs of female, male, and underage victims. For instance, just as occurred in the early stages of the trafficking flows from the former Soviet republics, the government of Turkey and Turkish society are ignoring the problems of Syrian refugee girls and women, and blame them for social problems, particularly in the south-eastern part of the country. Osotimehin highlights the brutal features and high prevalence of this crime, remarking that '[c]hild marriage is an appalling violation of human rights and robs girls of their education, health and long-term

²⁷ Udara Jayasinghe and Sasha Baglay, 'Protecting Victims of Human Trafficking Within a "Non-Refoulement" Framework: is Complementary Protection an Effective Alternative in Canada and Australia?' [2011] 23(3) International Journal of Refugee Law 489, 507

²⁸ UNHR Office of the High Commissioner, 'Human Rights and Human Trafficking' (Fact sheet no.36) <http://www.ohchr.org/Documents/Publications/FS36_en.pdf> accessed 11 January 2016 8

prospects.’²⁹ The victims are different, but the problems are same. This shows that Turkey needs to turn its face to female victims’ violated rights rather than the contributions of increasing numbers of Syrian refugees to Turkey’ political aspirations.

Secondly, as a necessary application of the 5P index, Turkey must raise institutional and public perceptions to combat trafficking in human beings. The requirement for raised perception is a separate element in the above equation, which catalyses the duties represented by other elements. Productive training programmes help raise institutional perceptions and work to increase the detection and identification of victims from the outset, and provide law enforcement officials with a greater understanding of victims’ mental and physical conditions. Well-organized public awareness campaigns help to raise public perceptions, reduce end-user demand, and help law enforcement officials in the investigation and prosecution of trafficking offences. People may report possible trafficking acts to law enforcement agencies as a result of such campaigns, while all participants of the investigative and prosecutorial processes, from police officers to prosecutors, can treat victims more carefully.

Thirdly, Turkey must concentrate on international and national coordination and cooperation. Inter-institutional relations amongst Turkey’s governmental institutions, and cooperation between governmental institutions and NGOs, have significant effects upon the entire anti-trafficking strategy. The first necessary step is to establish and activate the national referral mechanism, in order to benefit from a large body of experience, carrying greater operational capabilities to

²⁹ Babatunde Osotimehin, M.D, Executive Director, UNFPA, his speech was delivered in the launch of the report against child marriage of United Nations Population Fund (UNFPA) < http://www.who.int/mediacentre/news/releases/2013/child_marriage_20130307/en/> 04 August 2016

combat trafficking. I have examined the importance of monitoring mechanisms and statistical data analysis for an influential anti-trafficking strategy. In this regard, Turkey must collect more data before it can develop further steps against trafficking. This data should be stored in a certain way, so as to provide data to, and collate information from, relevant institutions. Currently, the Department of Protection of Victims of Human Trafficking carries out many duties but does not collect or prepare statistical data. With this data, Turkey could interpret regional variations in trafficking and take preventative measures accordingly. International and regional cooperation and coordination are of particular importance in this respect. Turkey's statistical self-assessments would provide an opportunity for international and regional organizations to observe and monitor the transformation of this criminal business in Turkey.

As the first interdisciplinary and victim-oriented research project regarding female trafficking in Turkey, this thesis offers the most up-to-date research analysing cause and effect relationships in the transformation of Turkey's anti-trafficking strategy. Due to the lack of self-assessment reporting on human trafficking in Turkey, this thesis utilizes annual reports from the EU and the US Department of State. In this respect, this research is the first academic work to evaluate both EU and US reports, together with an analysis of Turkey's transformation in its approach to human trafficking. Distinct from the 3P index, this research utilizes the 5P index (prevention, prosecution, protection, partnership, and perception) in order to compare Turkey's past and present practical problems in the context of victim welfare. This approach provides a more comprehensive view to finding solutions not only for victims' violated

human rights but also for Turkey's legislative and political anti-trafficking strategy.

The main aspiration of this thesis is to provide a body of research that cures the problematic symptoms of Turkish academic literature and legal and political practices surrounding human trafficking, by using the 5P model. I demonstrate that this brutal business has a complicated structure and needs a comprehensive, multi-disciplinary approach in order to find a victim-oriented solution. I have examined Turkey's human trafficking cases from 1992 to the present, highlighting not only the relevance of sociological and economic problems prevalent in the former Soviet states, but also the growing importance of international and national anti-trafficking policies, alongside the significance of states' geo-political locations. In this regard, I have argued that existing theoretical approaches and international obligations are ill-equipped to comprehend the different dimensions of the problem and to produce solutions which address the characteristic features of human trafficking, either at the international or regional levels or in Turkey specifically. It has been argued here that Turkey takes these anti-trafficking steps merely to support its political agenda. As a result of this misguided aspiration, human trafficking is still expanding. I have argued that Turkey's efforts in this respect fail disastrously to focus on human trafficking as a human rights violation. Nevertheless, I believe that Turkey can produce a comprehensive and victim-oriented anti-trafficking solution in the light of international obligations, by using its own domestic dynamics and the 5P model, which would provide a systematic approach for Turkey's anti trafficking agenda, not only at the governmental level but also at the societal level. In other words, making social values effective (perception) and establishing partnerships with every possible organization are so

important that they require separate expression and cannot be assumed to fall under the heading of prevention as currently understood under Turkey's international obligations.

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Appendices

Appendix 1.

Tier Classification

Tier 1: Countries which fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standards for the elimination of trafficking

Tier 2: Countries which do not fully comply with the TVPA's minimum standards but are making significant efforts

Tier 2 watch list: as Tier 2 but the number of victims is increasing, or the countries do not provide evidence of increased efforts to tackle the problem or the country is making efforts to improve

Tier 3: Countries which do not fully comply with the minimum standards and are not making significant efforts to do so.

Appendix 2.

The Trafficking Victims Protection Act's (TVPA) minimum standards

Trafficking Victims Protection Act of 2000, SEC. 108. Minimum Standards for the Elimination of Trafficking in Persons:

(a) MINIMUM STANDARDS.—For purposes of this division, the minimum standards for the elimination of trafficking applicable to the government of a country of origin, transit, or destination for a significant number of victims of severe forms of trafficking are the following:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is

sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

(b) CRITERIA.- In determinations under subsection (a)(4), the following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country, including, as appropriate, requiring incarceration of individuals convicted of such acts. For purposes of the preceding sentence, suspended or significantly reduced sentences for convictions of principal actors in cases of severe forms of trafficking in persons shall be considered, on a case-by-case basis, whether to be considered as an indicator of serious and sustained efforts to eliminate severe forms of trafficking in persons. After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked, including by

providing training to law enforcement and immigration officials regarding the identification and treatment of trafficking victims using approaches that focus on the needs of the victims.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons, measures to establish the identity of local populations, including birth registration, citizenship, and nationality, measures to ensure that its nationals who are deployed abroad as part of a peacekeeping or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and measures to prevent the use of forced labour or child labour in violation of international standards.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates, prosecutes, convicts, and sentences public officials who participate in or facilitate severe forms of trafficking in persons, including nationals of the country who are deployed abroad as part of a peacekeeping or other similar mission who engage in

or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and takes all appropriate measures against officials who condone such trafficking. After reasonable requests from the Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data consistent with its resources shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

(9) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

(10) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.

(11) Whether the government of the country has made serious and sustained efforts to reduce the demand for

(A) commercial sex acts; and

(B) participation in international sex tourism by nationals of the country

Appendix 3.

National Referral Mechanism

- Ministry of Foreign Affairs
- Ministry of Interior
 - General Directorate of Security
 - General Command of Gendarmerie

- Turkish Coast Guard Command
- Prime Minister's Office
 - General Directorate for Social Services and Child Protection
 - General Directorate on the Status and Problems of Women
 - Human Rights Board
 - State Planning Organization
- Ministry of Justice
- Ministry of Finance
- Ministry of Labour and Social Security
- Ministry of Health
- General Directorate of Social Assistance and Solidarity
- Human Resource Development Foundation (NGO)
- Foundation for Women's Solidarity (NGO)
- Observer status:
 - International Organization for Migration
 - European Commission