

Sex Trafficking and a Gender Based Approach to EU Immigration Policy

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Abstract

In the past decade, we have witnessed a rapid expansion of organized crime throughout the Former Soviet Union and with it, the growth of the illegal sex trade. It is estimated that over fifty thousand women are trafficked out of this region annually.¹ The following paper examined whether anti-trafficking policies found within EU immigration legislation effectively address victimization. What I discovered during my research is that current EU immigration policy demonstrates that too much focus has been placed on securitization and criminality. There is also a significant lack of coordination and cooperation between EU member states regarding an anti-trafficking initiative, which means that statistics on trafficking are scarcely available. The emphasis on criminality as opposed to victimization demonstrates a misunderstanding of gender inequalities and how to effectively address them. What I conclude in this paper is that in order to properly combat sex trafficking, a gender based approach which focuses on victimization rather than criminality should be incorporated into current EU immigration policy.

¹ IOM (1995) *Trafficking and prostitution: The growing exploitation of migrant women from Central and Eastern Europe*. Geneva: IOM

Introduction

It has been estimated by the International Organization for Migration (IOM) that approximately half a million women are trafficked each year². The countries from which these women are taken have some of the highest numbers of people living in poverty in the world. In recent decades we have witnessed a dramatic increase of women being trafficked from the former Soviet Union³. According to statistics gathered by the IOM, approximately twenty thousand women are trafficked out of the former Soviet Union annually.⁴ Western Europe has become the main destination area for traffickers from the former USSR. Although Western EU states have attempted to address the problem, there appears to be some conflict between combating sex trafficking and EU immigration policy; one is the responsibility of individual states, while the latter uses an intergovernmental approach. A lack of international coordination and too much focus on cross border crime and illegal migration has resulted in anti-sex trafficking initiatives that are ineffective. In recent years policy analysts and authors have called for a reformulation of current immigration policies. Authors, such as Jo Goodey, have argued that there needs to be less focus on criminality and more focus on victimization; and that this can be achieved through a gender based approach. In the following paper I will be examining the rise of sex trafficking in the former USSR and the impact immigration policies in the European Union have had on combating this problem. This paper will start by presenting the following question: Would a gender based analysis of EU immigration policy allow states to address the issue of sex trafficking from the former Soviet Union more effectively? I will argue that a gender based understanding of immigration policy would result in more effective sex trafficking

² Ibid

³ Ibid

⁴ Ibid.

counter-measures. I will begin by discussing the “feminization of poverty” in the former USSR. Secondly, I will examine the process of trafficking and how it differs from other forms of illegal migration, such as smuggling. I will then analyse and critique current EU immigration policy, as well as recent EU anti-trafficking initiatives. This section will also examine the concept of “agency” and the role it plays in EU policy. I will then move on to discussing how a gender based approach that focuses on victimization could prove to be more effective. I will conclude by outlining possible considerations that must be taken into account, including international coordination and a lack of information, and provide my final thoughts.

Chapter 1: Methodology and Terminology

The research material used to write this paper consisted of both academic articles and official documents created by the United Nations and the European Union. The academic readings were used predominantly during my discussions of the process of sex trafficking and the mechanisms used by traffickers, the incidence of female poverty in the Former Soviet Union and a gender based approach to anti-trafficking initiatives. In the sections that discuss international law and EU immigration policy, my most major sources were the UN reports on international trafficking, as well as the Palermo Protocol. I also reference several EU directives including the 2011 Directive on Preventing and Combating Trafficking in Human Beings; as well as the 2006 Schengen Borders Code. My approach to answering the question posed by this paper began with an analysis of the existing literature. Firstly, I examined articles written by author Jo Goodey, whose research focused on a gender based analysis to anti-sex trafficking legislation. I also collected research provided by the International Organization for Migration on sex trafficking statistics in the former Soviet Union. After achieving a firm understanding of the mechanics of sex trafficking, as well as the gender based criticisms of policy, I moved on to an analysis of actual EU immigration policy.

I focused my research on parts of EU immigration policy that dealt directly with cross border crime prevention and more precisely, sex trafficking. I examined EU legislation that addresses external border crossing procedures, as well as policies that deal with organized crime activity in third countries, and compared them with EU and UN anti-trafficking initiatives. The reason for making a comparison between the different legislations was to determine whether the policies differed. What I discovered during my analysis was that a majority of the current legislation prioritizes securitization and criminality. I also examined the UN Convention on Human

Trafficking and attempted to find national statistics published by EU member signatories. I took this approach hoping to find concrete statistical data. I was unable to find reliable and consistent national data and instead relied on statistics that had been collected by the IOM. Many EU member states have not collected a significant amount of qualitative or quantitative data regarding sex trafficking. The absence of sex trafficking data and an abundance of information regarding cross border crime further advanced my argument that victimization is ignored and criminality remains the focus.

My use of “state” refers specifically to each individual EU member country. Member states of the EU are “party to treaties of the European Union (EU) and thereby subject to the privileges and obligations of EU membership”.⁵ I am aware that the centralized nature of the EU system makes it very difficult to determine what falls under national and EU authority. By providing the above definition, I intend to clarify for the reader when I am making reference to each individual member state and when I am discussing the EU centralized government.

The term “international law” is also used and for the purposes of this paper I provide the following definition: “International law is the set of rules generally regarded and accepted as binding in relations between states and nations.”⁶ I use the term “international law” to apply to both UN conventions and EU immigration policy. I use this term in reference to EU immigration law because the Union consists of several sovereign states. With the formation of the Schengen Area, many aspects of EU immigration policy apply to all member states equally and countries in within the designated area are legally obligated to implement and abide by shared policies.

⁵ European Commission (10 November 2005). "The History of the European Union: 1994"

⁶ Bentham, J.(1789), *An Introduction to the Principles of Morals and Legislation*, London: T. Payne, pp. 6.

Chapter 2: Women and Poverty in the Former Soviet Union

In 1991 the “Iron Curtain” had fallen and Eastern Europe and the former Soviet Republics were now free to open their markets and diversify their economies. Unfortunately, the romanticism surrounding free market capitalism soon died out as the realities of the end of the Cold War set in throughout the former USSR. One of the most significant and devastating effects of the end of communism was the impact it had on the socioeconomic welfare of women.⁷ The 1990s saw the rapid expansion of organized crime and illegal black markets in all of Eastern Europe and Russia.⁸ While men capitalized on the privatization of oil and other lucrative industries, women were left to fend for themselves. Reports presented by the United Nations have shown that some of the world’s highest rates of poverty are experienced in the former Soviet Union⁹. Ukraine and Russia have rates of poverty of about twenty-percent, while the former Republic of Moldova experiences a staggering rate of seventy-percent.¹⁰ The group that has been the most profoundly impacted by poverty in these regions are women, of all ages. For the purpose of my paper I will be examining the issue of “overall poverty” as defined by the United Nations:

“Fundamentally, poverty is a denial of choices and opportunities, a violation of human dignity. It means a lack of basic capacity to participate effectively in society. It means not having enough to feed and clothe a family, not having a school or clinic to go to; not having the land on which to grow one’s food or a job to earn one’s living, not having access to credit. It means insecurity, powerlessness and exclusion of individuals,

⁷ Hughes, D., L. Sporcic, N. Mendelsohn and V. Chirgwin (1998) Factbook on Global Sexual Exploitation: Russia. Retrieved October 20th, 2012, from Coalition Against Trafficking in Women Web site: <http://www.uri.edu/artsci/wms/hughes/russia.htm>

⁸ Feingold, D. (2005) Human Trafficking. *Foreign Policy*, 1(150): 26-30

⁹ Slay, B. (2009) Poverty, Inequality, and Social Policy Reform in the Former Soviet Union. *United Nations Development Programme*. Pp 1-19

¹⁰ Bezemer, D. (2006) Poverty in Transition Countries. *Journal of Business and Economics*, 9(1): 11-35

households and communities. It means susceptibility to violence, and it often implies living on marginal or fragile environments, without access to clean water or sanitation”¹¹

Under the communist regime, women were provided government employment and given adequate maternity leave, as well as access to government funded childcare. All government assistance ceased to exist with the end of the Cold War. Research has shown that women have been disproportionately affected by the cut to social assistance programs¹². The fall of the Soviet Union also saw the re-emergence of traditional social norms and the re-enforcement of gender roles that disadvantaged women. In many regions, especially the Caucasus, women fulfill a “secondary” role in society and are often not entitled to the same rights and privileges as men¹³. Women throughout the former USSR earn lower wages compared to their male counterparts and can often find it difficult gaining access to education. The majority of families living below the poverty line are headed by women or have women as the primary breadwinner. Many researchers claim that what we are witnessing in the former Soviet Union is the “feminization of poverty”¹⁴. This statement has proven to be somewhat contentious given that many critics argue that poverty affects men and women equally. However, Moghadam argues that the feminization of poverty is precisely what is occurring in the former Soviet Republics.¹⁵

Single mother headed households have grown exponentially since the fall of communism and it is predominantly these households that are living below the poverty line. Statistics have shown

¹¹ Gordon, D. (2005) 1998 UN Indicators of Poverty and Hunger. UNESCO.
http://www.un.org/esa/socdev/unyin/documents/ydiDavidGordon_poverty.pdf

¹² See 9.

¹³ See 10.

¹⁴ Moghadam, V. (2005) The ‘Feminization of Poverty’ and Women’s Human Rights. *Gender Equality and Development Section, UNESCO*: 1-39

¹⁵ Ibid

that women in the USSR are now the main financial contributors in families¹⁶. With alcohol and suicide rates amongst men especially high, women have become the primary breadwinners.¹⁷ The financial burden has now fallen on young women to help contribute to household costs. As a result, many families are now supported by solely the mother's income because the father has either left the family or uses his income to support his habit.¹⁸ Unfortunately, increased economic demand has not resulted in an increase in job or educational opportunities for women. Most women found in rural Ukraine, Moldova, Russia and Poland have not finished high school, possess no trade skills and have limited work experience.¹⁹ But it is specifically in these regions where we are witnessing a higher demand for female contributions to the household income. The second problem in these areas is the increase of chronic substance abuse. The massive rates of unemployment that resulted from the fall of communism caused a surge in alcohol and drug abuse throughout the former Soviet Union; young adult and middle aged men appear to be the most affected.²⁰

There has also been the issue of income redistribution, which has become increasingly unequal since the fall of the Soviet Union. The privatization of all major industries including oil and mining resulted in making the rich, richer and making the poor, poorer. Former government representatives and organized crime groups, none of which were women, made billions of dollars from the unregulated purchase of goods due to the privatization of industry.²¹ None of this money has been redistributed or re-invested into any kind of social infrastructure that would

¹⁶ See 10.

¹⁷ The United Nations (2010). Intensification of Efforts to Eliminate All Forms of Violence against Women: Report for the Secretary General.
http://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/65/A_65_208.pdf

¹⁸ See 14

¹⁹ See 9

²⁰ See 10

²¹ See 9

benefit women. There are extremely limited resources available to women where they can gain access to education or receive any kind of vocational training²². Women are expected to make more money while having limited access to resources and a smaller skill set.

During my research I discovered that the former Soviet Republics, especially Russia, have a significant portion of the female population working as prostitutes in their home countries before they are trafficked. In study done by Lehti and Aromaa, it was discovered that approximately one third of Russian women who had been victims of sex trafficking had worked as prostitutes in Russia beforehand.²³ Similar situations occur in the former Soviet republics of Moldova and Ukraine. These women become especially susceptible to exploitation by traffickers because they are already involved in the sex trade. Girls as young as eighteen are left with few options and often have to resort to prostitution.

While some would like to argue that the “feminization of poverty” is an over-generalized term, it is clear that women have been disproportionately affected by the socioeconomic effects brought about by the end of communism. A complete breakdown of social infrastructure has meant that women are no longer entitled to any employment benefits including maternity leave and free child care. Gender inequalities have been exacerbated since the break-up of the Soviet Union and women are not afforded the same socioeconomic opportunities as men.²⁴ An increased rate of alcohol and drug abuse amongst men has forced women to become the primary, and sometimes only, breadwinner.²⁵ Women now have to fulfill several familial roles including caregiver, mother and main provider. However, despite these societal changes, economies have

²² Silova, I. and C. Magno (2004). Gender Equity Unmasked: Democracy, Gender, and Education in Central/Southeastern Europe and the Former Soviet Union. *Comparative Education Review*, 48(4): 417-44

²³ Lehti, M & K. Aromaa (2006) Trafficking for Sexual Exploitation. *Crime and Justice*, 34(1): 133-227

²⁴ See 22

²⁵ See 9

not evolved. Jobs are few and far between, women in poor rural areas have limited access to education and many of the former republics such as Moldova and Belarus simply have no opportunities for women. For most women, the only alternative is to travel abroad to work and earn an adequate wage; and it is precisely for this reason that sex trafficking has expanded so quickly in these regions.²⁶

The feminization of poverty and the expansion of organized crime have led to the rapid growth of sex trafficking in the former Soviet Union and into Western Europe. It has been estimated that over a hundred thousand women are trafficked out of this region each year; although it is believed that the number is probably much higher.²⁷ A note on terminology here: trafficking differs significantly from smuggling even though both are forms of illegal migration. Trafficking has been defined by the United Nations as: “a crime against humanity. It involves an act of recruiting, transporting, transferring, harbouring or receiving a person through a use of force, coercion or other means, for the purpose of exploiting them.”²⁸

In contrast, smuggling is defined as “the facilitation, transportation, attempted transportation or illegal entry of a person or persons across an international border, in violation of one or more countries laws, either clandestinely or through deception, such as the use of fraudulent documents.”²⁹ The most fundamental difference between trafficking and smuggling is the use of

²⁶ See 7

²⁷ The United Nations (2010). Trafficking in Women and Girls: Report for the Secretary-General. http://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/65/A_65_209.pdf

²⁸ The United Nations (2009). Trafficking in Persons, Especially Women and Children: Note by Secretary General. *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms.* http://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/64/A_64_290.pdf

²⁹ Obokata, T. (2005) Trafficking of Human Beings as a Crime against Humanity: Some Implications for the International Legal System. *The International and Comparative Law Quarterly*. 54(2): 445-457

coercion in the former and the presence of free will and agency in the latter. People that are smuggled across international borders are doing so by paying someone for their services. In contrast, human beings that are trafficked are moved across borders under false pretenses and are often subject to abuse and gross human rights violations.³⁰ Women and children are the most vulnerable to illegal traffickers and make up a majority of the sex trafficking market.³¹

The republics of the former Soviet Union, including Ukraine and Moldova, along with Russia are home to a disproportionately large number of young, poor and mostly uneducated women.³² The Republic of Moldova is a country being especially affected. A recent phenomenon that has developed in the region is women and men leaving their children in the care of relatives or orphanages in order to work abroad and hopefully earn enough to support their families.³³ Thousands of children have been abandoned because more and more women have had to leave the region in search of employment³⁴. Even in the event of finding a job in Western Europe, wages are extremely low and many women are often unable to return home. A lack of economic opportunities makes women especially susceptible to recruitment and exploitation. In recent years the global sex trade has become one of the most lucrative markets in this region. It has been estimated that illegal sex trafficking generates approximately seven billion dollars annually.³⁵ Sex trafficking from the former Soviet Union is characterized by the “profit

³⁰ Ibid

³¹ See 28

³² See 22

³³ Finnegan, W. (May 5, 2008) The Counter-traffickers: Rescuing the Victims of the Global Sex Trade. *The New Yorker*. 1-13. Web site: http://www.newyorker.com/reporting/2008/05/05/080505fa_fact_finnegan?currentPage=1

³⁴ Ibid

³⁵ Kapstein, E.B. (2006). The New Global Slave Trade. *Foreign Affairs*, 85(6): 103-115

maximization” approach that recruiters have adopted.³⁶ Women that have been trafficked often switch hands several times, the price increasing each time. Once finally sold to a pimp and/or brothel, the victim incurs a debt that includes her costs of travel, living and her purchase price.³⁷ Interpol has reported that a single victim of sex trafficking can generate a profit of up to 250,000 US\$ for a pimp or brothel owner.³⁸ The use of the debt repayment system also means that a trafficker will spend very little on clothes, food, living accommodations and medical treatment for victims. Data has shown that source countries experience some of the highest levels of poverty amongst women and gender inequality. By focusing entirely on organized crime, we are ignoring the factors that can lead to women being sexually exploited.

³⁶ Corrin, C. (2005) Transitional Road for Traffic: Analysing Trafficking in Women from and Through Central and Eastern Europe. *Europe-Asia Studies*. 57(4): 543-560

³⁷ Ibid

³⁸ Bales, K. (2000) *Disposable People: New Slavery in the Global Economy*. Berkeley (CA): University of California Press

Chapter 3: The Process of Trafficking

The process of trafficking is systematic, complicated and effective. Firstly, traffickers travel to mostly small rural villages, where women of low socioeconomic status are plentiful. Women in these villages are considered to be the perfect targets because they are so desperate for work and are more than willing to travel far distances in order to make money. The most common ruse used by traffickers is the opportunity for waitressing and exotic dancing jobs available in Western Europe.³⁹ In the majority of cases, these women are so eager to work and earn money to support their families that they agree on the spot. It is also not uncommon for women in these regions to be sold by friends, boyfriends or family members to traffickers for a small fee.⁴⁰ Another disturbing trend that has emerged in recent years is the use of female recruiters, many of whom had once been trafficked.⁴¹ Female recruiters have a much easier time establishing trust between themselves and their potential victims. Traffickers based in Russia have proved to be some of the most brutal. They are notorious for using both physical and sexual violence in order to control their victims⁴². Russian organized groups also use female recruiters the most often.⁴³ Whether the traffickers are male or female, the process is always the same. The common trend that we are witnessing is traffickers that hold EU passports, recruiting women and girls that are non-EU citizens.⁴⁴

³⁹ See 36

⁴⁰ See 33

⁴¹ Crawford, A. and J. Goodey (2000) *Integrating a Victim Perspective within Criminal Justice: International Debates*. Aldershot: Ashgate

⁴² See 23

⁴³ Ibid

⁴⁴ Goodey, J. (2000) Non-EU Citizens Experiences of Offending and Victimisation: The Case for Comparative European Research. *The European Journal of Crime, Criminal Law and Criminal Justice*, 8(1): 13-34

Once the women have agreed to what they believe is a job opportunity in Western Europe, the exploitation begins. Travel documents are seized and victims are not told where they will be going. The porous nature of borders across EU member states, especially within the Schengen Area, facilitates the process of moving trafficked women from one country to the next.⁴⁵ During their travel, most women are subject to physical and sexual violence. Traffickers have dubbed this process “breaking the girls in.”⁴⁶ Another practice that has come to characterize the sex trafficking industry is the use of drugging victims. During their travel and imprisonment, women are systematically injected with drugs such as crack and heroin. This practice serves two purposes: 1. victims become disoriented and are rendered powerless. 2. Women can develop a dependency and their drug use will cause them to be in debt to their “owner” for much longer.⁴⁷ Upon arriving at their final destination, women will most likely have no idea where they are, cannot speak the local language and will only be allowed to interact with fellow victims, their traffickers and clients. The most popular destinations in Western Europe are France, Italy, the UK and Germany.⁴⁸ Most women are sold to brothels where they have to service up to thirty clients a day.⁴⁹ Any attempts to escape, refusal to service a client or an inability to perform due to illness will result in beatings, rape and torture.

⁴⁵ Goodey, J. (2003) Migration, crime and victimhood: responses to sex trafficking in the EU. *Journal of Punishment and Society*, 5(4): 415-431

⁴⁶ See 36

⁴⁷ Goodey, J. (2002b) ‘Whose insecurity? Organised crime, its victims and the EU’, in A. Crawford (ed.) *Crime, insecurity and safety in the new governance*, pp. 135–58. Cullompton: Willan Publishing

⁴⁸ See 36

⁴⁹ Haynes, D.F. (2004) Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers. *Human Rights Quarterly*. 26(2): 221-272

In the event that a woman falls ill or becomes pregnant, she will be responsible for repaying the costs of medication and her abortion.⁵⁰ The debt repayment scheme was developed specifically by traffickers in the former Soviet Union⁵¹. It ensures that profits for organized crime groups are maximized and women are forced to work for several months and sometimes even years. All necessities, including food and housing, must be repaid to the traffickers. In all cases, the woman must also reimburse the trafficker who purchased her. Women are allowed to keep their false travel documents, while genuine passports and travel visas are kept under lock and key. Many interviews of victims revealed that local law enforcement are also frequent patrons of brothels owned by traffickers⁵². It is also not uncommon for local police to work with organized crime groups, taking a percentage of the profits in exchange for their cooperation.⁵³ A system is established where men who systemically and brutally victimize women, protect each other.

When a brothel is raided by police, the women are taken into custody and usually charged with holding false travel documents and illegal migration.⁵⁴ Because they often have no idea where they are or speak the local language, women are seldom ever able to tell authorities that they have been trafficked. After being charged, most women are usually thrown in jail for an interim period and then deported.⁵⁵ Upon returning home most victims are too ashamed to tell anyone in their villages what has happened to them. Many women return to their husbands and

⁵⁰ See 44

⁵¹ See 36

⁵² See 49

⁵³ Goodey, J. (2004a) 'Promoting Good Practice in Sex Trafficking Cases', *Special Issue of International Review of Victimology on Trafficking* 11(1): 89–110

⁵⁴ See 49

⁵⁵ See 44

families and never share their horrific experiences. The existence of traditional gender roles in these regions has meant that women are seen as responsible for their own victimization.⁵⁶ Many victims have stated that they were ostracized in their communities and persecuted by family and friends after being trafficked.⁵⁷ There are often no social resources or counselling facilities made available to women who have been trafficked.

⁵⁶ Samarasinghe, V. (2007). Strategising Prevention: A Critical Review of Local Initiatives to Prevent Female Sex Trafficking. *Development in Practice*, 17(1): 51-64

⁵⁷ See 49

Chapter 4: International Intervention

The Moldovan branch of the International Organization for Migration has been developing resources for victims of trafficking at the grassroots level.⁵⁸ Approximately half of sex trafficking victims who receive assistance from the IOM have been Moldovan.⁵⁹ Thousands of women are trafficked out of Moldova each year and sold to brothels in Western Europe. According to data collected by the IOM: “Recent estimates suggest that 50,000–100,000 Moldovans, over 100,000 Ukrainians, and as many as 500,000 Russians are active in international prostitution outside their home countries.”⁶⁰ It should be noted that while Russia presents a high figure in regards to the number of women working in prostitution, its population is nearly fifty times higher than that of the Republic of Moldova. If we convert these statistics into percentages, we can observe that only one third of one percent of Russians are active in the illegal sex trade. In contrast, nearly three percent of Moldovans are working as prostitutes outside of their home country.

The IOM and local Moldovan women’s organizations are hoping to reduce the incidence of trafficking in this region by promoting education, vocational training and job opportunities for women. The IOM has also been working with other international bodies to return trafficked women to their villages and towns and help them re-integrate⁶¹. Victims are given access to healthcare facilities, temporary housing, and counselling. The IOM has also attempted to take preventive measures in order to decrease the incidence of trafficking in Moldova and neighbouring Ukraine. Anti-trafficking ads have been placed throughout the capital cities of

⁵⁸ See 33

⁵⁹ See 23

⁶⁰ Ibid.

⁶¹ Ibid

Chisinau and Kiev in hopes to reach as many potential victims as possible. IOM workers have also travelled to small rural villages outside the cities to educate and inform young women about the dangers of trafficking and how to protect themselves from exploitation.⁶² In my opinion, this is one of the most proactive approaches to combating sex trafficking. While providing victims with social services and medical care is of the utmost importance, information and education are some of the best tools to fight sexual exploitation.

Unfortunately, the Moldovan branch of the IOM has only been able to help a small fraction of women that have been victims of trafficking. Lack of funding and cooperation between international bodies has prevented the IOM and other similar organizations from fulfilling the needs of all victims⁶³. Many women return without ever telling anyone that they have been trafficked and those who do manage to get into contact with organizations such as the IOM are often detained by local authorities. What is even more disturbing is that the possibility of women being re-trafficked is extremely high in the former USSR.⁶⁴ Whether they are released by their captors or deported, women are still returning to the same socioeconomic conditions that led to their initial victimization. Job opportunities are scarce and now there is the added trauma making it very difficult for women to find and maintain employment. Living conditions in rural former Soviet republics are so dire that many women are willing to risk re-trafficking in order to make more money.⁶⁵ Sadly, most women know that they are being sent to Western Europe to be indentured servants and prostitutes, but few see any other viable option. Most women who become recruiters for traffickers were ostracized from their communities following their return from Western Europe and feel that working in the trafficking industry is the only place where

⁶² Ibid.

⁶³ Ibid

⁶⁴ See 36

⁶⁵ Samarasinghe, V. (2007). Strategising Prevention: A Critical Review of Local Initiatives to Prevent Female Sex Trafficking. *Development in Practice*, 17(1): 51-64

they can make money.⁶⁶ It is also not uncommon for women to run the brothels in Western Europe. In exchange for their cooperation with organized crime groups, they can eventually obtain EU citizenship and make money exploiting other women⁶⁷. Despite local and international initiatives, the global sex trade continues to be one of the fastest growing and most profitable industries in the world. The following section will discuss how current EU immigration policy has failed to effectively combat sex trafficking in Europe and how a gender approach is required if legislation hopes to be successful.

⁶⁶ See 49

⁶⁷ See 44

Chapter 5: Agency and EU Immigration Policy

One of the most significant aspects that becomes apparent when analysing the evolution of immigration policy within the European Union is the idea “agency”. The definition of agency chosen for this paper is as follows: “the capacity of an agent (a person or other entity, human or any living being in general) to act in a world.”⁶⁸ I plan to take a philosophical approach to the concept of agency based on this definition provided by the Stanford Encyclopedia of Philosophy: “every agent has an authority over herself that is grounded, not in her political or social role, nor in any law or custom, but in the simple fact that she alone can initiate her actions.”⁶⁹ I have chosen to incorporate this definition as well because it addresses the issue of free-will, which I argue plays a very significant role in sexual exploitation. The following section will examine the impact agency has had on EU immigration policy, pertaining specifically to trafficking. For the sake of argument, this paper will discount the several socioeconomic factors that can contribute to a woman’s loss of agency in the former Soviet Union. By putting these parameters in place, we are assuming that a woman possesses agency at the time that she is trafficked. This chapter will also examine externalization, prevention and the effects these two concepts have had on policy formation.

Author Christina Boswell provides a thorough analysis of EU immigration policy beginning from the early 1990s. In her research Boswell examines two trends that emerged which have significantly influenced immigration legislation. Externalization and prevention were two

⁶⁸ Bandura, A. (2001). Social Cognitive Theory: An Agentic Perspective. *Annual Review of Psychology*, 52 (1): 1-26

⁶⁹ Buss, Sarah (2008), "Personal Autonomy", *The Stanford Encyclopedia of Philosophy*, Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/fall2008/entries/personal-autonomy>.

approaches formally adopted by the European Union in the late 1990s.⁷⁰ Externalization is characterized by two distinct factors: “The exportation of classical migration control instruments to sending or transit countries outside the EU.”⁷¹ This would be achieved by employing specific instruments which included: “border control, measures to combat illegal migration, smuggling and trafficking, and capacity-building of asylum systems and migration management in transit countries.”⁷² The second characteristic of externalization was: “a series of provisions for facilitating the return of asylum seekers and illegal migrants to third countries.”⁷³ The main mechanisms put in place in order to achieve this goal were: “agreements with third countries committing them to readmit irregular immigrants who had passed through their territory into EU countries, or were their nationals.”⁷⁴ Regarding asylum seekers specifically, the EU developed: “...other provisions on safe third countries allowed EU states to return asylum seekers to countries from which they came or through which they had passed which were considered 'safe'.”⁷⁵

The reasoning behind the “externalization” approach was to shift much of the responsibility to third countries, which were the source of immigrants and asylum seekers. These third countries would be responsible for tightening borders around their territory and limiting migration as much as possible.⁷⁶ Boswell argues that this “tight control” approach was the result of a backlash

⁷⁰ Boswell, C. (2003) The ‘External Dimension’ of EU Immigration and Asylum Policy. *International Affairs*, 79(3): 619-638

⁷¹ Ibid. Pp 629

⁷² Lahav, G., & Guiraudon, V. (2000). A Reappraisal of the State Sovereignty Debate: The Case of Migration Control. *Comparative Political Studies*, 33(2): 163–195

⁷³ See 70

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Geddes, A. (2003). *The politics of migration and immigration in Europe*. London: Sage

against immigrants entering Western Europe throughout the 1980s and 1990s.⁷⁷ The shift to an external approach is also linked to the opening of borders between European states, for example the agreement between France, Belgium and the Netherlands.⁷⁸

After the creation of the European Union in 1993, there was the development of the Schengen Area in 1995, which consisted of five European States.⁷⁹ The reasoning behind the establishment of the Schengen Area was to allow freedom of movement for European citizens.⁸⁰ The Schengen Agreement was put into force in 1995 and abolished internal borders between signatory states⁸¹. As more European states began to join the Schengen Area, it was decided that legislation was needed to integrate the Area into the European Union.⁸² In 1997 the Amsterdam Treaty was passed and the Schengen Area and intergovernmental cooperation were formally incorporated into the EU; this created the Area of Justice, Freedom and Security.⁸³ 26 European states have now been integrated into the Area and while others including Norway, Switzerland and Iceland have developed formal border agreements to facilitate travel and visa applications.⁸⁴ However, EU member states the United Kingdom and Ireland have opted out of the Schengen Agreement and retain full control over their internal and external borders.⁸⁵

Along with externalization, Boswell also examines a second approach to immigration policy that emerged later in the 1990s. “Preventive” policy was an entirely different method which: “generated proposals for addressing the 'root causes' of migration and refugee flows in countries

⁷⁷ See 70

⁷⁸ See 72

⁷⁹ Europa (2009) Summaries of EU Legislation: The Schengen Area and Cooperation.

http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/33020_en.htm

⁸⁰ Ibid

⁸¹ Ibid

⁸² Ibid

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ Ibid

of origin...”⁸⁶ Through the preventive approach the EU would use: “more targeted use of development assistance, trade, foreign direct investment or foreign policy instruments; and proposals to promote so-called 'reception in the region'...”⁸⁷ The main idea was to provide refugee protection in source countries in the hopes that migration and asylum seeking would no longer be needed. This approach proved to be a complete contrast to “externalization”.

Preventive immigration policy promoted cooperation and communication between European and third countries⁸⁸. More money would be spent on direct foreign investment and building social infrastructures within source countries. The hope was that if mechanisms were put into place that would improve living conditions and socioeconomic opportunities, immigration would slow and people would not have to resort to illegal forms of migration such as trafficking and smuggling.⁸⁹

The use of preventive migration policy was promoted by many human rights groups, who believed that getting at the “root causes” of illegal migration and asylum seeking was the best way to ensure success.⁹⁰

Both of these methods approach the idea of “agency” from two completely different perspectives. “Externalization” makes the assumption that all illegal migrants and asylum seekers possess agency. Someone that has entered the European Union illegally has done so by choice and should be subject to criminal prosecution and/or deportation. Those seeking asylum must prove beyond reasonable doubt that residing in their home country poses an immediate threat to their lives and that asylum is the only alternative. Stricter border controls and harsher

⁸⁶ See 70

⁸⁷ Ibid.

⁸⁸ Givens, T. and A Luedtke (2004) The Politics of European Union Immigration Policy: Institutions, Salience, and Harmonization. *Policy Studies Journal*. 32(1): 145-165

⁸⁹ See 76

⁹⁰ See 70

punishments for illegal immigrants demonstrate a profound miscomprehension of agency and its influence on migration. In contrast, the preventive approach is characterized by understanding of agency and the impact socioeconomic and politics conditions have on whether we can retain our agency. The preventive approach differs from externalization in that it requires a cooperative and coordinated relationship with third countries. While the main focus of externalization is to maintain external border security and combat cross border crime; the preventive approach addresses the root causes that contribute to the growth of illegal activities, such as trafficking.⁹¹ The motivation behind the preventive approach is to stop crimes before they are even committed by addressing the needs of those vulnerable to exploitation.⁹² Despite the need for a preventive approach to immigration policy in most source countries, Boswell found that only externalization continued to be used when dealing with Eastern European and former Soviet States.⁹³ This decision could be based on the common assumption that those residing within these states have the mechanisms available through which to attain their own agency. Therefore, should a Moldovan or Ukrainian citizen “choose” to emigrate illegally, it is not because they do not possess their own agency.

So what we have witnessed in most recent years is an approach to immigration that prioritizes border securitization. What does this mean for anti-trafficking policies? While new legislation has emerged that calls for more protections for trafficked women and harsher punishments for those who exploit them, immigration policy is making it somewhat difficult to accomplish these goals. The European Union is able to understand that socioeconomic conditions in many countries hinder a person’s ability to achieve their own agency; as result, many are forced to

⁹¹ See 70

⁹² Ibid

⁹³ Ibid

resort to drastic measures such as allowing themselves to be smuggled illegally or becoming vulnerable to traffickers. However, a conscious decision has been made not to invest into the social infrastructures of former Soviet states or to fund anti-trafficking initiatives. Instead, this money is being provided to countries in South East Asia⁹⁴. The issue here is that despite new anti-trafficking laws, legislation is failing to properly target all source countries and resources are being distributed unequally. According to the IOM, approximated 175,000 women are trafficked from the former Soviet Union each year but these countries are not the main recipients of aid funding.⁹⁵ In order to substantiate my arguments, I will outline and discuss past and current anti-trafficking legislation; I will also examine the complementarities and differences between anti-trafficking legislation and immigration policy.

In 1996, Vienna hosted the first conference focused on the problem of women being trafficked and sexually exploited in the EU.⁹⁶ During this conference certain measures were proposed, which included the adoption of a comprehensive and structured approach to combating trafficking for the purposes of sexual exploitation.⁹⁷ The recommendations that were discussed during this conference included: judicial and police cooperation and training immigration officers in identifying and effectively handling trafficking cases⁹⁸. At the time, very little information was available in regards to source countries, rates of women being trafficked or how the process worked. However, the 1996 Vienna Conference proved to be a significant starting off point for EU anti-sex trafficking legislation.

⁹⁴ See 70

⁹⁵ See 72

⁹⁶ Commission Communication to the Council and the European Parliament (1996) On Trafficking in Women for the Purpose of Sexual Exploitation

⁹⁷ Ibid

⁹⁸ Ibid

The 2000 UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, has been the most fundamental contributor to EU legislation. The Protocol defines trafficking in Article 3 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 use of power...for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation...”⁹⁹

Article 5 of the Protocol states that “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3...”¹⁰⁰ The Convention Against Transnational Organized crime, along with the Protocol, was signed by Antonio Vitorino, a member of the EU Commission acting on the behalf of the European Community.¹⁰¹ In response to the creation of this UN Protocol, the Council of the European Union created the “Council Framework Decision on Combating Trafficking in Human Beings” in July of 2002. In 2006, the EU Council formally approved the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.¹⁰²

⁹⁹ United Nations (2000) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. Article 3

¹⁰⁰ Ibid. Article 5.

¹⁰¹ Official Journal of the European Communities (2002) Council Framework Decision 2002/629/JHA: On Combating Trafficking in Human Beings

¹⁰² Official Journal of the European Union (2006) Council Decision: On the Conclusion, On the Behalf of the European Community, of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime Concerning

The main objective behind the creation of the 2002 Directive was to implement EU legislation that would be complimentary to the UN Protocol signed and ratified by states within the EU Community. Article 1 of the Directive states explicitly that all EU Member States are responsible for creating and implementing legislation to combat sex trafficking.¹⁰³ All acts of recruitment, coercion, deception and exploitation are to be punishable under domestic criminal law.¹⁰⁴ Article 1 also states that a victim's consent in the exploitation is to be deemed irrelevant.¹⁰⁵ Article 3 outlines the judicial mechanisms that need to be adopted once this directive is implemented; these mechanisms include: extradition and minimum terms of imprisonment.¹⁰⁶ In Article 6 of the Directive, member states are instructed to "take the necessary measures to establish its jurisdiction over an offence referred to in Article 1..."¹⁰⁷ Article 7 addresses the issue of protection and assistance for victims; however, this section is very brief and only makes reference to situations where children are the victims of trafficking.¹⁰⁸ Article 10 discusses the process of implementation; member states are to comply with this Directive by August of 2004 and must submit a progress report by August 2005.¹⁰⁹

In 2004 the European Council issued a directive regarding the UN Convention Against Transnational Crime. In Article 1 of the directive states that the UN Convention has been approved on behalf of the EU community and that it will be implemented immediately.¹¹⁰ The

Provisions of the Protocol, In So Far as the Provisions of This Protocol Fall Within the Scope of Article 179 and 181a of the Treaty Established by the European Community

¹⁰³ See 92 Article 1.

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ Ibid Article 3.

¹⁰⁷ Ibid Article 6.

¹⁰⁸ Ibid Article 7.

¹⁰⁹ Ibid Article 10.

¹¹⁰ Official Journal of the European Union (2004) Council Decision on the Conclusion, on Behalf of the European Community, of the United Nations Convention Against Transnational Organized Crime

Directive focuses on all aspects of transnational organized crime, including human trafficking for the purposes of sexual exploitation. The Directive covers several issues including: protection of state sovereignty (Article 4), member state jurisdiction (Article 15) and cooperation between member state law enforcement agencies (Article 19)¹¹¹. One of the most significant issues this Directive addresses, which fails to be properly outlined in the 2002 Directive, is the assistance and protection of witnesses (Article 25).¹¹² This article states explicitly that all member states “...shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.”¹¹³ Article 25 also outlines that states are responsible for establishing procedures through which victims can be afforded the opportunity to seek compensation and restitution.¹¹⁴

In 2005 the EU Council issued the Directive on the “EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings”. This 2005 Directive builds upon the initial 2002 Treaty and further expands on several key issues. The most significant point made in this Directive for the purposes of my project is the acknowledgement of the need for a human rights and victim oriented approach to combating human trafficking in the EU. The Treaty outlines that legislation adopted by member states must protect and respect the human rights of trafficking victims through every step of the judiciary process.¹¹⁵ The initial 2002 Directive was general and all encompassing but failed to address any specific issues

¹¹¹ Ibid

¹¹² Ibid

¹¹³ Ibid Article 25.

¹¹⁴ Ibid.

¹¹⁵ Official Journal of the European Union (2005) EU Plan on Best Practices, Standards, and Procedures for Combating Trafficking in Human Beings

properly. With the creation of the 2005 Directive, the EU Council further expanded on past legislation. Article 1 states:

“Member States and the Commission should actively pursue policies reinforcing the criminalization of human trafficking including the protection of (...) potential victims at national, regional, EU and at a wider international level. This should include, as appropriate and where relevant, prevention strategies specific to vulnerable groups such as women and children.”¹¹⁶

The 2005 Directive also emphasizes a need for more international cooperation and stresses the need to engage in human rights based dialogue with third countries¹¹⁷.

In contrast to the 2002 Directive, the 2005 Treaty also addresses the issue of gender, stating: “EU institutions and Member States should promote gender specific prevention strategies as a key element to combat trafficking in women and girls.”¹¹⁸ The Directive also calls for stronger coordination and cooperation between state authorities and emphasizes the need for information sharing between EU members:¹¹⁹

“Member States should promote combating human trafficking as a priority in their law enforcement relations with third countries. Police cooperation between special units to fight trafficking in human beings in Member States and in countries of origin should be enhanced. Common projects should be set up to enhance the capacity of the special units of the countries of origin to fight trafficking in human being in the line with EU standards.”¹²⁰

¹¹⁶ Ibid Article 1

¹¹⁷ Ibid

¹¹⁸ Ibid. Article 5

¹¹⁹ Ibid

¹²⁰ Ibid Article 5

The most recent anti-trafficking Directive was issued by the European Council in 2011 and replaced the 2002 Directive “Council Framework Decision on Combating Trafficking in Human Beings”. The Directive combines the most important issues raised in the 2002 and 2005 treaties. Following the need for a human rights approach outlined in 2005, Article 1 of the 2011 Treaty calls for a gender sensitive approach to combating sex trafficking.¹²¹ Article 8 addresses the issue of “non-prosecution or non-application of penalties to the victims”¹²²; something that was overlooked in past legislation. Under this Article, member states are not entitled to criminally prosecute victims for their participation in illegal activities.¹²³ Articles 11 and 12 further elaborate on the need to provide assistance and protection to victims of sex trafficking.¹²⁴ Articles 18 and 19, which discuss prevention and the need for state rapporteurs, are the most significant additions to existing legislation. Article 18 states that EU members are obligated to take all necessary measures, including education and training, to reduce demand in the illegal sex trade.¹²⁵ States are responsible for developing anti-trafficking campaigns, as well as funding anti-trafficking initiatives at the grassroots level. Article 19 of the Directive outlines that member states shall:

“...take the necessary measures to establish national rapporteurs or equivalent mechanisms...including carrying out assessments of trends in trafficking...measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organizations...”¹²⁶

¹²¹ Official Journal of the European Union (2011). Directive 2011/36/EU: On Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA

¹²² Ibid. Article 8.

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ Ibid

¹²⁶ Ibid Article 19

This overview of the EU anti-trafficking Directives from 2002 until 2011 shows that there has been a clear evolution of the legislation. The changes made to the 2011 Directive demonstrate a shift from focusing on only criminality, to incorporating a human rights approach to policy. In the initial 2002 Directive only a handful of issues are addressed and the focus is on creating a judiciary process and facilitating the prosecution of human traffickers. Later in 2005, the European Council expanded the legislation to include a human rights approach and emphasized the need to provide assistance and protection to victims of human trafficking. The 2011 Directive created to replace the one issued in 2002, focused on both the need for judiciary mechanisms and the need for a human rights and gender sensitive approach. One of the most important issues addressed by the 2011 Directive, therefore, is the need for additional information sharing, education and funding for anti-trafficking initiatives. What this shift in objectives has meant for victims of trafficking, is that there are far more resources available and access to these resources will be made much easier. A Directive that integrates a victim-centred approach means that policy will be far more gender and victim sensitive.

The integration of the Schengen Area into the European Union in 1997 facilitated easier travel for EU citizens and non-citizens.¹²⁷ The ratification of the Amsterdam Treaty also resulted in the abolishment of all internal borders between states that are within the Area¹²⁸. In order to ensure internal and external border security, member states have developed a system that demands high levels of cooperation and coordination.¹²⁹ In 1999 the Schengen Acquis was

¹²⁷ See 79

¹²⁸ Ibid

¹²⁹ Ibid

created, which called for intergovernmental cooperation in regards to border securitization.¹³⁰ A Treaty known as the Schengen Borders Code was then developed in 2006, which further outlined the need for coordination between states.¹³¹ Article 1 of the Treaty defines external borders as: “land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders.”¹³² The Borders Code outlines the general procedures that are to be adopted by all states within the Schengen Area that border on third countries. These measures include: border checks, uniform entry requirements, and information sharing between national authorities¹³³. Member states that have external borders are to adopt common rules regarding visa applications, asylum seekers and checks at external borders.¹³⁴ This highlights that integrating common immigration procedures for all members within the Schengen Area, states are able to facilitate easy travel while protecting internal security within the Area.

When examining the immigration procedures that have been developed as a result of the creation of the Schengen Area compared to recent anti-trafficking legislation, it is evident that many differences and complementarities can be found. One of the most significant similarities found in both sets of legislation is the promotion of information gathering and sharing. Article 19 of the 2011 Directive on Preventing and Combating Trafficking in Human Beings, outlines the need for member states to employ special trafficking rapporteurs to “carry out assessments of trafficking trends in trafficking in human beings...including the gathering of statistics in close

¹³⁰ Ibid

¹³¹ Official Journal of the European Union (2006) Establishing a Community Code on the Rules Governing the Movement of Persons Across Borders (Schengen Border Code)

¹³² Ibid. Article 1

¹³³ Ibid

¹³⁴ Ibid

cooperation with relevant civil society organizations...”¹³⁵ Article 20 states that all member states need to “facilitate the task of an anti-trafficking coordinator (ATC)...”¹³⁶ All information that is gathered under Article 19 is to be shared with an ATC from each member state so that statistics can be consolidated.¹³⁷ Article 9 regarding the investigation and prosecution of traffickers calls for member states to utilize all the resources used for fighting organized crime groups.¹³⁸ These include cooperating with local authorities and contributing to border information sharing systems.¹³⁹

The implementation of this type of data gathering system can be made possible through already existing immigration policy in the form of the Schengen Information Sharing (SIS)¹⁴⁰. SIS was created under the Schengen Convention and with it came the establishment of an intergovernmental information sharing network¹⁴¹. SIS is used by border agents, local police forces and judicial authorities throughout the Schengen Area¹⁴². Article 16 of the Schengen Border Code states that all “... Member States shall assist each other and shall maintain close and constant cooperation with a view to the effective implementation of border control...”¹⁴³

We can speculate that the SIS is a response to one of the most significant criticisms of past anti-trafficking initiatives in the European Union, namely the complaint that there was a lack of data

¹³⁵ See 112 Article 19

¹³⁶ Ibid Article 20

¹³⁷ Ibid

¹³⁸ Ibid Article 19

¹³⁹ Ibid

¹⁴⁰ European Commission: Home Affairs (2013) Schengen Information Sharing (SIS).
http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system/index_en.htm

¹⁴¹ Ibid

¹⁴² Ibid

¹⁴³ See 122 Article 16

available and the inability of states to properly gather information in a systematic way¹⁴⁴. It has been far more common for only certain states to allocate resources to collecting trafficking statistics; while others have little to no information available.¹⁴⁵ With the existence of the SIS, it would much easier to integrate a system of trafficking data exchanges between states. Border agents within the Schengen Area are already responsible for recording data about cross border criminal activity.¹⁴⁶ The information gathered by these agents could be used in current and future trafficking research. The 2011 Directive on Preventing and Combating Trafficking in Human Beings states explicitly: “Close cross-border cooperation, including the sharing of information and the sharing of best practices, as well as a continued open dialogue between the police, judicial and financial authorities of the Member States, is essential.”¹⁴⁷

Both immigration and anti-trafficking policy have stated that there is a need for continued cooperation and coordination with third countries bordering on the Schengen Area. The 2011 Anti-trafficking Directive states:

“Action should be pursued in third countries of origin and transfer of victims, with a view to raising awareness, reducing vulnerability, supporting and assisting victims, fighting the root causes of trafficking and supporting those third countries in developing appropriate anti-trafficking legislation.”¹⁴⁸

In comparison, the Schengen Border Code also promotes the need to maintain strong ties with third countries that share external borders with the EU.¹⁴⁹ In both sets of legislation, there is an acknowledgment of the need to maintain open lines of communication between member states and third countries in order to effectively prevent cross border crime.

¹⁴⁴ See 70

¹⁴⁵ Ibid

¹⁴⁶ See 122

¹⁴⁷ See 112

¹⁴⁸ Ibid

¹⁴⁹ See 122

Along with SIS, another potentially complementary border system would be the 2011 proposal for the European Border Surveillance System (EUROSUR).¹⁵⁰ The adoption of EUROSUR is seen as a way of increasing information sharing and operational cooperation between member states. One of the main issues that EUROSUR plans to focus on is cross border crime, which is defined in the proposal as: “...any serious or organised crime committed at the external borders of Member States, such as trafficking in human beings, smuggling of drugs and other illicit activities”.¹⁵¹ With the adoption of EUROSUR, anti-trafficking measures could be incorporated into immigration policy. Surveillance of external borders would allow authorities to determine the location of popular trafficking routes. More importantly, information sharing between states would mean that traffickers that were apprehended at the border of one country would be unable to enter the EU by simply taking a different route¹⁵².

Another initiative that incorporates immigration, internal security and anti-trafficking policy is the Harmony Process, which focuses on combating the three main contributors to the growth of organized crime in the EU and third countries.¹⁵³ Eight objectives are outlined, including: “combating against all forms of trafficking in human beings and human smuggling by targeting organised crime groups conducting such criminal activities.”¹⁵⁴ The proposal of the Harmony Process demonstrates that human trafficking has become a pressing issue in the EU and that it poses a

¹⁵⁰ European Commission (2011) Proposal for a Regulation of the European Parliament and of the Council: Establishing the European Border Surveillance System (EUROSUR)

¹⁵¹ Ibid

¹⁵² Ibid

¹⁵³ European Commission: Home Affairs (2013) Harmony Process: Eight Priorities for the Fight Against Organized Crime. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/internal-security/harmony-process/index_en.htm

¹⁵⁴ Ibid

threat to internal security. Anti-trafficking initiatives also place emphasis on addressing organized crime because these groups gain a large portion of their funding through profits made in the illegal sex trade.¹⁵⁵

Despite the presence of complementarities within both immigration policies and anti-trafficking legislation, there are also some differences. The different immigration policies discussed in this paper focus specifically on internal security and external border securitization. The main objectives of these legislations are to curtail cross border crime and to ensure internal security within the EU; anti-trafficking legislation in the EU, on the other hand, has begun to focus more on providing assistance and protection to victims of trafficking; and emphasizes the need for a human rights approach to policy formation. Articles 11 through 17 of the 2011 Directive on Preventing and Combating Trafficking in Human Beings, deal specifically with protection and assistance for victims.¹⁵⁶ The policies outlined promote a human rights approach and emphasizes the need to have mechanisms in place to protect those rights.¹⁵⁷

In contrast, while the Schengen Border Code recognizes the need to prevent and combat human trafficking, none of the policies outlined focus on the victims. The primary goal is to facilitate information sharing and coordination between member states and third countries¹⁵⁸. The objective of immigration policy, such the Schengen Border Code, is to establish a uniform border protocol for all member states and to combat illegal migration and cross border crime¹⁵⁹.

Providing trafficking victims with protection and assistance does not fall within the parameters of internal security and border surveillance. This makes it extremely difficult to coordinate

¹⁵⁵ See 43

¹⁵⁶ See 112

¹⁵⁷ Ibid

¹⁵⁸ See 122

¹⁵⁹ Ibid

information gathering regarding cross border crime and victims of sex trafficking. The Schengen Border Code focuses entirely on criminality¹⁶⁰; and although mechanisms have been put in place to combat trafficking, the main objective is to prosecute traffickers and not protecting victims.

This distinction between criminalization and victimization found in immigration policy and anti-trafficking legislation creates problems. The Schengen Border Code seeks to fight human trafficking by focusing on the prosecution of criminals and the securitization of external borders.

The problem with this approach is how it interprets agency, in terms of trafficking victims.

Women that have been trafficked from third countries lose their agency once they are trafficked.

If we examine the root causes of why women in the former Soviet Republics are vulnerable to exploitation, it can be shown that due to socioeconomic conditions in these regions, women do not possess any type of agency to begin with. While the root causes approach addresses the needs of a community as a whole I have demonstrated in an earlier chapter that women in the former Soviet Republics are being disproportionately impacted by the lack of social infrastructure. I would therefore argue that when discussing root causes, we are in fact examining some of the main contributing factors to sex trafficking in this region. In contrast, the victimization approach that is being promoted in recent anti-trafficking legislation recognizes that women that are victims of trafficking are not acting as their own agents once they have entered the EU illegally. However, I would also like to note that more recent immigration policies are moving toward more a preventive approach and encourage reciprocity agreements between member states and third countries.

¹⁶⁰ See 122

I would argue that immigration policy that hopes to fight cross border crime needs to be reformatted to include a victim centred approach. A focus on securitizing borders and combating organized crime has done little to curtail illegal trafficking. Despite the development of anti-trafficking policy, there is still the basic assumption that women are acting as their own agents. For the sake of argument, we can assume that women possess their own agency when they are trafficked; but it is clear that this agency is lost during the trafficking process. Women that are beaten, drugged, and subject to sexual violence and exploitation are no longer their own agents. A woman who has been trafficked does not have the ability or the right to decide where she is trafficked, how many customers she has to service and for how long they will work. The externalization approach does assume that even illegal immigrants are their own agents; and it is because of this assumption that laws are made stricter and no money is funnelled into source countries to deal with socioeconomic disparities.

New anti-trafficking legislation promotes victim rights and encourages cooperation between national judicial bodies in order to address the issue. The legislation calls for an increase in victim rights including: access to counselling, medical care and temporary housing.¹⁶¹ While this new legislation is viewed as being far more progressive than past laws, it still contains many flaws. The 2011 Directive on Preventing and Combating Trafficking in Human Beings states explicitly that providing assistance to victims should not be based upon their willingness to provide information to authorities¹⁶². However, the Directive also states victims are given a short time period during which they can decide whether or not to cooperate; and if they choose not to,

¹⁶¹ European Parliament and Council (2011) Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

¹⁶² See 112

they are deported¹⁶³. I would argue that this is somewhat of contradiction, because while assistance is provided immediately after victims are rescued, the provision of these resources will only be temporary if women refuse to cooperate.

In this chapter we analysed approaches to EU immigration policy and problems that have arisen. For the sake of argument, this paper assumed that socioeconomic factors have no influence and therefore women possess agency when they are trafficked. However, when we delve deeper into the subject we can observe that women lose their agency during the trafficking process. This paper then discussed the impact of externalization and how this approach focuses on limiting migration, both legal and illegal¹⁶⁴. ‘Third countries’ are expected to allocate resources to policing borders and monitor cross border travel. The main problem with this approach is that many of these ‘third countries’ do not have the resources available to fulfill this mandate¹⁶⁵. It also means that any type of illegal migration will not be tolerated. Externalization promotes deportation of all illegal immigrants regardless of whether they were trafficked or not.¹⁶⁶ This is done in order to maintain internal security and limit organized criminal activity. However, without preventive measures being implemented in source countries that limit socioeconomic disparities and promote anti-trafficking initiatives, the likelihood of women being re-victimized and re-entering the EU illegally is extremely high. According to a study done the IOM, the former Soviet Republics of Belarus and Moldova have the highest incidences of women being re-trafficked.¹⁶⁷ In a case study of seventy-nine victims in the Republic of

¹⁶³ Ibid

¹⁶⁴ See 72

¹⁶⁵ See 70

¹⁶⁶ Ibid

¹⁶⁷ IOM (2010) The Causes and Consequences of Re-trafficking: Evidence from the IOM Human Trafficking Database

Moldova, follow-up research revealed that over fifty percent of the women were later re-trafficked.¹⁶⁸

This chapter has examined EU immigration and the approaches and problems associated with it. What can be concluded is that the goals set out by the EU that dictate policy have not been achieved due to a misunderstanding of agency and trafficking. Border securitization may be the main priority, but the external approach has not increased internal security or limited migration. Instead, hundreds of thousands of women continue to be trafficked into Western Europe by organized crime groups where they are sexually exploited. New anti-trafficking initiatives also fail to achieve their goal of preventing and combating victimization. Too much focus is placed on criminal prosecution and eventual deportation of victims. Clearly, internal securitization even dictates how states deal with trafficking.

¹⁶⁸ Ibid.

Chapter 6: Victimization and Criminalization

The creation of the Schengen Area and its integration into the European Union has had the most significant impact on EU immigration policy.¹⁶⁹ Internal borders have been abolished between all states within the Schengen and focus has now shifted to controlling external borders. EU immigration policy's main mandate is preventing non-EU citizens, from Asia, the Middle East, Africa, and Russia from entering the Union illegally¹⁷⁰. The emphasis on criminality rather than victimization has had a profound impact on the sex trafficking industry and how the EU combats this problem.¹⁷¹ The emphasis on securitization, cross border crime and illegal migration has allowed the global sex trade to flourish in Europe. In the event that a trafficking ring is raided by local authorities, it is typically the victims that are prosecuted for illegal migration. Authors Goodey and Haynes, attribute this problem to a lack of gender sensitivity in the legislative process. Current policies allow for traffickers, who are predominantly men with EU citizenships, to victimize women who lack agency.¹⁷²

The focus on illegal immigration within the EU has resulted in the re-victimization of women who have been trafficked. When brothels, which are run by European citizens, are raided women often find themselves being charged with possession of illegal travel documents and illegal migration¹⁷³. In contrast, their traffickers will most likely receive a light jail sentence or small fine for prostitution. Haynes argues that because the punishments are so minor, traffickers are

¹⁶⁹

¹⁷⁰ Beare, M.E. (1997) 'Illegal migration: Personal tragedies, social problems, or national security threats?' *Transnational Organized Crime* 3(4): 11–41

¹⁷¹ Goodey, J. (2004a) 'Promoting Good Practice in Sex Trafficking Cases', *Special Issue of International Review of Victimology on Trafficking* 11(1): 89–110

¹⁷² See 41

¹⁷³ See 47

willing to take the risk in exchange for a large pay-off.¹⁷⁴ While the average profit to be made from one woman is approximately two hundred thousand US dollars, the average fine is around two-thousand Euros.¹⁷⁵ How is this supposed to combat illegal sex trafficking? Traffickers see the raids and fines as a minor inconvenience; hardly anything that would deter their behaviour. Proponents of the gender based approach to sex trafficking policy have argued that harsher punishments need to be dealt out to traffickers.¹⁷⁶ They also argue that the focus needs to be shifted away from border securitization and cross border crime. Punishing women who have been trafficked does nothing to curtail criminal activity. Trafficking of human beings is the third most profitable market for organized crime groups. Ironically, the emphasis on “criminality” in EU immigration policy has facilitated criminal activity. Because it is much easier for local authorities to simply charge women and then deport them, very little headway has been made in combating sex trafficking by charging the traffickers.

According to authors Lehti and Aromaa, international legislation has had a profound impact on the EU’s approach to immigration, stating: “...the focus in the United Nations 2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol) has shifted to the combat and prevention of organized crime.”¹⁷⁷ The authors attribute this phenomenon to the rapid increase of immigration into Western countries in the most recent decade.¹⁷⁸ The distinction between criminality and victimization was even more muddled by the incorporation of anti-trafficking policy into the Palermo Protocol. The main

¹⁷⁴ See 49

¹⁷⁵ See 41

¹⁷⁶ See 29

¹⁷⁷ See 23

¹⁷⁸ Ibid.

issue with basing anti-trafficking policy on the Palermo Protocol is that: “The primary objective of it is the regulation of neither the slave trade nor prostitution, but international cooperation in the prevention and control of organized crime.”¹⁷⁹ When examining both the Palermo Protocol and most recent EU anti-trafficking immigration policy, it was clear that the main focus of both was combating illegal activity and migration. Both emphasize the need for mechanisms to be put in place that facilitate effective prosecution of traffickers and the need to repatriate victims.

During my research, I discovered that both the Palermo Protocol and EU policy appear to demonstrate a misunderstanding of agency. While both provide a clear and concise definition of trafficking, both policies make the basic assumption that women retain their agency. Anti-sex trafficking initiatives are seen as a way of combating organized crime and illegal activity within the EU; providing assistance to victims of sex trafficking is merely seen as a way to facilitate the prosecution process. It became very evident to me during my research that this is most likely the reason why most Western EU states do not provide trafficking victims with temporary visas or asylum. The hope is to provide short term medical assistance and counselling, without having to make any long term commitments.

The issue of gender biases permeates through every aspect of the legal process. Even when sex traffickers are caught and prosecuted it often comes at the cost of further victimizing the women that have been abused. Sex traffickers use this failure on the part of the legal system to keep women under their control; these women understand full well that the likelihood of them escaping unscathed is highly improbable. Most often, after a police raid “...women deny that they are forcibly prostituted through fear of retaliation, and so are either returned to their brothel or

¹⁷⁹ Ibid pg 152

deported.”¹⁸⁰ Even in the event that the woman wishes to testify, it is often the case that she cannot speak the language of the country she is in or does not possess any real knowledge of the groups’ structure and activities.¹⁸¹

The situation is even worse for women who enter the sex trade industry “voluntarily”. Many women, most notably from the former USSR, know that they will be going to Western Europe to work as prostitutes.¹⁸² It is often the case that these women do not have any other choice in the matter and unfortunately, the end result is that they are no longer seen as a *victim*. The general consensus is that they choose to enter the world of prostitution voluntarily; and are therefore, not necessarily deserving of the protections afforded to those *forced* into prostitution¹⁸³. The argument raised by author Julia O’Connell Davidson is that whether they enter it voluntarily or involuntarily *all* women in the sex trade are subject to abuses and should be afforded rights; such as access to free medical care and protection from victimization under the law.¹⁸⁴ This division of *victim* and *prostitute* is indicative of the gender biases found throughout society, which have been incorporated into laws and Davidson is correct to argue that this “distinction” should be irrelevant when it comes to the rights of all women working in the sex trade.

¹⁸⁰ See 53

¹⁸¹ See 44

¹⁸² Biemann, Ursula (2005). Remotely Sensed: A Topography of the Global Sex Trade. *Feminist Review*, 1(83), 180-193

¹⁸³ See 49

¹⁸⁴ Davidson, Julia O’Connell (2006). Will The Real Sex Slave Please Stand Up? *Feminist Review*, 6(83), 4-22.

Chapter 7: A Gender Based Approach to EU Immigration Policy

Gender biases at every social and political level need to be addressed¹⁸⁵. In the former Soviet Union, we are witnessing the “feminization of poverty” and the sex trafficking industry has prospered as a result. There are few socioeconomic opportunities made available to women in these regions and so they must resort to putting themselves in precarious situations where they are vulnerable to exploitation and victimization. There needs to be a new approach if sex trafficking is to be combated effectively. Current legislative mechanisms hinder rather than facilitate the legal process and clearly favour traffickers over victims. According to the IOM “The current definition in international legislation...focuses too much on pre-exploitation activities and for not addressing the outcome of the trafficking (the situation the victim is placed into) or the abuses victims’ experience.”¹⁸⁶

So what can be done to combat sex trafficking while adequately addressing the needs of the victims? Current legislation outlines three key points in combating sex trafficking: “1. Prevention of Victimization. 2. Prosecution of Offenders. 3. Protection and Assistance for Victims.”¹⁸⁷ According to most feminist political theorists, there needs to be far more emphasis on the third point if we wish to properly combat global sex trafficking. Author Jo Goodey argues that several policies should be implemented including “...providing short-term residence permits; housing; education; employment and health care.”¹⁸⁸ Along with these social supports, women who are victims of sex trafficking should also have access to specialized counselling and

¹⁸⁵ The United Nations (2010). Intensification of Efforts to Eliminate All Forms of Violence against Women: Report for the Secretary General.
http://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/65/A_65_208.pdf

¹⁸⁶ See 23

¹⁸⁷ See 53.

¹⁸⁸ Ibid

“restitution from the State/offender.”¹⁸⁹ There also needs to be further investigation into corruption within local government and police forces; because it is the cooperation between local authorities and organized crime groups that has facilitated the growth of sex trafficking in Western Europe.¹⁹⁰ The main issue, which is addressed by Goodey and Davidson, is that more often these women have very little information to give. Sex trafficking routes are elaborate, with the women being trafficked changing hands several times throughout the journey; and it is often the case that they are being drugged and abused along the way.¹⁹¹ The end result is that they typically have no idea where they are, how they got there or who is in charge of the operation. Making the state assistance contingent upon the usefulness of the information provided by the victim just makes it easier for local governments to deport these women and not have to offer any long term care or restitutions.¹⁹²

The argument is raised by Goodey, Davidson and many other feminist theorists, that in order to effectively prosecute sex traffickers and protect the victims, international and domestic authorities need to have a better understanding of the implications of gender biases. Current laws are the result of patriarchal systems that do not have a firm grasp of the social, physical and psychological ramifications sex trafficking have for women.¹⁹³ Proponents of a gender based approach to policy argue that there needs to be a complete restructuring of the system. But along with the legal and political structures, we also need to address social issues, which is the more difficult task. Source countries for sex trafficking have some of the highest rates of gender

¹⁸⁹ Ibid

¹⁹⁰ See 65

¹⁹¹ See 135

¹⁹² See 53.

¹⁹³ Goodey, J. (2008) Human Trafficking: Sketchy Data and Policy Responses, *Criminology and Criminal Justice*, 1(8): 421-444

inequality; and the feminization of poverty is a very real problem in these regions. There needs to be focus placed on the redistribution of wealth and the provision of educational and job opportunities for women in rural areas of the former Soviet Union. IOM has taken steps in this direction, running anti-trafficking initiatives in Moldova and other areas affected by sex trafficking. If women are afforded socioeconomic opportunities, they are far less vulnerable to exploitation.

Chapter 8: Cooperation and Coordination

If a gender based approach to sex trafficking legislation is going to be successful, there are factors that need to be considered first. Authors Martti Lehti and Kauko Aromaa argue that one of the most fundamental issues that need to be addressed is information gathering, stating that: “there is the scarcity, unreliability, and non-comparability of existing national and international data.”¹⁹⁴ I would also argue that this is an extremely valid point. During my research, I found it nearly impossible to find any consistent trafficking data. Even at the international level, most organizations do not have much information regarding numbers of women trafficked annually and convictions of traffickers. Lehti and Aromaa argue that legislation has been too nationally oriented and coordination and cooperation has suffered as a result:

“The diverse ways the crime of trafficking in women is criminalized in the legislation of nation-states; the characteristics of trafficking (as organized—in part, transnational—crime), which result in a high level of uncounted crimes (i.e., because such crime is not readily reported to the police) and make trafficking hard to identify, control, and prevent; the weak legal status of victims in most countries, which contributes to their reluctance to report crimes or to cooperate with investigations and court proceedings; and the inconsistent uses of the concept of trafficking in women and persons in international and national contexts.”¹⁹⁵

Even at the international level, organizations such as the IOM experience difficulty collecting quantitative and qualitative data. In their research, Lehti and Aromaa found that the majority of quantitative data collected at the international level is derived from statistics provided by state legal authorities, border agents and local police.¹⁹⁶ I have discussed in this paper that there is an overemphasis on criminality in current EU legislation and Lehti and Aromaa reached the same conclusion: “...the databases are created to meet administrative needs of criminal justice and

¹⁹⁴ See 23 p.140

¹⁹⁵ See 23 p.144

¹⁹⁶ Ibid

immigration authorities and not for criminological or trafficking research...”¹⁹⁷ Because of an overemphasis on criminality, even the United Nations has had difficulty formulating accurate trafficking statistics¹⁹⁸. There is under-estimation and, in some cases, over-estimation, of incidences of sex trafficking within EU states.¹⁹⁹

There is also an issue with the collection of qualitative data. The information available is inconsistent and sporadic. In cases where victims of sex trafficking have been interviewed, there have been significant issues that prevent the data from being useful. Lehti and Aromaa argue that current sample sizes are simply too small and information gathering is not performed over a long enough time period.²⁰⁰ I also encountered this problem while doing my research. I had the most success finding data that had been released by the Moldovan branch of IOM; but even there were only a handful of women who agreed to be interviewed and no follow-ups were done after the victims were repatriated. Finding any definitive evidence that demonstrated international trafficking trends and victimization was nearly impossible. I firmly believe that in order to successfully apply a gender based approach to EU anti-trafficking legislation, there needs to be far more international cooperation and coordination.

¹⁹⁷ Ibid

¹⁹⁸ See 137

¹⁹⁹ See 23

²⁰⁰ Ibid.

Conclusion

In this essay I posed the question: Would gender based analysis of EU immigration policy allow states to address the issue of sex trafficking from the former Soviet Union more effectively? Given the arguments of Goodey, Haynes and other feminist authors, I have hypothesized that a gender based understanding of immigration policy would result in more effective sex trafficking counter-measures. In every aspect of the sex trafficking industry we see the impact of gender and the inequalities that are included. The major source countries in the former USSR have a large portion of their female populations living in poverty.²⁰¹ For many, the only hope they have for getting a job and making money is by taking their chances and travelling into the EU illegally. Some women know that they will be working as prostitutes while some are coerced; but that does mean that women in either situation are not both victims.

In both scenarios, vulnerable women are being sexually exploited for the financial gain of others. There is a stigma attached to the sex industry whether one enters into it voluntarily or through force; and current legislation reflects this gender bias. Women are not afforded adequate protections under current EU legislation and this problem needs to be addressed. While performing my research, it was extremely difficult to find comprehensive and complete quantitative and qualitative data regarding trafficking. I have argued that this is the result of too much focus on criminality at the state level and there needs to be a shift toward victim research. In my discussion of the development of anti-trafficking and immigration policy, I was able to determine that progress has been made. Immigration policy, such as the Schengen Border Code and the Harmony Process, are focusing much more attention on the issue of human trafficking

²⁰¹ Molyneux, M. (1995) Gendered Transition in Eastern Europe. *Feminist Studies*, 21(3): 637-645

and are allocating resources to combating it. The promotion of intergovernmental cooperation and information sharing means that there is the potential for more concrete trafficking data to be published. Coordination of state efforts will also hinder cross border crime and limit the mobility of trafficking groups. However, the main objective of immigration policy is still focused on criminality.

Anti-trafficking legislation in the EU has also improved. The initial Directive on Preventing Human Trafficking was far too short and failed to address many important issues. Much like EU immigration policy, the 2002 Directive focused on predominantly on fighting cross border crime and prosecuting traffickers. Only one article in the Directive discusses assistance for victims, but only provides aid to children who have been trafficked. The 2011 Directive which replaced the one adopted in 2002 addresses far many more important issues. By adopting a human rights approach, the 2011 Directive promotes a move towards victim-centred policy. It outlines issues such as counselling, medical care, gender sensitivity training for local law enforcement and temporary residence visas. However, the 2011 Directive falls short in certain aspects. While a significant amount of the discussion is centred on victim assistance, it is made clear that the provision of resources is only temporary. The Directive outlines that access to counselling, housing etc. does not require for victims to testify at trial. However, it also states that victims will be repatriated if they choose not to cooperate or as soon as criminal proceedings conclude.

Finally, in this paper I discussed the importance of agency and the impact it has on policy formation. For the sake of argument, I concluded that women are initially their own agents before being trafficked; but that during the process of their exploitation they lose their agency. I believe that this is an important observation because of its impact on legislation. Policy that focuses on criminality assumes that those who break the law are acting as their own agents. From

what I have presented in previous chapters, I would argue that this is not the case for women who are trafficked. However, I would take it one step further and say that if we examine the root causes that lead to sexual exploitation, i.e. poverty, lack of social infrastructure, gender inequality, it can be argued that women who are trafficked out of the former Soviet Union never do really possess agency. Socioeconomic conditions have limited their opportunities and for many, sexual exploitation may be the only option. Author Sandra Whitworth has argued that many international institutions simply “don’t get gender”; and this argument could most definitely be applied to current EU and international laws. Whitworth would argue that in order to properly address the issue, society has to move away from our gender biased view of the role of women.²⁰² Women can play a significant role within the political realm but only if they are no longer subject to discrimination through legislation.²⁰³

²⁰² Whitworth, Sandra (2005). Globalizing Gender: Who Gets It? Who Doesn’t? In Ryerson Christie and Elizabeth Dauphinee, eds, *The Ethics of Building Peace in International Relations*, Selected Proceedings of the Twelfth Annual Conference of the Centre for International and Security Studies, 119-130.

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