

The Trafficking Protocol has Advanced the Global Movement against Human Exploitation: The case of the United Kingdom

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When politicians, responding to public campaigns focused on human trafficking, make bold and over-emotive statements, invoking William Wilberforce and the pressing need to lead the global fight against slavery, the Trafficking Protocol,¹ proves its worth. Insulated from national political rhetoric, international treaties, be it the Trafficking Protocol or regional instruments, provide an invaluable structure for governments' national legislative responses to human trafficking. As the United Kingdom's (UK) Solicitor General noted,²

The UK's legal framework has been *directly influenced* by UN [United Nations] and EU [European Union] Conventions and Directives (emphasis added) ... [and] The 'Palermo Protocol' continues to shape the UK's response to human trafficking and in particular the care and support afforded to identified human trafficking victims.

The evolution of the Trafficking Protocol represented a new approach to human trafficking and provided an opportunity for States to develop and implement new legislation which reflected the reality of trafficking, an update on antiquated laws against slavery more commonly found on the statute books. The Trafficking Protocol promoted a more accurate, contemporary understanding of this crime, and was to be a 'universal instrument that addresses *all* aspects of trafficking in persons'.³ With a focus on promoting rights, and human dignity, the Trafficking Protocol mandated a holistic approach to anti-trafficking, acknowledging, for example, the socio-economic pressures which increase vulnerability. This was not a document committed either to the regulation of the movement of people or to framing trafficking as a solely criminal justice problem.

The Trafficking Protocol is far from perfect, but it is realistic. To take the Trafficking Protocol as a static document is to misunderstand its intention. Just as the crime of human trafficking continues to evolve, so too the Trafficking Protocol, as a living convention, rises to meet this challenge. An example of this evolution is provided by Anne T Gallagher. She referred to the flexibility within the 'international legal definition, set out in the Trafficking Protocol, which has been able to accommodate the change in focus

¹ In full: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

² Speech, Solicitor General, Oliver Heald QC MP, 'Prosecuting human trafficking and slavery: The law and the UK response', UK Government, 12 October 2012, retrieved 6 January 2015
<https://www.gov.uk/government/speeches/prosecuting-human-trafficking-and-slavery-the-law-and-the-uk-response>

³ Emphasis added, United Nations, 'Preamble, Protocol To Prevent, Suppress And Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime', retrieved 6 January 2015, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

from the criminalisation of the process of trafficking to the criminalisation of exploitation, the end purpose of the trafficking.’⁴

The UK ratified the Trafficking Protocol almost a decade ago in 2006. Though much is made of this ratification in Parliamentary Questions,⁵ for example, the Trafficking Protocol only makes up one strand of the Government’s anti-trafficking strategy which includes compliance with the European Convention on Human Rights, relevant EU Directives,⁶ and UN human rights obligations, among others. In this respect, the Trafficking Protocol should not be viewed in isolation but as a key component of a unified approach to trafficking, just as the various treaties and conventions on trafficking, women’s rights, workers’ rights, for example, overlap and ‘cooperate’ with each other.

The Trafficking Protocol functions as a mechanism of national and international accountability, as has been seen in the UK’s consultation process for the Modern Slavery Bill.⁷ The Bill Committee found that the proposed definitions used in the Bill ‘are not as broad as the Government believes them to be, nor as broad as international definitions such as those in the Trafficking Protocol, and as a result fail to capture current or potential future forms of modern slavery’.⁸ This yardstick should insulate national legislation from the vagaries of political expediency. The acknowledgement of international obligations, as set out in the Trafficking Protocol, and the need to comply with these obligations in the design of national legislation should inhibit inaccurate, ineffective or plain incorrect legislation from making it to the statute books. Here the Protocol empowers activists, NGOs, politicians and scrutiny bodies by providing a neutral baseline of standards to which the government has committed and thus by which they can be held to account.

The Modern Slavery Bill has the potential to significantly improve the protections afforded to victims, though activists argue that the Government could go further. The Bill provides for a statutory defence for victims and special measures for witnesses in criminal proceedings, for example. In this respect, the Bill engages with the Trafficking Protocol where, as Kelly Hyland Heinrich notes: ‘Without the implementation of the fundamental concept of the interdependence between prosecution and protection that is set forth in the Palermo Protocol, State Parties will continue to misplace their resources and efforts.’⁹

The Modern Slavery Bill Committee further commented: ‘We believe that maintaining a link to international definitions is important to prevent the “double criminality” requirement [where extradition is requested, an offence being investigated by the requesting country must also be an offence in the receiving country] being used as an escape route from prosecution by slave masters and traffickers’.¹⁰ This is a key point. The provision of an international standard, for an international crime, will further strengthen cooperation and the likelihood of a unified response. If the UK and Ireland, which share a land border, are both utilising the same definition of trafficking, then the ability of these

⁴ A T Gallagher, ‘Submission to the Joint Committee on the Draft Modern Slavery Bill’, retrieved 6 January 2015, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/draft-modern-slavery-bill-committee/draft-modern-slavery-bill/written/7406.pdf>

⁵ See, for example, Hugo Swire MP, Minister of State, Foreign and Commonwealth Office to Andrew Stephenson MP, Hansard, HC Deb, 17 June 2013, c485W.

⁶ See, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [OJ L 101 of 15.4.2011].

⁷ Joint Select Committee, Draft Modern Slavery Bill, retrieved 6 January 2015, <http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-modern-slavery-bill/>

⁸ Joint Select Committee, Report: Draft Modern Slavery Bill, 2014, retrieved 6 January 2016, <http://www.publications.parliament.uk/pa/jt201314/jtselect/jt slavery/166/166.pdf>

⁹ K H Heinrich, ‘Ten Years After the Palermo Protocol: Where are protections for Human Trafficking?’, *Human Rights Brief* 18, no. 1, 2010, p. 4.

¹⁰ *Ibid.*, no. 7.

governments to successfully address (via prosecution or otherwise) this crime is undoubtedly enhanced.

In Northern Ireland, Lord Morrow's Private Members Bill on human trafficking has wrongly conflated sex work with sex trafficking¹¹ and a recent vote in the Assembly on this Bill has led to the criminalisation of the purchase of sex.¹² However, while there may be opponents to the approach taken in this Bill, the flexibility of the Protocol enables States to ensure that its implementation is adapted to local contexts.¹³ This flexibility strikes the balance between ensuring key principles are non-negotiable, such as the definition of trafficking, and that national political cooperation can be assured by the power to tailor the implementing legislation appropriately.

In line with human rights treaties, the approach taken by the Trafficking Protocol is cautious, sensitive to claims of the infringement of State sovereignty and the economic challenges of developing countries. As such, the Trafficking Protocol is rich with 'endeavours to' and 'considers'; it both provides minimum standards and elements of aspiration enabling a State's response to evolve and improve from a communal baseline. It challenges the argument that States cannot ratify the Trafficking Protocol on the basis of their limited resources. Indeed, it actively encourages States to assist and support the anti-trafficking efforts of its fellow Protocol signatories, communally overcoming economic constraints. The UK, for example, has recently committed to supporting Vietnam's anti-trafficking efforts, recognising that strengthening Vietnam's response to trafficking in turn strengthens the UK response.¹⁴ This cooperation, in the form of advice and the provision of resources, directly challenges the ability of traffickers to work transnationally.

The ratification of the Trafficking Protocol does not guarantee that a State will easily eradicate trafficking; for example, the recent examination of the UK by the UN Committee on the Elimination of Discrimination against Women highlighted 'the lack of a comprehensive national framework on trafficking, in view of the nature and complexity of this phenomenon and its prevalence'.¹⁵ However, it provides a clear set of objectives to work toward and enables the global response to trafficking to be efficient, concise and unified.

¹¹ G Ellison, 'The Sex Trade in Northern Ireland: The Creation of a Moral Panic', *Institute of Criminology and Criminal Justice Working Paper*, School of Law, Queen's University, Belfast, 2012, retrieved 6 January 2015, SSRN: <http://ssrn.com/abstract=2184040> or <http://dx.doi.org/10.2139/ssrn.2184040>

¹² Northern Ireland Assembly, Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill, October 2014.

¹³ The Interpretative Notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, at para 64 state, 'The travaux préparatoires should indicate that the Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms 'exploitation of the prostitution of others' or 'other forms of sexual exploitation' are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws.'

¹⁴ Hugo Swire MP, Minister of State, Foreign and Commonwealth Office to Kerry McCarthy MP, Hansard, HC Deb, 12 May 2014, c357W.

¹⁵ United Nations, 'Report of the Committee on the Elimination of Discrimination against Women, Examination of the United Kingdom', 55th session (2013), CEDAW/C/GBR/CO/7.

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