THE PALERMO PROTOCOL, AN INTERNATIONAL LEGAL STANDARD FOR ANTITRAFFICKING EFFORTS, EMBEDDED IN COLONIALITY

BY

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ABSTRACT

The Palermo Protocol is the most recent antitrafficking treaty, setting the international standard for law and policy in the prevention, suppression and punishment of this crime. Historically, the crime of trafficking was legally conceived as white slavery, and international treaties on the matter served to further powerful, wealthy states' interests regarding migration and sex work. This Capstone examines to what extent the Palermo Protocol reproduces the harmful patterns present in its predecessors, by analyzing the concepts of crime, victims, perpetrators and antitrafficking strategies that the protocol enshrines as legally authoritative and binding on States Parties.

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As Romanian tradition imposes, I must first thank my parents, for giving me life.

The people I thank the most are my close friends, my chosen family (Ana, Dewi, Hannah, and Vlad most of all) as they help me, everyday, to keep and honour the live I was given. They help me give meaning to this life, and they help me make sense of life and of Occidental society every time I feel like I'm the crazy one. I thank my girlfriend, for bearing with me in my best and worst moments with equal patience. I thank all the Romanian queers, my siblings of all genders and sexual orientations, who witnessed and experienced very rough times alongside me, and who did not all have the opportunity to migrate that I was given. I thank all those who came before me in the struggle against oppression, against marginalization, against injustice, against the innumerable forms of coloniality and imperialism, for their courage and experience, which I hope to honor in all of my writings, not just this thesis. I thank my ancestors, for fighting through poverty, marginalization and all the bad luck that life gave them, in the hope of giving me better life and opportunities. The fact that I am writing this thesis is a testament to their success.

I dedicate this piece of writing to all the aforementioned, who gave me the will to speak about things that matter no matter how many times I'm told to stay silent. I dedicate it to all those involved in trafficking, either as survivors or perpetrators, as it is about them that I speak, and I apologize for not making their voice heard directly through my research. I hope my modest contribution will someday amount to a change in existing legal regimes that will actually improve their lives.

I. Introduction

Trafficking in persons is one of the crimes which, in the 21st century, has generated the most public outrage, as well as the most media attention.[1] Two recent cases of human trafficking being at the core of highly mediatized scandals are the PornHub trials,[2] and the arrest of Andrew and Tristen Tate.[3] As regular citizens follow these stories closely, on social media, TV, and other platforms, governments keep increasing their efforts to fight against this crime, constantly allocating more and more material and human resources to antitrafficking efforts.[4] Even airline

[1] Aradau, C. "The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking" (2004) Millennium 33(2): 252-253; Ausserer, C. "'Control in the Name of Protection': A Critical Analysis of the Discourse of International Human Trafficking as a Form of Forced Migration" (2008) St Antony's International Review 4: 96; Bhagat, A. "Trafficking Borders" (2022) Political Geography 95: 97 ; Bryson Clark, J. & Shone, S. "Migration And Trafficking: The Unintended Consequences Of Security And Enforcement Frameworks And The Revictimization Of Vulnerable Groups" in *The SAGE Handbook on Human Trafficking and Modern Day Slavery* (2019) SAGE Publications 2 ; Chacon, J. "Human trafficking, immigration regulation, and subfederal criminalization" (2017) New Criminal Law Review 20(1), 97-98 ; Dandurand, Y., & Jahn, J. "The Failing International Legal Framework on Migrant Smuggling and Human Trafficking" In: Winterdyk, J., Jones, J. (eds) *The Palgrave International Handbook of Human Trafficking* (2019) Palgrave Macmillan, 784-785 ; Gallagher, A., "Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis" (2001) Human Rights Quarterly 23(4), 976-977 ; Gleason et al., "Discursive Content And Language as Action: A Demonstration Using Critical Discourse Analysis To Analyze Responses To Human Trafficking In Hawai'I" (2018) Journal of Community Psychology 46(3), 114-116 ; Hathaway, J. "The Human Rights Quagmire of Human Trafficking" (2008) Virginia Journal of International Law 49(1), 2 ; Hauck, P. & Peterke, S. "Transnational Organized Crime" in Geiss, R. & Melzer, N. (eds) *The Oxford Handbook of the International Law of Global Security* (2021) Oxford University Press, 228 ; Haynes, D. "The Celebritization of Human Trafficking" (2014) The Annals of the American Academy of Political and Social Science 653, 29-30, 41 ; Kotiswaran, P. "The Transnational Law of Human Trafficking" in Valverde, M. et al. (eds) *The Routledge Handbook of Law and Society* (2021) Taylor & Francis Group, 241; McGrath, S. &Watson, S. "Anti-slavery As Development: A Global Politics of Rescue" (2018) Geoforum 93, 22 ; Meriläinen, N., & Vos, M. "Public Discourse on Human Trafficking in International Issue Arenas." (2015) Societies 5(1), 15-20 ; O'Connell Davidson, J. "De-canting Trafficking in Human Beings, Re-centring The State" (2016) Italian Journal of International Affairs 51(1), 59 ; Rijken, C.R.J.J, and Van Reisen, M.E.H. "Sinai Trafficking: Origin and Definition of a New Form of Human Trafficking." (2015) Social Inclusion 3(1), 113 ; Russell, A. "Human Trafficking: A Research Synthesis On Human Trafficking Literature in Academic Journals From 2000-2014" (2017) Journal of Human Trafficking 4(2), 114 ; Sweileh, Waleed M. "Research Trends on Human Trafficking: A Bibliometric Analysis Using Scopus Database." (2018) Globalization and Health 14(1), 1-2; Thibos, C. & Howard, N. "Trafficking As The Moral Filter of Migration Control" in Carmel, E. et al. (eds) *Handbook on the governance and politics of migration* (2021) Edward Elgar Publishing, 148, 153

[2] Class action lawsuits were brought in California (*Doe v. Mindgeek U.S. Inc.*, 8:21-cv-00338-CJC-ADS (C.D. Cal. Nov. 2, 2021)) and Montreal (Jane Doe c. 9219-1568 Québec inc. (MindGeek), MindGeek s.a.r.l., MG Freesites Ltd, MG Freesites II Ltd et MG Content RT Limited, file no. 500-06-001115-209) against MindGeek, the parent company of PornHub, for allegations of complicity in trafficking in persons, and child trafficking. The website had unknowingly diffused pornographic material of victims of sexual assault and trafficking in persons. For news stories summarizing the trials, see: Pornhub settles California lawsuit that included Canadian women | CBC News; Pornhub owner settles lawsuit with 50 women, including four Canadians | CTV News

[3] Andrew and Tristen Tate, British millionaires and online influencers residing in Romania, were arrested a few months ago in the context of an ongoing investigation on trafficking in persons and rape. They are currently being questioned, and the case is pending trial. For news stories documenting the events (in the absence of an open trial, all documents relating to their arrest and interrogation are confidential), see: Online influencer Andrew Tate moved to house arrest in Romania | News | Al Jazeera; Fraţii Tate au fost scoşi din arest, pentru a fi audiaţi. Andrew Tate: „Nu au nicio dovadă împotriva mea. Dosarul este gol" - Stirileprotv.ro

[4] Aradau (n1) 252-253; Ausserer (n1) 96; Bhagat (n1) 97; Bryson-Clarke & Shone (n1) 2; Chacon (n1) 97-98; Dandurand (n1) 785-787; Gallagher (n1) 976 ; Gleason et al. (n1) 114-116 ; Hathaway (n1) 2; Hauck (n1) 228; Haynes (n1) 29-30, 41; Kotiswaran (n1) 241; McGrath, 22; Merilainen & Vos (n1) 17-20; O'Connell (n1) 59; Simmons, B. et al., "The Global Diffusion of Law: Transnational Crime and The Case of Human Trafficking" (2018) International Organization 72, 250; Sweileh (n1) 1-2; Thibos (n1) 148, 153

companies have recently joined in efforts to prevent trafficking, establishing their own public awareness campaigns.[5] Statistics and rankings have established that human trafficking is more prevalent in Third World countries, yet they are widely recognized as unreliable, due to the hidden nature of the crime, and the unsound methodologies First World nations use to elaborate them.[6] This data, some argue, is being produced with the purpose of diplomatic instrumentalization, for developed states to justify maintaining or increasing migration control measures targeting citizens from less developed nations, by apportioning blame for human trafficking on "less developed others".[7] Still, First World countries often forget they legally incur the same obligations to enterprise effective antitrafficking efforts, which they often do not implement adequately.[8]

Nowadays, the instrument setting the standard for antitrafficking law and policy is the Protocol to Prevent, Suppress and Punish Trafficking in Persons ('Palermo Protocol' or 'the Protocol'), one of the three Additional Protocols to the United Nations Convention on Transnational Organized Crime ('UNCTOC').[9] The first treaty to address trafficking in all

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[5] Airline companies (through the International Air Travel Association: IATA - Human Trafficking), airport management (through the Airports Council International: Stepping up action against an evil trade | Airport Business (airport-business.com)) and flight attendant associations (through the Association of Flight Attendants: Stop Human Trafficking - Association of Flight Attendants-CWA (afacwa.org)) have all initiated antitrafficking awareness raising campaigns, and implemented special trafficking hotlines.

[6] Chacon (n1) 97-98 ; Haynes (n1) 30 ; Kempadoo, K. "The Modern-Day White (Wo)Man's Burden: Trends in Anti-Trafficking and Anti-Slavery Campaigns" (2015) Journal of Human Trafficking 1(1), 16; Lobasz, J. "Beyond Border Security: Feminist Approaches to Human Trafficking" (2009) Security Studies 18(2), 324; Mahdavi, P. & Sargent, C. "Questioning the Discursive Construction of Trafficking and Forced Labor in The United Arab Emirates" (2011) Journal of Middle East Women's Studies 7(3), 23-24; McGrath (n1) 24-28 ; Russell (n1) 130; Simmons (n4) 260; Szablewska, Natalia, and Kubacki, Krzysztof. "Anti-Human Trafficking Campaigns." (2018) Social Marketing Quarterly 24(2), 116; Wilson, M. & O'Brien, E. "Constructing the Ideal Victim in the United States of America's Annual Trafficking in Persons Reports" (2016) Crime, Law and Social Change 65(1-2), 32

[7] Kempadoo (n6) 16; Lobasz (n6) 324; Mahdavi (n6) 13, 23-24; McGrath (n1) 24-28; Simmons (n4) 267-268, 277; Stabile, L. "Sex Work Abolitionism and Hegemonic Feminisms: Implications for Gender-Diverse Sex Workers and Migrants from Brazil" (2020) The Sociological Review 68(4), 856-857; Thibos (n1) 155; Wilson (n6) 32-42

[8] Bryson-Clarke & Shone (n1) 7; Chacon (n1) 105-128; Gleason et al. (n1) 111 ; Jovanovic, M. "International Law and Regional Norm Smuggling: How the EU and ASEAN Redefined The Global Regime on Human Trafficking" (2020) The American Journal of Comparative Law 68(4), 828-830 ; Kempadoo (n6) 17-18; Kotiswaran (n1) 241; Mahdavi (n6) 28-30; Mai et al., "Migration, Sex Work and Trafficking: The Racialized Bordering Politics Of Sexual Humanitarianism" (2021) Ethnic and Racial Studies 44(9), 1622 ; Millar, H. & O'Doherty, T. "Racialized, Gendered and Sensationalized: An Examination Of Canadian Anti-trafficking Laws, Their Enforcement, and Their (Re)Presentation" (2020) Canadian Journal of Law and Society 35(1), 25-27 ; O'Connell (n1) 59 ; Thibos (n1) 153-157

[9] UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000

persons, not just defined categories of vulnerable groups, it is the successor of International Conventions for the Suppression of White Slavery, which were first conceived in 1904.[10] The history of antitrafficking efforts is deeply racialized, as well as colonial, the Palermo Protocol being the first in this history to not be conceived by colonial empires based on racialized constructions of the crime of trafficking.[11] The genesis of the crime of human trafficking in a paradigm of coloniality has been given significant attention in the literature[12], but the extent to which the Palermo Protocol perpetuates or enables coloniality to perpetuate itself has hardly been studied. The interrogation of how current legal instruments are embedded in coloniality, or strongly enable coloniality to perpetuate itself, are at the core of decolonial legal scholarship, in particular Third World Approaches to International Law ('TWAIL').[13] Ingraining itself in the rich history of TWAIL scholarship, this Capstone focuses on answering the following question:

➔ How does the language of the Palermo Protocol perpetuate the colonialist narratives, social constructions, and attitudes of the historical anti-trafficking movement towards human trafficking?

The main argument of this Capstone is that the Palermo Protocol contains discursive constructions of trafficking in persons that are centered on the attitudes and perceptions of

[10] Blom, N. "Human Trafficking: An International Response" In: Winterdyk, J., Jones, J. (eds) *The Palgrave International Handbook of Human Trafficking* (2019) Palgrave Macmillan, 1278; Kotiswaran (n1) 238; Lammasniemi, L. "International Legislation on White Slavery and Anti-trafficking in the Early Twentieth Century" In: Winterdyk, J., Jones, J. (eds) *The Palgrave International Handbook of Human Trafficking* (2019) Palgrave Macmillan, 68-70; Lobasz (n6) 343; McAdam, M., "The International Legal Framework on Human Trafficking: Contemporary Understandings and Confusions" in *The SAGE Handbook on Human Trafficking and Modern Day Slavery* (2019) SAGE Publications, 2-3; O'Connell (n1) 59-60; Pati, R., "Trafficking in Human Beings: The Convergence of Criminal Law And Human Rights" in *The SAGE Handbook on Human Trafficking and Modern Day Slavery* (2019) SAGE Publications, 2; Scarpa, S., "UN Palermo Trafficing Protocol Eighteen Years On: A Critique" In: Winterdyk, J., Jones, J. (eds) *The Palgrave International Handbook of Human Trafficking* (2019) Palgrave Macmillan, 627; Siller, N. "Human Trafficking in International Law Before the Palermo Protocol" (2017) Netherlands International Law Review 64, 411; Stabile (n7) 860; Stoyanova, V. "Human Trafficking and Slavery" in Geiss, R. & Melzer, N. (eds) *The Oxford Handbook of the International Law of Global Security* (2021) Oxford University Press, 381; Thibos (n1) 148-149

[11] Ibid.

[12] Blom (n10) 1278; Kotiswaran (n1) 238; Lammasniemi (n10) 69-70; Lobasz (n6) 343; McAdam (n10) 2-3; O'Connell (n1) 59-60; Pati (n10) 2; Scarpa (n10) 627; Stabile (n7) 860; Stoyanova (n10) 381; Thibos (n1) 148-149.

[13] al Attar, M. "Subverting Eurocentric Epistemology: The Value of Nonsense When Designing Counterfactuals" details this rich history.

states, embedded in coloniality, and harmful to trafficked persons. Following a description of its decolonial legal methodology in section II., it explores the history of antitrafficking treaties in section III, while section IV. pertains to the creation of the Palermo Protocol. Section V. analyzes the Protocol and its Travaux Preparatoires, substantiating the Capstone's main argument. It details how the drafters of the Protocol enshrined inaccurate constructions of trafficking, its victims and perpetrators, and viable antitrafficking strategies as legally authoritative, despite being aware of their embeddedness in a history of coloniality and potential harm.

II. Methodology

The Palermo Protocol, as an additional protocol to a United Nations Convention, fits the definition of a treaty as per art. 2 of the Vienna Convention on the Law of Treaties (VCLT).[14] This Capstone is a legal analysis of the Protocol, which combines treaty interpretation, with a particular focus on the negotiating history (*travaux préparatoires*), with a historical-decolonial approach and critical discourse analysis.

The main principles of treaty interpretation are laid out in art. 31 VCLT. Interpreting the Protocol with due account to its drafting history serves to elucidate the meaning and purpose given to the Protocol by its makers.[15] The reason for this focus is that it helps unearth the concepts of crime, perpetrators, victims and crimefighting which are enshrined as legally authoritative and binding on States Parties. Methods and means of crime investigation, prosecution, and victim protection, for instance, are decided upon based on what policymakers and law enforcement officials view as effective and practical, and are not automatically what victims of crime would view as beneficial to them.[16]

The images and concepts of the crime of trafficking as contained in the Protocol create narratives which are easily adopted by politicians and the media, but they hardly help identify trafficking victims, reduce the driving factors for criminal activity and exploitation, or provide

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[14] Art. 2 (1) VCLT
[15] Art. 31 VCLT
[16] Aradau (n1) 256; Ausserer (n1) 108-110; Bhagat (n1) 96-99; Blanchet, T. & Watson, S. "Learning to Swim in Turbulent Waters: Women's Migration at the Agency-Exploitation Nexus" (2021) Journal of Contemporary Asia 51(1), 114-116; Bryant-Davis, T., & Tummala-Narra, P. "Cultural oppression and human trafficking: Exploring the role of racism and ethnic bias" In N. M. Sidun & D. L. Hume (eds), *A feminist perspective on human trafficking of women and girls: Characteristics, commonalities and complexities* (2018) Routledge/Taylor & Francis Group, 153-156; Bryson-Clark (n1) 2, 4-7 ; Chacon (n1) 125-128 ; Dandurand (n1) 795 ; Farrell, A. & Kane, B. "Criminal Justice System Responses to Human Trafficking" In: Winterdyk, J., Jones, J. (eds) *The Palgrave International Handbook of Human Trafficking* (2019) Palgrave Macmillan, 645-647, 651; Hathaway (n1) 4-5, 32; Hauck (n1) 230; Jovanovic (n8) 825, 835; Kotiswaran (n1) 240-241; Kusari, K. & Walsh, C. "Challenging repatriation as a durable solution: a critical discourse analysis of Kosova's repatriation strategy" (2021) Southeast European and Black Sea Studies 21, 130; Lobasz (n6) 333; Mahdavi (n6) 20-22, 27-28; Mai (n8) 1622; McGrath (n1) 29; Millar (n8) 27, 35-36; O'Connell (n1) 62-63; Rijken (n1) 122; Scarpa (n10) 637-638; Stabile (n7) 862-864; Stoyanova (n10) 393; Thibos (n1) 154-155; Troshynski, E.I. & Bejinariu, A. "Research on Human Trafficking" in DeKeseredy, W.S. et al., *The Routledge International Handbook of Violence Studies* (2018) Taylor & Francis Group, 370; Wilson, M. & O'Brien, E. "Constructing the Ideal Victim in the United States of America's Annual Trafficking in Persons Reports" (2016) Crime, Law and Social Change 65(1-2), 39

redress to victims and their communities.[17] Moreover, many of these concepts were developed prior to the Palermo Protocol, in treaties concluded between colonial empires which conceived of trafficking in persons as the crime of 'white slavery', namely the irregular prostitution of white, European women.[18] Therefore, it is important to retrace and examine the narratives constructed by the Palermo Protocol from a critical, decolonial lens, to understand which images of human trafficking, and its "suppression, prevention and punishment" were reproduced, or created by this legal instrument.

In order to ascertain how the Palermo Protocol perpetuates the social constructions and attitudes of previous anti-trafficking treaties, historical contextualization and critical discourse analysis accompanies the interpretation of the treaty's provisions. Firstly, the decolonial-historical method created by Anthony Anghie supports the analysis by taking into account how the Protocol perpetuates coloniality. In "Sovereignty, Imperialism, and the Making of International Law", Anghie analyzes the relationship between international law and colonialism through the concept of sovereignty.[19] Broadly, Anghie argues that sovereignty doctrine was not a European legal invention pre-dating colonialism, which was then used in colonial conquest efforts.[20] Rather, the occurrence of colonial encounter and conquest raised issues which led to the invention of sovereignty doctrine.[21] Essentially, he claims that "doctrinal and institutional developments in international law cannot be understood simply and always as logical elaboration of a stable, philosophically conceived doctrine (…) rather, we might see these doctrines and institutions as being generated by problems relating to colonial order."[22] His legal-historical method pays attention to how legal terminology and concepts, as well as states'

[17] Ibid.
[18] Blom (n10) 1278; Kotiswaran (n1) 238; Lammasniemi (n10) 69-70; Lobasz (n6) 343; McAdam (n10) 2-3; O'Connell (n1) 59-60; Pati (n10) 2; Scarpa (n10) 627; Stabile (n7) 860; Stoyanova (n10) 381; Thibos (n1) 148-149.
[19] Anghie A, Imperialism, Sovereignty and the Making of International Law (Cambridge University Press 2005), 6.
[20] Ibid.
[21] Anghie (n19) 6-8
[22] Anghie (n19) 7

views of law as an instrument to justify their political aims, have contributed to maintaining the coloniality of an international law doctrine such as sovereignty long after the end of colonial empires, into the present.[23] This method has since been used and developed by many critical legal scholars, in particular Third World Approaches to International Law ('TWAIL') scholars.[24] Thus, this Capstone examines the colonial imagery and narratives present in previous anti-trafficking treaties, and the extent to which they are reproduced in the Palermo Protocol. Additionally, the colonialist dimension of the attitude of wealthy and powerful states towards migration as a threat to their interests is explored.

Secondly, critical discourse analysis allows me to analyze how the Protocol's language reproduces certain power dynamics and creates a particular social construct of human trafficking. Critical discourse analysis is based on the observation that words and terminologies play an active part in constructing social realities, worldviews and concepts.[25] Discourse is comprised of the sets of meanings given to these words, which construct a particular social reality.[26] Critical discourse analysis dissects the meaning-making processes which turns language into social concepts.[27] In legal studies, critical discourse analysis can be particularly useful, as "legal experts create and give meaning to law and legal institutions but they also (re-)produce ignorance about other possible meanings"[28]. Thus, critical discourse analysis can help dissect processes of legal meaning-making, in order to see not only what social realities are constructed through the usage of particular legal language, but also how legal language excludes certain occurrences from belonging to these socially constructed realities. Human trafficking is a social reality/concept, constructed through discursive practice, since it represents a

[23] Anghie (n19) 6-8
[24] For a history of how this method has been used and developed upon in TWAIL and other critical legal schools of thought, see al Attar, M. "Subverting Eurocentric Epistemology: The Value of Nonsense When Designing Counterfactuals"
[25] Gleason et al. (n1) 294
[26] Gleason et al. (n1) 294
[27] Ibid.
[28] Lentner, G. "Law, Language and Power" (2019) International Journal of Language and Law 8, 51

characterization of particular social actors as victims or perpetrators, and of certain actions as morally (and legally) acceptable or unacceptable.[29] The Palermo Protocol contains these characterizations. Therefore, using critical discourse analysis allows an examination of which social realities of human trafficking are constructed by the Protocol's legal language. This Capstone analyses the Protocol and its *travaux préparatoires* to unearth the central topics present in the legal meaning-making, "discursive strands" as they are referred to in discourse analysis theory.[30] This Capstone refers to "discursive strands" as "discursive constructions" instead, to accentuate the fact that the discourse, because it is enshrined in an international law treaty, has the direct effect of constructing the legally authoritative definition of trafficking in persons.

Overall, this legal analysis of the Palermo Protocol from a critical perspective centers around: (a) the intended purpose of the language, (b) its relation to colonial imagery and terminology used in previous treaties, (c) its perpetuation of colonialist migration control policies and power imbalances, (d) its construction of the concept of human trafficking through particular discourse.

As a legal analysis, this Capstone draws on both primary and secondary sources to answer the research question. Regarding primary sources, aside from the Protocol itself and its *travaux préparatoires*, five international treaties on trafficking in persons pre-dating the Protocol are examined, to ascertain the extent to which their terminology and concepts have influenced the Protocol. Additionally, the Additional Protocol Against the Smuggling of Migrants by Land, Sea and Air,[31] will be mentioned insofar as some of the Palermo Protocol's provisions were directly drawn from its draft. One important limitation to note is that in the

[29] Gleason et al. (n1) 294
[30] Gleason et al. (n1) 296
[31] UN General Assembly, *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000,

Protocol's travaux preparatoires, drafts, comments, and proposals are not always attributed to specific delegations, the terms most often used being "some delegations" or "many delegations, whereas in the Convention's travaux preparatoires, the record-keeping is more minutious, and all delegations are listed by name of country or organization every time a comment or draft is mentioned.[32]

The secondary sources used are a mix of academic articles relating to trafficking in persons, chapters from edited volumes and books. Academic articles and book chapters are not only drawn from the legal field, but also from other fields in which human trafficking is a prominent topic, e.g., sociology, history, media studies, public health, in line with the critical perspective employed by the Capstone. The Capstone includes articles by academics of color, in particular women, LGBTQIA+ authors, and sex workers, as I seek to make heard the voices of those who are generally obscured from mainstream academic discourse, especially those from communities most affected by trafficking policies.

I approach this research with a critical perspective because of my positionality, in relation to legal systems, in relation to migration, in relation to mainstream academic discourse. I am a white, non-binary lesbian, from Romania, a country which is both a regional trafficking hub, and an exporter of legal low-paid migrant workers. Unlike many Romanian emigrants, I was privileged enough to be able to migrate to the Occident for educational opportunity, being financially supported to attend university. Like most Romanian emigrants, I faced discrimination by Occidental institutions and law enforcement officials (though not of the same nature or extent as racialized individuals), and supplementary travel documents were demanded from me by border authorities, who suspected I was being trafficked. I have had direct encounters with trafficking survivors as well as perpetrators, and witnessed many of the cases

[32] For example, in the travaux preparatoires, on p. 321, footnote 5 states "Two delegations (Australia and Canada)", whereas on p. 322 there is no reference to specific delegations, footnote 6 stating only "Two delegations", footnote 8 saying only "some delegations".

which are sensationalized in media as routine occurrences. My experiences and my identity made me feel alienated by mainstream academic discourse, which for a long time I did not understand, since on many issues related to legality, migration, crime, or human rights, it was very far removed from the realities I knew. Of course, the realities I know are not universal, yet I noticed that the criticisms I raised to prevailing conceptions of issues we discussed in class were understood and echoed by students or staff from marginalized positions close to mine: people of color, LGBTQIA+ individuals, people who had grown up in the Third World. Everyone else in the classroom space looked at the few of us who presented such critical ideas as if we simply did not understand the real topic of conversation, the real issues at hand. So I wanted to understand. I wanted to understand what these social constructions, these narratives, these ideas were that they all viewed as obvious, and that I viewed as absurd and disconnected from reality, since ultimately these same ideas underpin the laws that affect oppressed and marginalized people the most. I wanted to see the other side of laws on migration, on trafficking, the side which they originate from. This Capstone is the result of my attempt, from my inherently critical perspective, to understand how current legal standards for antitrafficking efforts were created, and what social constructions they are rooted in.

III. A Brief History Of Anti-Trafficking Treaties

This Capstone first explores the historical origins of international antitrafficking treaties, starting with the 'white slavery' treaties of the early 20th century, through the regulations elaborated at the League of Nations, until the 1949 Convention for the Suppression of Traffic in Persons and Exploitation of the Prostitution of Others, which remained in force until the ratification of the Palermo Protocol.

i. The Birth of The Anti-Trafficking Movement

Human trafficking became a criminal phenomenon of international concern in the early 20th century, when it was equated with 'white slavery'.[33] It is to these early anti-trafficking efforts that we owe the narrative of human trafficking as 'modern slavery', although our contemporary understanding of human trafficking as exploitative forced migration was not the concern back then.[34] Rather, the increase in migration of working-class individuals led to "an international rotation of prostitutes and the reported spread of venereal diseases"[35], which posed a concern for governments and civil society organizations in Western Europe.[36] Civil society organizations working to eradicate vice and immorality, as well as advance women's rights, joined forces with the national governments of colonial empires to tackle these issues, framed as 'white slave traffic'.[37] The term 'white slavery' was intentionally exclusionary, rooted in a conception of whiteness as purity, and of prostitution as "demeaning and de-whitening" through interaction with nonwhite clients or pimps.[38] All in all, early anti-trafficking efforts were aimed

[33] Blom (n10) 1278; Kotiswaran (n1) 238; Lammasniemi (N10) 68-70; Lobasz (n6) 343; McAdam (n10) 2-3; O'Connell (n1) 59-60; Pati (n10) 2; Scarpa (n10) 627; Siller (tn10) 411; Stabile (n7) 860; Stoyanova (n10) 381; Thibos (n1) 148-149
[34] Ibid.
[35] Siller (n10) 411
[36] Allain, J. "White Slave Traffic in International Law." (2017) Journal of Trafficking and Human Exploitation 1(1), 2; Lammasniemi (n10) 68; Siller (n10), 411
[37] Allain (n36) 2; Lammasniemi (n10) 68; Siller (n10) 411
[38] Lammasniemi (n10) 73

at limiting the spread of venereal disease, controlling/regulating migration of working-class women, and preserving the morality of white women (by stopping prostitution).[39]

The first proposal to legislate the issue of 'white slave traffic' was made in 1899, at an International Congress organized by the International Bureau for the Suppression of 'White Slave Traffic', a branch of the UK government.[40] The Bureau campaigned for an international treaty to tackle 'white slavery' as a crime, provide for international cooperation in criminal investigations, and involve associations in state initiatives to protect or repatriate migrants.[41] The Bureau's efforts culminated in a Draft Convention on 'White Slave Traffic' written at a 1902 conference[42], substantively laying the foundations for the two first International Agreements for the Suppression of the 'White Slave Traffic', signed in 1904 and 1910 respectively.[43]

ii. International Treaties for the Suppression of White Slave Traffic

The 1904 Agreement marks the very first treaty regulating trafficking in persons, signed by 12 European nations, all colonial powers.[44] Rather than obliging states to criminalize 'white slave traffic', it provided a tentative definition of the phenomenon as the procurement of women for "immoral purposes", meaning sex work.[45] States wanted to avoid encroaching on national sovereignty by creating an international treaty imposing criminal law obligations on their domestic legal regimes, therefore conceiving the Agreement as an instrument to facilitate international cooperation in preventing and investigating the phenomenon.[46] An elaborate set of administrative provisions was established, setting up central bureaus for the collection and

[39] Allain (n36) 2
[40] Lammasniemi (n10) 68-69
[41] Lammasniemi (n10) 69
[42] Ibid.
[43] Allain (n36) 1-2; Lammasniemi (n10) 68-69; Siller (n10) 423-425
[44] UNTC
[45] Lammasniemi (n10) 71
[46] Allain (n36) 16; Lammasniemi (n10) 71; Siller (n10) 418

sharing of information, as well as identification, protection, employment and repatriation of supposed victims.[47] More stringent border control measures were put in place, involving cooperation between national authorities and civil society associations.[48]

According to Lammasniemi, the Agreement mainly targeted "women and girls of a particular class and appearance in order to identify potential prostitutes", thus far paying no mind to their pimps and traffickers.[49] The very limited scope of this first agreement, and its focus on the identification and rehabilitation of victims, was partially due to the numerous disagreements having surfaced during the negotiation of the 1902 Draft.[50] Aside from the matter of respecting state sovereignty, the delegates present at the conference in 1902 could not agree on a number of practical matters, including the elements of the crime, legal terminology to be used, and the differentiation between legal sex work and trafficking.[51] In 1910, all of the contentious issues from the 1902 Conference were taken up again, in the drafting of a treaty explicitly geared at criminalizing human trafficking.[52]

The 1910 International Convention on the Suppression of the 'White Slave Traffic' represents the first instance of trafficking in persons being addressed by criminal law. Its first article defines 'white slave traffic' as a criminal offence with two elements: the act (transnational acquisition through illegal means) and the purpose ('immoral purposes', meaning prostitution and debauchery).[53] The Convention greatly expands on the definition included in the 1902 Draft, notably by including an extensive list of illegal means, including 'enticing', 'leading away', or 'procuring'.[54] Consent of the victim, a much-debated problem, was considered irrelevant not only for underage women, but also for those working with a pimp,

[47] Allain (n36) 21; Lammasniemi (n10) 71; Siller (n10) 418
[48] Allain (n36) 21; Lammasniemi (n10) 72; Siller (n10) 418
[49] Lammasniemi (n10) 72; Siller (n10) 416-431
[50] Allain (n36) 1-2, 21-22; Siller (n10) 429-430
[51] Allain (n36) 8-10;
[52] Allain (n36) 1-2, 21-22; Siller (n10) 429-430
[53] Lammasniemi (n10) 72; Siller (n10) 429-432
[54] Siller (n10) 431.

thereby including to some extent the practice of voluntary sex work within the crime of 'white slave traffic'.[55] This is paradoxical, as the regulation of sex work was still considered to be a matter of national jurisdiction, some of the states involved in drafting the Convention considering sex work and certain associated activities (e.g. brothel-keeping) domestically legal.[56] Other important treaty provisions include mandatory criminalization on a national level, prosecution and conviction of perpetrators, extradition and repatriation procedures.[57] The Convention sets all of these legislative measures as minimum thresholds, encouraging states to expand on them at a national level, according to their respective capacities and priorities.[58] Due to the start of the First World War, states did not have the occasion to expand much on anti-trafficking legislative efforts.

iii. The League of Nations, anti-trafficking and abolitionism

Nevertheless, the issue remained high on the political agenda, as proved by its inclusion in the Covenant of the League of Nations as a matter for which the newly-formed organization was to be responsible.[59] The Members of the League decided to entrust the newly-formed organization with "the general supervision over the execution of agreements with regard to the traffic in women and children."[60] Trafficking was thereby included in art. 23 of the Covenant as one of the issues requiring international co-operation under the auspices of the League.[61] Coincidentally, drug trafficking, the arms trade, and safety within "freedom of transit", were also part of the issues listed in art. 23.[62] With the notable absence of migrant smuggling, these

[55] Lammasniemi (n10) 72; Siller (n10) 429-432
[56] Lammasniemi (n10) 76
[57] Lammasniemi (n10) 72-73; Siller (n10) 429-432
[58] Siller (n10) 433
[59] Siller (n10) 434
[60] Art. 23(c), covenant of the league of nations
[61] Art. 23 covenant of the league of nations
[62] Art. 23(c), (d), (e) covenant of the league of nations

are the same issues of international concern which resurfaced half a century later as a reason to draft the UN Convention on Transnational Organized Crime.[63]

The League of Nations created a Committee for Traffic in Women and Children, whose conferences became the main international forum to discuss the issue of trafficking in persons.[64] The League of Nations took the very important step of de-racializing trafficking, by re-framing it from 'white slave traffic' to 'traffic in women and children'.[65] In 1921, member states signed an International Convention for the Suppression of Traffic of Women and Children, which broadly reproduced the same provisions as in the 1904 Agreement and the 1910 Convention, with a new term for the same crime.[66] The member states continued approaching anti-trafficking as an issue of controlling women's migration, and abolishing prostitution, numerous anti-trafficking resolutions almost exclusively centering around these two themes.[67] Following extensive research efforts by the Committee worldwide, prostitution and brothel-keeping were acknowledged as the main incentives to trafficking, prompting the enacting of a further Convention at the League of Nations, in 1933.[68] The 1933 Convention set itself apart from previous instruments through the total exclusion of the issue of consent, rendering the abusive means of acquisition of persons irrelevant, which made voluntary sex work a part of the crime of 'traffic in women and children'.[69] In 1937, a Draft Convention was written which was meant to include men as potential victims of trafficking, and fully criminalize all activities relating to sex work, including pimping and renting or owning property for the practice of prostitution.[70] Although the Draft was never signed (never making it past plenary meeting discussions), it

[63] UNGA resolution 53/111 of 20.01.1999
[64] Lammasniemi (n10) 74; Siller (n10) 436
[65] Ibid.
[66] Ibid.
[67] Ibid.
[68] Lammasniemi (n10) 76; Martinez, J. "The League of Nations, Prostitution, and the Deportation of Chinese Women from Interwar Manila" (2021) Journal of Women's History 33(4), 74-77; Siller (n10) 436
[69] Lammasniemi (n10) 76; Martinez (n68) 74-77; Siller (n10) 436
[70] Siller (n10) 440-442

clearly represented the purpose of the anti-trafficking movement at the League of Nations: abolishing prostitution through criminal punishment[71].

This purpose reached its culmination in the 1949 Convention for the Suppression of Traffic in Persons and Exploitation of the Prostitution of Others, considered to be the most controversial instrument in the history of anti-trafficking legislation.[72] The 1949 Convention, in practice, reduced trafficking in persons to prostitution, thereby enacting abolitionist legislation instead of anti-trafficking measures.[73] Whilst explicitly criminalizing prostitution, it lacked enforcement measures as well as any mention of the protection of victims and their rights.[74] The 1949 Convention was ratified by only 18 out of its 82 signatory states (only the states criminalizing prostitution prior to the treaty ratified it), which was sufficient for it to enter into force.[75] Although it has gathered no additional ratifications, it remained the primary international legal instrument dealing with trafficking in persons prior to the Palermo Protocol.[76] The inadequacy of such an instrument in fighting human trafficking should have prompted the creation of a new treaty, instead it seemed to fully erase trafficking in persons from the international political agenda for nearly five decades.

[71] Siller (n10) 440-442
[72] Lammasniemi (n10) 82; Pati (n10) 3; Siller (n10) 443

[73] Lammasniemi (n10) 82; Siller (n10) 443
[74] Ibid.
[75] 1949 convention, preamble, art. 24, 25; Lammasniemi (n10) 82; McAdam (n10) 3; Pati (n10) 3; Siller (n10) 445
[76] Lammasniemi (n10) 82; McAdam (n10) 3; Pati (n10) 3; Siller (n10) 445

IV. Contemporary Anti-trafficking Efforts

This section first examines the mobilization of efforts at the UN to create a new international treaty on trafficking in persons, which resulted in the Palermo Protocol. Additionally, it introduces the substantive content of the Protocol.

i. Trafficking in persons, an organized transnational crime (at the UN)

After 1949, the issue of human trafficking as a matter of international concern did not resurface until the mid-1990s at the UN.[77] Although the issue of trafficking had been discussed by human rights activists and scholars, little effort was mobilized to legislate anti-trafficking measures.[78] Following the 1994 Ministerial Conference of Naples, at which the necessity of a Convention against Transnational Organized Crime (hereinafter 'the Convention') was decided, human trafficking became an issue to be solved through legal means once more.[79] In the mobilization of efforts to write the Convention, criminal activity caused by an increase in migratory flows marked the main concern at hand.[80] In an increasingly globalized world in the aftermath of the Cold War, transnational cooperation was viewed as necessary to protect national security, control and regulate migratory flows, thereby preserving states' sovereign powers.[81] It is thus that trafficking in persons was to be criminalized under an Additional Protocol to the Convention, along with two other important migration-related crimes, migrant smuggling, and weapons trafficking.[82]

According to Gallagher, a participant in the drafting of the Palermo Protocol on behalf of a UN human rights agency, there were four main groups partaking in the negotiations for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and

[77] McAdam (n10) 3-4; Pati (n10) 3-4
[78] McAdam (n10) 3-4
[79] UNGA resolution 53/111 of 20.01.1999; Scarpa (n10) 624
[80] Chacon (n1) 103; Gallagher, A., "Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis" (2001) Human Rights Quarterly 23(4), 976; Scarpa (n10) 624
[81] Chacon (n1) 103; Gallagher (n 80), 976; Scarpa (n10) 624
[82] Chacon (n1) 103; Gallagher (n 80), 976; Scarpa (n10) 624

Children (hereinafter 'Palermo Protocol' or 'Trafficking Protocol'), each with its own agenda and demands. Firstly, there were the representatives of national governments, with two main interests: on the one hand, to obtain a clear definitional distinction between migrant smuggling and human trafficking, on the other hand, to obtain a robust criminal framework easily implementable at national level and conductive to inter-state cooperation.[83]

Secondly, there were representatives from UN human rights agencies, in particular dealing with refugee, children's and women's rights, concerned about how globalization "created complex new networks and even new forms of exploitation."[84] They attempted to secure a definition of the crime broad enough to encompass as many forms of exploitation as possible, as well as broad victim protection and human rights preservation provisions.[85]

Thirdly, civil society representatives, in the form of various NGOs, were invited to actively participate in the discussion, and formed two distinct interest groups. Among the NGOs, division surfaced because of the abolitionist debate, namely between the radical feminists, under the name of 'Coalition Against Trafficking in Women' or 'International Human Rights Network', and the sex workers' representatives, under the name of 'Human Rights Caucus'. The radical feminists ardently argued that all prostitution is a violation of womens' rights, and desired the definition of the crime to include all forms of sex work, whether exploitation was involved in the process or not.[86] The sex workers' representatives focused on an expansive definition including all forms of exploitation, making a distinction between voluntary and forced sex work, and campaigning for the decriminalization of prostitution.[87] Ultimately, these serious ideological differences had to be set aside, and consensus was reached on a definition

[83] Gallagher (n 80), 790
[84] Gallagher (n 80), 790
[85] Ibid.
[86] Chacon (n1) 101
[87] Ibid.

of the offence, transnational cooperation between law enforcement agencies, as well as victim rehabilitation and repatriation.

ii. The Palermo Protocol, the birth of a new Legal Regime

The Palermo Protocol has been ratified almost universally, with only three countries being the exception: the Democratic Republics of the Congo and North Korea, and Uganda.[88] The Palermo Protocol is divided into four parts, the first of which is comprised of general provisions stating the object of the present treaty. The Protocol begins by stating its purpose, namely the fight against human trafficking on three fronts: prevention of the criminal phenomenon, protection of victims, and promotion of inter-State cooperation.[89] Subsequently, it defines the offence of trafficking in persons, constituted of three elements: the act of movement ("recruitment, transportation, transfer, harboring or receipt of persons"), the abusive means ("the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person") and the purpose of exploitation.[90] The abusive means listed in art. 3(a) render any consent which the trafficking victim might have provided irrelevant, when the victim is over 18.[91] For underage victims (referred to as children), the means are not a constitutive element necessary to establishing occurrence of the crime.[92]

Marking great progress compared to previous definitions of trafficking, the scope of the term "exploitation" is expanded beyond sexual exploitation, including but not limited to forced labor, slavery, servitude or the removal of organs.[93] However, the crime of trafficking in persons

[88] United Nations Treaty Collection website: UNTC
[89] Art. 2 Palermo Protocol
[90] Art. 3(a) Palermo protocol
[91] Art. 3(b) Palermo protocol
[92] Art 3c,(d) Palermo protocol
[93] Art. 3(a) Palermo protocol

is still limited to cases of transnational movement, specifically involving organized criminal groups.[94] Essentially, human trafficking occurring within national borders, as well as cases where none of the perpetrators are affiliated to organized criminal groups, are fully excluded from the scope of the Protocol. All conduct fitting the definition laid out in art. 3 carried out with intent, as well as fulfilling the criteria of transnationality and organized criminality, must be criminalized by States Parties in their domestic legal systems.[95] Art. 5 also mandates the establishment of conduct amounting to secondary liability ("attempting to commit an offence", "participating as an accomplice", "organizing or directing other persons to commit an offence") as criminal in national legislation, pursuant to each State Party's existing legislation.[96]

The second part of the Protocol pertains to the protection of trafficking victims, and is the shortest in the protocol, containing three articles. Out of the eight main measures States Parties should implement for the protection and assistance of victims, only three are mandatory[97]: guaranteeing the right to involvement in court proceedings[98], guaranteeing possibility of compensation of victims for damages incurred[99], and adhering to the administrative procedures agreed upon regarding interstate cooperation for repatriation and identification of victims[100]. The other measures are recommendations to the state parties, not binding obligations, to preserve the human rights of victims and facilitate their social reintegration. These include guaranteeing the protection of privacy and identity[101], the provision of aid in their physical, psychological and social recovery (such as free housing or medical assistance)[102], respect of the special needs of victims according to their age, gender and personal circumstances[103], insurance

[94] Art. 4 palermo protocol
[95] Art. 5 palermo protocol
[96] Art. 5 palermo protocol
[97] Binding obligations are phrased in terms such as "shall ensure that its domestic or legal system contains administrative measures that provide to victims of trafficking" (art. 6(2)), whereas non-binding obligations are phrased in terms such as "shall consider implementing measures to provide for the physical, psychological and social recovery of victims" (art. 6(3))
[98] Art. 6(2) palermo protocol
[99] Art. 6(6) palermo protocol
[100] Art. 8 palermo protocol
[101] Art. 6(1) palermo protocol
[102] Art. 6(3) palermo protocol
[103] Art. 6(4) palermo protocol

of their physical safety[104], and the enactment of legislative measures allowing victims of trafficking to remain on the territory of the destination state temporarily or permanently[105]. Even though the Protocol clearly mentions a wide range of measures to provide redress and assistance to the victims, they are given less importance than those pertaining to other prevention, investigation, and prosecution methods.

These other measures, centering around international cooperation, form the main part of the treaty. Firstly, States are legally obliged to establish policies aimed at preventing trafficking in persons, as well as the revictimization of trafficked persons.[106] The Protocol encourages States to implement this obligation by adopting measures, especially through multilateral cooperation, to alleviate factors making persons vulnerable to trafficking ("such as poverty, underdevelopment, and lack of equal opportunity")[107], and to reduce the demand fostering exploitation of persons of all kinds[108]. Moreover, it is suggested that states enterprise research, public information, media campaigns, and other social and economic initiatives in the prevention of trafficking.[109] Civil society, through non-governmental organizations and other elements, should be involved in the development and implementation of all these measures.[110] Thereafter, the cooperation of law enforcement authorities and immigration services is mandated, particularly through information exchange and establishment of regular, reliable channels of communication.[111] States Parties must also provide adequate training to their law enforcement officials, in the prevention of trafficking in persons, notably immigration services.[112] The Protocol also mandates the strengthening of border control measures[113], in

[104] Art. 6(5) palermo protocol
[105] Art. 7 palermo protocol
[106] Art 9(1) palermo protocol
[107] Art. 9(4) palermo protocol
[108] Art. 9(5) palermo protocol
[109] Art. 9(2) palermo protocol
[110] Art. 9(3) palermo protocol
[111] Art. 10 (1) (3), art 11(6) palermo protocol
[112] Art. 10(2) palermo protocol
[113] Art. 11(1) palermo protocol

particular by regulating commercial carriers, and implementing criminal sanctions for those who do not ensure that all their passengers are in possession of adequate travel documents.[114] States also have the option of denying entry or revoking the visas of commercial carriers as well as passengers violating such border control regulations.[115] Additionally, to minimize the risk that travel or identification documents are falsified, States have an obligation to ensure the quality, integrity, and security of the identification documents that they emit.[116] If a case of trafficking or false documents are suspected by another state party, national authorities must verify the validity of identity documents with minimal delay.[117] Overall, cooperation between specialized agencies of each State Party in all measures meant to prevent human trafficking is the central obligation laid out by this part of the Protocol.

The last part of the protocol contains final provisions, relating to administrative matters. This includes dispute settlement[118], conditions for ratification[119] and entry into force[120] of the Protocol, procedures allowing for denunciation[121] or amendments[122], language and depository matters[123]. Importantly, the Protocol contains a saving clause, which states that none of its provisions shall prejudice the rights and obligations laid out in 1951 Convention and 1967 Protocol relating to the Status of Refugees (especially the non-refoulement principle).[124] The clause also mentions that the measures set forth in the Protocol shall be consistent with principles of non-discrimination, "interpreted and applied in a way that is not discriminatory to persons on the ground"[125].

[114] Art. 11 (2)(3)(4) palermo protocol
[115] Art. 11(5) palermo protocol
[116] Art. 12 palermo protocol
[117] Art. 13 palermo protocol
[118] Art. 15 palermo protocol
[119] Art. 16 palermo protocol
[120] Art. 17 palermo protocol
[121] Art. 19 palermo protocol
[122] Art. 18 palermo protocol
[123] Art. 20 palermo protocol
[124] Art 14(1) Palermo protocol
[125] Art. 14(2) Palermo protocol

V. Harmful Discursive Constructions of Trafficking in Persons, as perpetuated in the Palermo Protocol

The issues that came up in the drafting of the Palermo Protocol reveal what problems its lawmakers believe human trafficking poses, for states, for society at large, and for its victims. The solution to these problems, and how it should be expressed in legal terms, forms the subject of the debate, the result of which is the treaty. One of the main issues that the treaty needed to address was providing a definition for the crime of trafficking in persons itself.[126] The Protocol thereby reveals what conduct its drafters believed could amount to trafficking in persons, why trafficking in persons poses a problem to society and must be prevented. This analysis focuses on looking beyond the result, which is the content of the Protocol, back to the debate that generated it, back to the question that originally posed a problem. By tracing the connections between the Palermo Protocol and the treaties preceding it, one notices how radically different debates originated in very similar questions, with relatively similar answers. The analysis explains how even though a century has passed since the white slavery Conventions, the discursive constructions which were enshrined as legally authoritative in previous antitrafficking treaties were largely present in the construction of the Protocol as well. Consequently, it is shown how the Protocol reproduces to some extent the coloniality of its predecessors in a new era with new terminology, while also distancing itself from explicitly racist, anti-prostitution laws central to previous treaties.

[126] Blanchet & Watson (n16) 114-116; Chacon (n1) 99-100; Columb, S. "Beneath the Organ Trade: a Critical Analysis of the Organ Trafficking Discourse" (2015) Crime, Law and Social Change 63(1-2), 27-30; Hathaway (n1) 4-5; Jovanovic (n8) 801-802, 805-807; Kotiswaran (n1) 241; Mahdavi (n6) 12-14; McAdam (n10) 8-10; O'Connell (n1) 62-63; Scarpa (n10) 631-632; Thibos (n1) 155

i. Sexual exploitation as slavery

The definition of trafficking in persons as a crime is deeply influenced by its history, and to this day remains linked to the fight against 'white slavery.'[127] From the 'white slavery' conventions to the present day, the crime has always consisted of two main constitutive elements: the abusive means and the exploitative purpose.[128] The abusive means vary from treaty to treaty, based on the judgment of the drafters at the time of the negotiations, and are always exhaustively listed in the provisions containing the definition of the crime.[129] They generally include means which are explicitly abusive, and criminal in their own right (kidnapping, use of force), as well as deception or coercion ('enticement' for example).[130]

The exploitative purpose, on the other hand, referred exclusively to sexual exploitation until the Palermo Protocol expanded its scope.[131] As the concept of trafficking in persons was generated by moral outrage at the so-called 'sexual enslavement' of white women, its constitutive element of exploitation could initially only be of a sexual nature.[132] 'White slavery' could legally only occur when white women were transported across borders for an 'immoral purpose'.[133] Although treaties never explicitly clarified what 'immoral purposes' were, from the travaux preparatoires and interpretive guidance, it is clear that the expression was then commonly understood to mean sexual exploitation.[134]

However, what constitutes sexual exploitation remains unclear, as it varied from jurisdiction to jurisdiction. In some countries, where prostitution was legal, exploitation meant

[127] Blom (n10) 1278; Kotiswaran (n1) 238; Lammasniemi (n10) 68-70; Lobasz (n6) 343; McAdam (n10) 2-3; O'Connell (n1) 59-60; Pati (n10) 2; Scarpa (n10) 627; Siller (n10) 411; Stabile (n7) 860; Stoyanova (n10) 381; Thibos (n1) 148-149
[128] Allain (n36) 16, 21; Lammasniemi (n10) 71; Siller (n10) 418
[129] Allain (n36) 21; Lammasniemi (n10) 72; Siller (n10) 429-432
[130] Allain (n36) 21; Lammasniemi (n10) 72; Siller (n10) 429-432
[131] Allain (n36) 21; Lammasniemi (n10) 72; Siller (n10) 429-432
[132] Allain (n36) 16; Blom (n10) 1278; Kotiswaran (n1) 238; Lammasniemi (n10) 68-70; Lobasz (n6) 343; McAdam (n10) 2-3; O'Connell (n1) 59-60; Pati (n10) 2; Scarpa (n10) 627; Siller (n10) 411; Stabile (n7) 860; Stoyanova (n10) 381; Thibos (n1) 148-149
[133] Allain (n36) 16, 21; Lammasniemi (n10) 71; Siller (n10) 418
[134] Allain (n36) 16, 21; Siller (n10) 432

profiting off of someone else's prostitution, including broad definitions for exploitative acts such as brothel-keeping or pimping.[135] In others, where prostitution was illegal, all sexual labor was considered exploitative, even when engaged in consensually by a woman having reached the age of majority.[136] This variety of meanings of sexual exploitation as an element of trafficking within domestic legislation created problems for investigating and prosecuting trafficking.[137] Sex workers were often erroneously labeled victims of sex trafficking simply for practicing their profession, and subsequently detained or deported.[138] These issues have endured ever since, being one of the factors why nowadays trafficking investigations and prosecutions across the world target consenting sex workers more than actual victims of trafficking.[139]

The drafters of the Palermo Protocol were aware of these issues, and the debate on which forms of exploitation should constitute trafficking was explicitly opened with the intention to provide either a definition or minimum threshold for each form of exploitation, to harmonize definitions across national jurisdictions.[140] The majority of delegations were in agreement about the need to expand the definition of trafficking beyond sexual exploitation.[141] It was long debated, however, which forms of exploitation to include, and how to phrase the provisions to include so-called 'future forms of exploitation', which had not yet come into being or were not yet known to the international community at the time of drafting.[142] Labor exploitation was unanimously mentioned as important, but organ trafficking and debt bondage were the subject

[135] Allain (n36) 21; Lammasniemi (n10) 73-74, 76; Martinez (n68) 75-78 ; Siller (n10) 429-432
[136] Ibid.
[137] Ibid.
[138] Ibid.
[139] Bryant-Davis (n16) 164-165; Bryson-Clark (n1) 2; Chacon (n1) 125-126 ; Kotiswaran (n1) 240; Mahdavi (n6) 12-13 ; Mai (n8) 1608, 1622; McGrath (n1) 23 ; Millar (n8) 25, 27; O'Connell (n1) 62-63; Stabile (n6) 862-864; Thibos (n1) 154 ; Wilson (n16) 39
[140] United Nations Office on Drugs and Crime, Travaux Preparatoires of the negotitions for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, 2006, 333, note 5 ; p. 335, note 14 ; p. 339-340
[141] Travaux Preparatoires, 339-340
[142] Travaux Preparatoires, 341-345, in particular notes 22, 28, 30

of dissent among delegations.[143] In elaborating definitions for each exploitative purpose, sexual exploitation was equated with servitude or slavery of a sexual nature, all of its draft definitions being directly drawn from the 1956 Slavery Convention.[144] In drafts where slavery or servitude were defined, it was unanimously considered that no definition of sexual exploitation was necessary, as it was automatically included in servitude or slavery.[145] On the other hand, debt bondage and forced labor were always separated from slavery and servitude in the draft definitions.[146] Until the two final drafts of the Protocol, nobody considered introducing conduct amounting to servitude or slavery as a form of exploitation separate to sexual exploitation (luckily, in the signed version of the Protocol, the distinction is very clear).[147]

Overall, the discourse on sexual exploitation emerging from the travaux preparatoires is therefore one of sexual exploitation as slavery, or a practice similar to slavery. Simultaneously, there is a discourse of forced labor, debt bondage and other forms of exploitation as distinct from slavery, implying that they are less serious, or cause less moral outrage. This discourse is corroborated by discussions on child trafficking, as several delegations suggested explicitly referring to trafficking in children as including the purposes of prostitution and pornography, as the worst forms of child exploitation.[148] In the end, providing an official definition for each of the forms of exploitation included in the Protocol, even providing a minimum threshold for what acts might constitute exploitation, was abandoned.[149] Still, definitions of labor exploitation, debt bondage, and organ trafficking were generally agreed upon, and a minimum threshold for what should constitute sexual exploitation garnered wide agreement among delegations.[150] Yet the issue of states parties addressing prostitution differently in their domestic

[143] Travaux Preparatoires, 340-345, in particular notes 7-9, 28, 30
[144] Travaux Preparatoires, 339-344, in particular notes 2-6, 14-15, 26-27
[145] Travaux Preparatoires, 342-344, in particular notes 14, 15
[146] Travaux Preparatoires, 340-346, in particular notes 7-9, 16
[147] Travaux Preparatoires, 343-346, in particular notes 29-30
[148] Travaux Preparatoires, 342, note 17
[149] Travaux Preparatoires, 345-346
[150] Travaux Preparatoires, 341-344

jurisdictions was considered crucial enough to prevent any minimum threshold or interpretative guidance for sexual exploitation from being enshrined as authoritative.[151] Consequently, no minimum threshold or interpretative guidance for any other form of exploitation emerged.[152]

Both the discourse of sexual exploitation as slavery and the explicit choice to leave forms of exploitation listed in the Protocol explicitly undefined are reminiscent of earlier antitrafficking treaties, and of their origin in the fight against 'white slavery'. The final text of the Protocol reproduces one of the big problems of its predecessors: it abstains from definitions or thresholds for the exploitative purposes of human trafficking as legally authoritative on an international level.[153] The drafters abandoned this ambition, intentionally leaving the Protocol to be a blueprint, for states to interpret exploitation within the crime of human trafficking as they wish within their national jurisdictions, although it appears from the Travaux Preparatoires they were aware of the practical problems such a choice had caused in previous treaties. The discursive construction of exploitation and exploitative practices as relative appears to stand in opposition to the construction of human trafficking as a crime of international concern.

By reaffirming the importance of respecting national sovereignty over enshrining clearer provisions on the meaning of exploitation within the crime of human trafficking, the Protocol is placed within the same paradigm of coloniality as its predecessors. First and foremost, they are allowing the practices of trafficking investigation and prosecution targeting non-victims of trafficking to continue, in full compliance with the Palermo Protocol.[154] By leaving the power to define exploitation in the hands of states, they are leaving states with the power to exclude certain exploitative practices from the legal definition of exploitative purpose

[151] Travaux Preparatoires, 347
[152] Travaux Preparatoires, 345-347
[153] Blanchet & Watson (n16) 114-116; Chacon (n1) 99-100; Columb (n126) 27-30; Hathaway (n1) 4-5; Jovanovic (n8) 801-802, 805-807; Kotiswaran (n1) 241; Mahdavi (n6) 12-14; McAdam (n10) 8-10; O'Connell (n1) 62-63; Scarpa (n10) 631-632; Thibos (n1) 155
[154] Bryant-Davis (n16) 164-165; Bryson-Clark (n1) 2; Chacon (n1) 125-126 ; Kotiswaran (n1) 240; Mahdavi (n6) 12-13 ; Mai et al., (n8) 1608, 1622; McGrath (n10) 23 ; Millar (n8) 25, 27; O'Connell (n1) 62-63; Stabile (n7) 862-864; Thibos (n1) 154 ; Wilson (n16) 39

within the crime of trafficking, and creating ambiguity about whether certain forms of exploitation fit the trafficking definition.[155] In the past, the exploitation of the labor of colonial subjects was explicitly excluded from antitrafficking treaties.[156] Some academics argue that it is this lack of clarity of the Palermo Protocol which has enabled states to create legal channels for migratory flows geared at exploitative practices, while fully complying with the Protocol's provisions.[157] States such as the United Arab Emirates, have created special visa regimes for foreign workers, the purpose of which is to facilitate their legal migration, so that their labor may be exploited in various ways nationally.[158] Moreover, so-called sending states from South-East Asia have adapted their migration policies accordingly, employing anti-trafficking strategies selectively where they want to restrict or promote the migration of certain population groups.[159] It seems that while affirming their commitment to fight against trafficking by implementing the Palermo Protocol, states have no trouble simultaneously implementing migratory regimes which enable people to be exploited and trafficked.

ii. Migration as Vulnerability

Clearly, trafficking in persons as a phenomenon is indissociable from migration, both legal and irregular. The Palermo Protocol renders the migratory nature of the crime clear, as its scope is limited to the 'prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature.'[160] In the travaux preparatoires, the need to introduce an article rendering transnationality explicit as a constitutive element of the crime is explained to be twofold: first, to ensure compatibility

[155] Mattar, M.Y., "Medical Liability for Trafficking in Persons for the Purpose of Human Experimentation: International Standards and Comparative Perspectives From Arab Jurisdictions"(2019) International Annals of Criminology 55, 21-22
[156] Lammasniemi, 73-76; O'Connell, 59-60
[157] Blanchet & Watson (n16) 114-116; Chacon (n1) 99-100; Columb (n126) 27-30; Hathaway (n1) 4-5; Jovanovic (n8) 805-816; Kotiswaran (n1) 241; Mahdavi (n6) 12-14; McAdam (n10) 8-10; O'Connell (n1) 64-69; Scarpa (n10) 631-632; Thibos (n1) 155
[158] Mahdavi (n6) 12-13
[159] Columb (n126) 26-29; Bhagat (n1) 99-100; Blanchet & Watson (n16) 112-115; Jovanovic (n8) 820-822
[160] Art. 4 palermo protocol

with the convention under which the protocol was written, second, to avoid infringing on national sovereignty.[161]

The decision to elaborate international standards for antitrafficking legislation under a convention on transnational organized crime, alongside protocols on migrant smuggling and weapons trafficking, betrays the perception (at the UN and by states parties) that migration, the crossing of borders, is a necessary condition for the occurrence of trafficking in persons.[162] Arguably, this is due to the domination of the debate on antitrafficking by First World states and their anti-immigration agenda, both in the monopolizing of efforts to create a new international treaty on human trafficking in the 1990s, and in the negotiation of the substantive content of that treaty.[163] Although Third World states were present at the negotiation table, they were indirectly coerced into complying with this agenda, because of their relative lack of political power.[164] This is a reflection of the attitudes of the historical antitrafficking movement, as previous antitrafficking treaties were conceived mainly because imperialist powers saw a threat to their national sovereignty in particular forms of migration by groups which they were seeking to control.[165]

Within states, there had never been a perceived need to address criminal conduct amounting to human trafficking until certain groups with political power in the British Empire started drawing attention to 'white slavery'.[166] 'White slavery' was from the get-go conceived as a phenomenon international in nature, caused by female migration, and whose consequence

[161] Travaux Preparatoires, 335 note 17; 349-355, in particular notes 3, 13, and note 1 by the secretariat p. 354
[162] Aradau (n1) 276; Chacon (n1) 101-103; Gallagher (n 80) 790-792; Gallagher (n1) 976-980; Hathaway (n1) 2-4; McAdam (n10) 5-6; McGrath (n1) 23-24; O'Connell (n1) 60-63; Scarpa (n1) 634-635; Simmons(n4) 254-255; Stoyanova (n10) 382
[163] Aradau (n1) 276; Chacon (n1) 101-103; Gallagher (n 80) 790-792; Gallagher (n1) 976-980; Hathaway (n1) 2-4; McAdam (n10) 5-6; McGrath (n1) 23-24; O'Connell (n1) 60-63; Scarpa (n1) 634-635; Simmons(n4) 254-255; Stoyanova (n10) 382
[164] Ibid.
[165] Ibid.
[166] Attwood, R. "Stopping the Traffic: The National Vigilance Association and the International Fight Against the white Slave Trade (1899-c.1909)" (2015) Women's History Review 24(3), 327-328; Lammasniemi (n10) 73-76; Lobasz (n6) 342; Stoyanova (n10) 381;

was the 'moral corruption' and 'de-purification' of white British women.[167] An interesting duality was formed here, where victims of trafficking were exclusively white women, yet antitrafficking measures targeted visibly foreign women at borders.[168] Attwood and Thibos argue that this is due to the construction of a hierarchy of purity among victims of trafficking, wherein women of color and prostitutes were considered inherently impure and responsible for their own demise, white foreign and working-class women considered most vulnerable to trafficking and in need of rescuing, while the remaining, pure white women were rescuers and preservers of virtue.[169] The idea that such a phenomenon was a real danger to a white, colonial society resonated with other Western European nations, whose legislators agreed that there was a need to criminalize conduct amounting to 'white slavery'.[170] In other words, trafficking became an issue of public concern because anti-immigration, racist sentiment prevailing among the occidental political class erroneously validated the worry that vulnerable white women were being sexually enslaved by evil, racialized men.[171]

It could be argued that the drafters of antitrafficking treaties did not share the racist, nationalist, anti-immigration ideology of the political interest groups which brought trafficking to the public agenda, because of efforts to de-racialize antitrafficking treaties at the League of Nations. Nevertheless, the political interest groups which brought trafficking to the public agenda were involved in the drafting of antitrafficking treaties.[172] Moreover, there is evidence that some of the other drafters exhibited racist, anti-immigration ideology as well. League of Nations reports in the interwar period, produced by committees in charge of researching trafficking in persons, all unanimously state that the migration of so-called 'vulnerable women'

[167] Attwood (n 166) 337-344; Attwood, R. "A Very Un-English Predicament: The White Slave Traffic and the Construction of National Identity in the Suffragist and Socialist Movements' Coverage of the 1912 Criminal Law Amendment Bill" (2022) National Identities 24(3) 225-227; Lammasniemi (n10) 73-76; Lobasz (n6) 342-343;
[168] Lammasniemi (n10) 73-74; attwood (n166), 342-344
[169] Attwood (n166), 342-345; Attwood (n167), 225-228; Thibos (n1) 149-151
[170] Attwood (n 166) 345-346; O'Connell (n1) 59-60; Stoyanova (n10) 381; Thibos (n1) 149, 151
[171] Attwood (n166) 344; attwood (n167), 219-220, 225-227; O'Connell (n1) 59-60; Stoyanova (n10) 381; Thibos (n1) 149, 151
[172] Attwood (n166) 345-347; Blom (n10) 1278; Lammasniemi (n10) 73-75; Lobasz (n6) 342-343; Martinez (n68) 73-77; McGrath (n1) 23-24

from colonial territories was the 'core evil' that led to their trafficking and exploitation.[173] If this dangerous migration could be successfully curtailed, there would eventually be no more opportunity for trafficking to occur.[174] It is visible that the main victims of human trafficking were no longer thought to be white women rendered impure by their enslavement, rather racialized women who migrated to gain better social standing or economic opportunity.[175] Low-class women, those lacking communities acting as support systems, or women of ethnicities who were already politically oppressed formed this class of 'vulnerable women' whose migration needed to be prevented.[176] This is in line with the hierarchy of trafficking victims previously created, underpinned by a paternalistic logic of rescue by virtuous men and non-vulnerable women.[177] Thus, the de-racialization of anti-trafficking efforts was purely formal, as they originated no longer in demonization of racialized others for the preservation of the purity of the white race, but in a white savior paradigm wherein primarily racialized women (and white women in subaltern positions) needed saving from their own dangerous, self-sabotaging choices.[178]

The concerns present at the table in the drafting of the Palermo Protocol are similarly drawn from paternalistic or white savior paradigms, some scholars argue, as the Protocol contains and promotes an image of racialized women as vulnerable populations, inherently at risk of trafficking in their decision to migrate, and in need of protection or rescue from this risk through migration regulation.[179] The scope of the Protocol was initially limited to trafficking in women and children, subsequently States Parties demanded permission from the UN to expand

[173] Lammasniemi (n10) 73-75; Lobasz (n6) 342-343; Martinez (n68) 73-77; McGrath (n1) 23-24; O'Connell (n1) 59-60; Stoyanova (n1) 381; Thibos (n1) 149, 151
[174] Ibid.
[175] Ibid.
[176] Ibid.
[177] Lammasniemi (n10) 73-75; Lobasz (n6) 342-343; Martinez (n68) 73-77; McGrath (n1) 23-24; O'Connell (n1) 59-60; Stoyanova (n1) 381; Thibos (n1) 149, 151
[178] Ibid.
[179] Lobasz (n6) 342-344; McAdam (n10) 5-6; McGrath (n1) 23-24; O'Connell (n1) 60-63; Scarpa (n10) 634-635; Simmons (n4) 254-255; Stoyanova (n10) 382

it to 'persons, especially women and children.'[180] Women and children are repeatedly referred to as 'vulnerable populations, in special need of protection by states'.[181] Third World countries, most notably Argentina, who produced one of the two initial drafts of the Protocol, proposed paternalistic measures aimed at controlling women's activities and curtailing their migration.[182] Some examples include draft provisions on the constitutive elements of the crime, in which the exploitative purposes include consensual, voluntary sex work, and one of the abusive means is facilitating women's migration.[183] Initial drafts of the Protocol focused on such measures aimed at the rescue of vulnerable populations, in particular women.[184] In later drafts, First World States, led by Australia and Canada, managed to push their anti-immigration agenda into the Protocol, by intensively arguing for the inclusion of border control and migration regulation measures, which initially nobody had envisioned as antitrafficking strategies.[185]

iii. Victim Protection as Border Control

The border control measures proposed by Australia and Canada were based on articles contained in the draft version of the Migrant Smuggling Protocol, prompted little disagreement between delegations.[186] They pertain to the strengthening of border controls, and the imposition of obligations on commercial carriers to verify their travelers have all necessary documents in possession.[187] Explicit mention of the respect of human rights of individuals in border checks was proposed, but abandoned, as were provisions emphasizing the need for border authorities to focus on identifying and providing assistance to victims.[188] Other provisions which were incorporated based on the draft of the Migrant Smuggling Protocol relate to the security,

[180] Travaux Preparatoires, 321-322
[181] Travaux Preparatoires, 319-358
[182] Travaux Preparatoires, 331-332, 350
[183] Travaux Preparatoires, 350
[184] Travaux Preparatoires, 321-355
[185] Travaux Preparatoires, p. 403-409 ; Hathaway, 28-31
[186] Ibid.
[187] Travaux Preparatoires, p. 405-409
[188] Travaux Preparatoires, p. 406-408, in particular notes 3 and 4 by the secretariat

control, legitimacy and validity of international travel documents, and a saving clause meant to prevent the Protocol's provisions from affecting the rights of refugees.[189] Interestingly, these provisions were modified very little in comparison to their original drafts. A discourse of migration as the main risk factor for trafficking emerges, alongside a discourse of regulating and curtailing irregular migration as the most effective strategy for trafficking prevention. This is odd, as in the negotiations the main difference between trafficking and smuggling was construed as the difference between migration channels: most trafficking victims migrate legally, only to be exploited afterwards, whilst smuggled migrants always migrate illegally.[190]

This discourse of migration as the cause of trafficking, and of migration regulation as trafficking prevention, is strengthened by the victim protection provisions contained in the protocol. States unanimously agreed that the main victim protection strategy should be repatriation, and should occur even without consent of the victim (effectively amounting to deportation), even where there might be risks to their safety upon return to their country of origin.[191] They disregarded the opposition by the UN High Commissioner for Human Rights, who stated that "safe and, as far as possible, voluntary return must be at the core of any credible protection strategy for trafficked persons", on the grounds that this might encourage illicit migration.[192] A position paper by the Special Rapporteur on violence against women was also dismissed, wherein it was stated that deportation deterred many trafficked persons from reporting to authorities, and that provision of temporary or permanent residency status and work authorization would greatly facilitate identification of victims and prosecution of traffickers.[193] In fact, many recommendations pertaining to the introduction of provisions enshrining respect

[189] Travaux Preparatoires, p. 411-421
[190] Travaux Preparatoires, p. 334, note 2 by the secretariat, p. 337 note 19, p. 409 interpretative note on paragraph 2
[191] Travaux Preparatoires, 383-389, in particular note 7, and interpretative note on paragraph 2
[192] Travaux Preparatoires,, 380, notes 8, 11-13, p. 385
[193] Travaux Preparatoires, 378, note 1 by the secretariat

for human rights of victims throughout the treaty were disregarded by states.[194] These recommendations were most often made by the UN Special Rapporteur on Violence Against Women, High Commissioner on Human Rights, and the International Labour Organization.[195] The only time a reason was cited for ignoring such recommendations was with respect to the provision of assistance to victims in the shape of housing, education, psychological and medical assistance, when developing countries stated their economic status would prove an impediment in the realization of such human rights obligations.[196]

Discursive constructions of victims as needing rescuing by states similar to those of previous antitrafficking efforts are visible in the Protocol. Migration of vulnerable populations is assumed to carry the inherent risk of exploitation and trafficking, hence the legally authoritative solution enshrined to prevent trafficking is to make border controls stricter, and travel documents harder to falsify. Unfortunately, in practice, this reduces the availability of legal migratory channels to marginalized populations, in particular racialized, working-class, and LGBTQIA+ individuals, who are routinely discriminated against in the provision of travel documents such as visas for various reasons.[197] Instead of regulating migratory flows as intended, this increases the necessity for marginalized individuals to make use of illegal migratory channels, which in turn leave them more vulnerable to exploitative situation and trafficking, as well as deportation by immigration authorities who do not recognize them as potential trafficking victims.[198]

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[194] Travaux Preparatoires, 357, note 4 by the secretariat, 361, note 2 by the secretariat, 368, note 2 by the secretariat, 375, note 7 by the secretariat, 378-379, notes 1-2 by the secretariat, 385, notes 1-2 by the secretariat, 393, note 1 by the secretariat, 394, note 4 by the secretariat, 399, note 1 by the secretariat, 407, note 3 by the secretariat, p. 415 note 2.
[195] Ibid.
[196] Travaux preparatoires, 367 note 1 by the secretariat
[197] Aradau (n1) 256; Ausserer (n1) 108-110; Bhagat (n1), 96-99; Blanchet (n16) 114-116; Bryant-Davis (n16) 153-156; Bryson-Clark (n1) 2, 4-7 ; Chacon (n1) 125-128 ; Dandurand (n1) 795 ; Farrell (n16) 645-647, 651; Hathaway (n1) 4-5, 32; Hauck (n1) 230; Jovanovic (n8) 825, 835; Kotiswaran (n1) 240-241; Kusari (n16) 130; Lobasz (n6) 333; Mahdavi (n6) 20-22, 27-28; Mai (n8) 1622; McGrath (n1) 29; Millar (n8) 27, 35-36; O'Connell (n1) 62-63; Rijken (n1) 122; Scarpa (n10) 637-638; Stabile (n7) 862-864; Stoyanova (n10) 393; Thibos (n1) 154-155; Troshynski (n16) 370; Wilson (n16) 39
[198] Aradau (n1) 256; Ausserer (n1) 108-110; Bhagat (n1) 96-99; Blanchet (n16) 114-116; Bryant-Davis (n16) 153-156; Bryson-Clark (n1) 2, 4-7 ; Chacon (n1) 125-128 ; Dandurand (n1) 795 ; Farrell (n16) 645-647, 651; Hathaway (n1) 4-5, 32; Hauck (n1) 230; Jovanovic (n8) 825, 835; Kotiswaran (n1) 240-241; Kusari (n16) 130; Lobasz (n6) 333; Mahdavi (n1) 20-22, 27-28; Mai

Regard for victims' human rights is lacking, and the only protection or assistance they are guaranteed is repatriation, even when it goes against their explicit wish, or when it might deter them from reporting to authorities. Many academics have pointed out that this paradigm of victim assistance and protection is centered on states' paternalistic perception of rescue as a reversal of the act of migration, through which victims exposed themselves to trafficking in the first place.[199] In this paradigm, which is currently enshrined by the Protocol as the international standard, victims need to be saved from their own dangerous choices, thereby being stripped of political agency.[200] There is no explicit racial element in the Protocol, yet since the migration control agenda was the result of predominantly white, First World nations, it indirectly translates to predominantly white societies deporting the trafficking victims located on their territories, under the pretense of rescue.[201] This has actively contributed to the reinforcement of preexistent racialized, gendered images of trafficking wherein racialized women must be rescued from their own bad decisions.[202] The lack of importance that the Palermo Protocol places on the social, economic and political factors which are the real risk factors of trafficking has enabled states to avoid addressing them, while claiming moral superiority for preventing trafficking in accordance with the standards set by the Protocol.[203]

(n8) 1622; McGrath (n1) 29; Millar (n8) 27, 35-36; O'Connel (n1), 62-63; Rijken (n1) 122; Scarpa (n10) 637-638; Stabile (n7) 862-864; Stoyanova (n10) 393; Thibos (n1) 154-155; Troshynski (n16) 370; Wilson (n16) 39

[199] Aradau (n1) 256, 276; Aussere (n1) 101-105; Kusari (n16) 130; Hathaway (n1) 27-31; Kempadoo (n6) 13-16; Mahdavi (n6) 22-23; McAdam (n10) 3, 5; McGrath (n1) 22; O'Connell (n1) 60-61; Scarpa (n10) 627, 634; Stabile (n7) 856-862; Thibos (n1) 138-153

[200] Aradau (n1) 256, 276; Aussere (n1) 101-105; Kusari (n16) 130; Hathaway (n1) 27-31; Kempadoo (n6) 13-16; Mahdavi (n6) 22-23; McAdam (n10) 3, 5; McGrath (n1) 22; O'Connell (n1) 60-61; Scarpa (n10) 627, 634; Stabile (n7) 856-862; Thibos (n1) 138-153

[201] Ibid.

[202] Ibid.

[203] Blom (n16) 1294-1295; Bryant-Davis (n16) 157, 161; Hathaway (n1) 3-4; Hauck (n1) 230; Jovanovic (n8) 805-807, 835; Lobasz (n6) 325,-326; Millar (n8) 35-36; Szablewska (n6) 116; Troshynski (n16) 370

VI. Conclusion

Antitrafficking efforts, starting the International Conventions for the Suppression of White Slave Traffic, have always been rooted in racist, anti-immigration and anti-prostitution ideology. These ideologies were made explicit in the treaties, who were mainly designed by colonial empires. The Palermo Protocol marks groundbreaking progress compared to previous antitrafficking treaties, having successfully rid itself of all provisions including racialized and anti-prostitution terminology. Nevertheless, it is embedded in coloniality, as it reproduces the some discursive constructions laying at the heart of its predecessors. By refraining from elaborating a more precise definition of trafficking and its elements, and by giving priority to anti-immigration and deportation measures as the only viable universal solution to trafficking, it gives considerations of national sovereignty primacy over the safety and wellbeing of trafficked persons and migrants at risk of trafficking. Moreover, it enables the First World states who led the debate on its elaboration to control migration and, in some cases, enshrine legal regimes for the exploitation of migrants according to their interests. As such, the Palermo Protocol should be revised, as it serves to reproduce existing power imbalances and enable oppression by states, rather than its intended purpose of combating trafficking in persons and helping its victims.

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