

Trafficking Against Human Beings from the Polish-European Perspective: Why the State Security Approach is the Wrong Solution

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**Trafficking Against Human Beings from the
Polish-European Perspective:
Why the State Security Approach is the
Wrong Solution**

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**A Senior Honors Thesis Submitted to the
College of Arts and Sciences Honors Program and the
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Introduction

The modern concept of globalization is most characterized by the death of geography and the notion that the free market is an indispensable vehicle of wealth. Yet, in the post-9/11 context, governments around the world increasingly view security as trumping both trade and economics. This has led to a drive for increased border control, which runs counter to the very forces that propel globalization. In fact, it seems impossible to address demands for security and scrutiny of cross-border movements without major setbacks to the drumbeat of faster, cheaper, and less bureaucratic elements of current economic activity.¹ Such duality in policy and expectations has aggravated the conditions for modern crime. For example, globalization has intensified the demand for cheap, low-skilled labor in developed nations (such as those of Western Europe), while current migration policies have prevented the free flow of people to fill that demand. Governments' insistence on the right to determine who crosses national borders and under which conditions thus "provides a market for traffickers' 'services' and facilitates their ability to engage in slavery-like abuses with virtual impunity."² The world's poor are often left no other option than to depend on smugglers and human traffickers in order to leave home and seek economic opportunity. Thus, although there remains a lack of conclusive evidence on this point, it appears likely the opposing forces of free markets

¹ Frank P. Harvey, *Smoke & Mirrors: Globalized Terrorism and the Illusion of Multilateral Security*, (Toronto: University of Toronto Press), 2004, p. 13.

² Kinsey Alden Dinan, "Globalization and national sovereignty: from migration to trafficking," *Trafficking in Human\$*, Sally Cameron and Edward Newman, eds, (United Nations University Press), 2008.

and border security propel modern slavery. I plan to demonstrate that, in order to effectively combat this enormous violation of human rights in the twenty-first century, countries must shift away from their obsession with state security and turn toward a human security mindset.

The tensions between migratory pressures and border security have been exacerbated by the current structure of the European Union (EU) as well as the broader organization of the Schengen zone. In full force since 29 March 1995, the Schengen Agreement of 1985 completely opened the borders between EU member states and several other European countries. Yet “while the borders within Europe’s Schengen zone have become much more open in recent years, those at the edges of the zone have become more difficult to cross, leading many observers to refer to ‘Fortress Europe’.”³ Regardless of new border controls, the ease of travel once inside the zone makes it very tempting for migrants to attempt illegally crossing the outer barriers. This has consequently created both a major fuel for human trafficking and a significant obstacle to the fight against organized crime in Europe. Furthermore, the unique arrangement of EU border security has put nations on the periphery of the Schengen zone in an uncertain position. Countries such as Poland, which once merely served as origin states for trafficking victims, have now found themselves to be the door to the EU, forcing them into a position of both transit and destination.

Before examining the specific situation of human trafficking in contemporary Poland as well as the European Union, it is first important to consider the universal

³ Leslie Holmes, “Human Trafficking & Corruption: Triple Victimization?”, *Strategies Against Human Trafficking: The Role of the Security Sector*, Cornelius Friesendorf, ed., United Nations Office on Drugs and Crime and the Geneva Centre for the Democratic Control of Armed Forces, September 2009.

understanding of the modern slavery topic. In fact, human slavery is not a new phenomenon to the world, as demonstrated by the large number of international laws drafted throughout the nineteenth and twentieth centuries as a means of thwarting the problem. In 1815, the Congress of Vienna adopted an act, which included an annex regarding the Universal Abolition of the Slave Trade. Later, four international conventions were adopted with the aim of abolishing the phenomenon of white slave traffic: “the 1904 International Agreement for the Suppression of the White Slave Traffic, the 1910 International Convention for the Suppression of the White Slave Traffic, the 1921 International Convention for the Suppression of the Traffic in Women and Children and, finally, the 1933 International Convention for the Suppression of the Traffic in Women of Full Age.”⁴ Next, the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others went into effect in 1951, extending previous international conventions by using a race, gender, and age neutral terminology. Eventually, the UN General Assembly recognized the need for a Convention against Transnational Organized Crime (CTOC), which entered into force on 29 September 2003 and was soon supplemented by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children on 25 December 2003.

This Trafficking Protocol was designed to establish the first widespread and clear definition of trafficking:

“(a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of

⁴ Silvia Scarpa, *Trafficking in human beings: Modern Slavery*, (New York: Oxford University Press), 2008, p. 50.

the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) ‘Child’ shall mean any person under eighteen years of age.”⁵

In addition to this definition, the Protocol emphasizes the so-called ‘three-Ps of trafficking,’ which stand for the prosecution of traffickers, the protection of victims, and the general prevention of the crime. The Protocol attempts to spread these three Ps by requesting signatories (1) to adopt any legislation necessary to establish human trafficking as a criminal offence; (2) to protect the privacy of victims and “consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons”; (3) to cooperate with states and international organizations in the fight against trafficking; and (4) to strengthen border controls as necessary to prevent trafficking in persons.⁶ Much of the twenty-first century literature and research regarding human trafficking thus has been a reaction to this Protocol’s structure and a review of the signatories’ methods of response.

⁵ “UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime,” United Nations, 2000, <http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf>, p. 2.

⁶ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, p 3-4.

1. Trafficking as a Criminal Offence

Before the passage of the UN Trafficking Protocol, many countries had weak, unenforced or nonexistent laws against trafficking in human beings.⁷ As a result, the penalties faced by criminals were often minor, which made trafficking both extremely lucrative and relatively risk-free for many criminal groups across Europe and the world. These circumstances were instrumental in making human trafficking today a venture second only to drug trafficking in the portfolio of international organized crime.⁸ Yet, even after 124 countries ratified the 2000 Protocol, little significant improvement has been made in reducing the horrors of modern slavery. As a result, many theories have arisen in the attempt to interpret this lack of progress. Firstly, many scholars suggest that the Protocol's convoluted structure has not been easy to translate into standard national law. The result – differences in legal frameworks across jurisdictions – has consequently become a fundamental impediment to an effective response to trafficking, which requires both national and international cooperation among states, agencies, and non-governmental organizations (NGOs).⁹ Secondly, recent books and articles often focus on the fact that many countries continue to ignore labor exploitation as a problem. Thus, these states have written laws solely against sex trafficking, making the prosecution of other traffickers extremely difficult, if not impossible. Thirdly, trafficking issues are still regularly approached from an illegal immigration and prostitution angle rather than an

⁷ Jyothi Kanics, "Trafficking in Women," *Foreign Policy in Focus*, Martha Honey and Tom Barry, eds., Volume 3, Number 30, October 1998.

⁸ Terry Coonan and Robin Thompson, "Ancient Evil, Modern Face: The Fight Against Human Trafficking," *Georgetown Journal of International Affairs*, Volume 6, Number 1, Winter/Spring 2005.

⁹ Francesca Bosco, Vittoria Luda di Cortemiglia, and Anvar Serajitdinov, "Human Trafficking Patterns," *Strategies Against Human Trafficking: The Role of the Security Sector*, Cornelius Friesendorf, ed., United Nations Office on Drugs and Crime and the Geneva Centre for the Democratic Control of Armed Forces, September 2009, p 72.

illegal detention and coercion viewpoint.¹⁰ In these cases, traffickers, when prosecuted, are charged for their immigration violations rather than human rights abuses. Lastly, scholars observe that many of the nations facing the greatest amount of trafficking pressure (i.e. those on the borders of the EU) are post-communist states, where the rule of law is likely to be weak and corruption prevalent.

1.1 Disparate Legal Frameworks

A law enforcement officer in South-East Europe is quoted as saying, “It is very obvious that the [human traffickers] have established a high quality of cooperation on an international level... The globalization of this type of crime is established. If we want to provide an adequate response to this challenge, we should use the same globalization strategy.”¹¹ Yet globalizing the fight against modern slavery requires coherence and compatibility in states’ individual legislation. Nations can no longer act as autonomous entities; instead “they need to create horizontal policy networks that quickly and flexibly reach across borders.”¹² This remains impossible as long as states have trouble deciphering the exact meaning and intentions of the UN Protocol on Trafficking. It has been agreed that without a universally established and clear law against trafficking, criminals will continue to exploit the lack of coordination within and between the nations in which they do business.

¹⁰ Cameron, 6.

¹¹ Charlene Porter, *European Alliance Combats Human Trafficking*, Global Issues, June 2003, p. 27.

¹² Cornelius Friesendorf, ed., *Strategies Against Human Trafficking: The Role of the Security Sector*, United Nations Office on Drugs and Crime and the Geneva Centre for the Democratic Control of Armed Forces, September 2009, p 19.

1.2 The Ignored Issue of Labor Trafficking

According to the International Labor Organization (ILO), at least 2.45 million people worldwide find themselves in forced labor as a result of human trafficking at any given time. Furthermore, the ILO predicts that approximately forty-three percent of these people are trafficked for the purpose of commercial sexual exploitation.¹³ In all likelihood, the large remaining percentages of victims are trafficked for economic and labor exploitation. Thus, whereas countries of origin are often characterized by poverty and few prospects of economic opportunity, destination countries are often in great demand of sexual services and, as often ignored, cheap migrant labor. The latter is often forgotten in comparison to the highly publicized sex slave trade, yet it still poses a very large problem. Many scholars today write about such labor exploitation and the increasing need for improved labor movement policies that will allow not only well-qualified migrants, but also cheap manual labor to enter wealthy, industrialized countries.¹⁴ They label trafficking as predominantly a labor market issue, examining the factors that drive demand as well as regulatory frameworks that allow trafficking to grow. Yet such changes seem far in the distance, as many countries continue to have no specific legislation on labor trafficking. “This is true despite the fact that the ILO Forced Labour Convention, requiring [the] criminalisation of forced labour, is one of the oldest and most widely ratified of ILO conventions. [Sadly,] violations of workers’ rights are [still] seen

¹³ Bosco, 39.

¹⁴ Benjamin S. Buckland, “Human Trafficking & Smuggling: Crossover & Overlap,” *Strategies Against Human Trafficking: The Role of the Security Sector*, Cornelius Friesendorf, ed., United Nations Office on Drugs and Crime and the Geneva Centre for the Democratic Control of Armed Forces, September 2009, p 164.

as matters for civil rather than criminal enforcement.”¹⁵ This latter sentiment explains a deep misconception that trafficking is linked to irregular migration and prostitution rather than labor exploitation.

1.3 The Immigration Obsession

Governments today see the battle against illegal immigration as priority number one, while simultaneously trying to fight human trafficking. Thus, even after the passage of the UN Protocol, perpetrators of human trafficking are often charged with crimes related to immigration violations, reflecting the refusal of developed nation-states to accept the existence of a larger migratory problem caused by globalization. Also, by focusing on human trafficking as an issue of immigration and cross-border movement, states simply encourage traffickers to take their activity further underground; this often results in increased violence and abuse of victims rather than a decrease in their existence.¹⁶ Furthermore, even discovered traffickers remain in a state of relative impunity, as their victims are mainly illegal immigrants who are frightened of denouncing their captors and risking deportation.¹⁷ Thus, those traffickers who are convicted usually receive less than five years in jail. All of these factors help explain why it has remained difficult for signatories of the UN Protocol to reduce the incidence of trafficking.

¹⁵ Allison, Jernow, “Human Trafficking, Prosecutors & Judges,” *Strategies Against Human Trafficking: The Role of the Security Sector*, Cornelius Friesendorf, ed., United Nations Office on Drugs and Crime and the Geneva Centre for the Democratic Control of Armed Forces, September 2009, p 335.

¹⁶ Ratna Kapur, “Migrant women and the legal politics of anti-trafficking interventions,” *Trafficking in Human\$*, Sally Cameron and Edward Newman, eds., (United Nations University Press), 2008. p 115.

¹⁷ Scarpa, 16.

1.4 The Role of Transition States

Many border states of the Schengen zone (e.g. Poland, Lithuania, Latvia, Slovakia) are transition countries, whose post-conflict situations provided a perfect environment for human trafficking growth. Their newly emerging market economies in the 1990s produced large rates of poverty, unemployment, and inflation, all of which fueled the demand for illegal immigration to the West.¹⁸ These push factors were coupled with the rise of facilitating gangs and criminal organizations in such post-communist countries. “Trafficking prospers in places where criminals can profit from the enterprise because laws against it are not strictly enforced.”¹⁹ Countries in the midst of political and economic transition generally suffer(ed) from legal and enforcement capacity gaps and limitations. Such absence of the rule of law fostered an atmosphere of corruption, as well. Fiscal problems meant that many officials in post-communist states were not paid in full (if at all) and as large police and state apparatuses began to downsize, many unemployed workers began to seek criminal gang work. Their knowledge of criminal investigations and current police staff were both helpful to, and desired by, these illicit organizations, who needed to plan effective strategies of bribery and blackmail.²⁰ Many scholars believe that reducing such corruption could greatly improve the situation of those trafficked, since the expense of bribes is usually passed onto victims in the form of debt bondage. Likewise, the corrupt nature of these border states has now transformed them not only into origin countries, but also transit and destination states, thus further expanding the range of the crime.

¹⁸ Scarpa, 14.

¹⁹ Tara McKelvey, “Efforts Against Human Trafficking in the United States Extend Worldwide,” *Human Trafficking*, Christina Fisanick, ed., (Detroit : Greenhaven Press), 2010 p. 110.

²⁰ Holmes, 102.

2. The Protection of Victims

The UN Protocol on Trafficking requires its signatories to protect the privacy and ensure the physical safety of trafficking victims; to assist and inform victims in relevant court proceedings; and to ensure the ability for victims to obtain compensation for damage, among a variety of other things. Yet it fails to require states (1) to aid victims in physical, mental, and social recovery; (2) to allow for permanent or temporary stay in a destination country when appropriate; or (3) to be compassionate and humanitarian with victims. It is clearly evident that the text does not include any binding obligations for the protection of victims. Instead, these latter three portions of the Protocol are merely suggestions to be considered by signatories. However, these very suggestions are necessary for the well-being and empowerment of victims. Without their universal acceptance and implementation, the problem of human trafficking will not be alleviated.

2.1 Aiding Victims in Recovery

Discussions on victim recovery are closely related to that of countries' immigration obsessions and the latter's role as an impediment to the effective criminalization of trafficking. This is because "most trafficked persons continue to be treated as 'illegal aliens' when they come into contact with law enforcement officials, [and are] summarily deported without any investigation of the conditions of their migration or employment in the destination country."²¹ Such methods, however, only hurt state security by undermining criminal investigations of traffickers. As long as states view trafficking victims as illegal immigrants, they will not be able to gain their trust or cooperation as informants and witnesses. Such treatment also encourages traffickers to

²¹ Cameron, 7.

capitalize on victims' fears of both the police and immigration officials, deterring these victims from running away to safety. Again, research shows that such fears are not unfounded, since victims are often "detained and deported with little concern for the abuses they endured (or for the trafficking agents they may have to face at home)."²² In fact, studies show that nearly fifty percent of those victims immediately deported are reintroduced into the criminal cycle. Also, when women are not deported, many still fear testifying against tormentors, as few countries have effective witness protection programs and those that do usually fail to extend privileges to trafficking victims.²³ This puts victims in a very vulnerable and high-risk position, as traffickers can exploit their total lack of social and legal protection in order to exact revenge. Thus, many scholars argue that victims should be given access to witness protection, physical and mental therapy, as well as housing immediately after their rescue. Such treatment would hopefully encourage a growth of trust and an increase in testimonial evidence from victim-witnesses in prosecution cases.

2.2 Staying in a Destination Country

Many authors of human trafficking research and writing believe that victims should be given a right of temporary or permanent residence in the transit or destination countries where they are found. They write: "the legalization of the status of a trafficked person is a crucial element in any effective victim and witness protection strategy, and may help to assist a much greater number of trafficked persons who would normally not

²² Cameron, 72-3.

²³ Cameron, 149.

dare to seek refuge for fear of deportation.”²⁴ Such an approach would be part of a human security, rather than a state security approach. However, there are those who argue against such methods, saying that offering residence would only encourage migrants around the world to take the risk of being trafficked. Either way, it is agreed that the Protocol is a criminal law instrument whose provisions dedicated to victim protection are too vague and do not create strong obligations on signatories.²⁵ Thus, states must take their own initiative and cooperate with each other and NGOs in order to grant victims – regardless of their cooperation with authorities – the basic human protection they deserve.

3. Cooperation Among States

The Palermo Protocol requires states to cooperate with each other and with relevant international organizations in the fight against human trafficking. However, as mentioned in the discussion of trafficking as a criminal offence, such cooperation has been made difficult through the existence of disparate domestic laws, enforcement organizations, and information databases. For example, four bodies currently have databases on global trafficking patterns: “the International Labour Organization (ILO), the United Nations Office on Drugs and Crime (UNODC), the International Organization for Migration (IOM) and the US Government.”²⁶ The ILO and US government both monitor and estimate the number of victims worldwide, while the UNODC observes trafficking routes, and the IOM collects data on victims. Yet all of these tasks remain difficult to perform; many European countries keep their information highly confidential

²⁴ Cameron, 174.

²⁵ Scarpa, 62.

²⁶ Bosco, 40.

or simply cannot keep track of the records accumulated by various domestic agencies. Recently, a good model was created in the Netherlands where the position of a Dutch National Rapporteur on Trafficking in Human Beings was designed so as to collect data from a variety of agencies and create a map of trafficking trends within the country. If each nation-state implemented such a government position, international organizations would have a much easier time assessing human trafficking movements and patterns.

Also important to consider is the fact that groups operating in human trafficking are usually loose networks: horizontally linked, flexible, and highly specialized.²⁷ They can span great geographical regions and a range of criminal activities. Thus, multilateral action is necessary: states must each establish clear criminal definitions of trafficking, as well as grave criminal sanctions, criminal liability of people used as fronts for illicit activities, and extradition agreements and proceedings. Unfortunately, few of these legal tools currently exist. Likewise, states remain reluctant to use facilitating institutions that are already in place. For example, some EU officials are concerned about sending information to INTERPOL, since some of the organization's 187 member countries include "high-risk" nations with regard to corruption and organized crime. The EU officials fear that information sent to INTERPOL may be seen by corrupt agents who will use it to their advantage.²⁸ Thus, although it is clear that cooperation is necessary in order to engage in proactive investigations of human trafficking, scholars recognize that the UN Protocol did little to encourage such multilateral action.

²⁷ Bosco, 45.

²⁸ Jana Arsovska and Stef Janssens, "Human Trafficking & Policing: Good & Bad Practices," *Strategies Against Human Trafficking: The Role of the Security Sector*, Cornelius Friesendorf, ed., United Nations Office on Drugs and Crime and the Geneva Centre for the Democratic Control of Armed Forces, September 2009, p. 207.

4. Stronger Border Controls – A Conclusion

All of the scholarly advice discussed in this introduction – criminalizing all forms of trafficking, protecting victims regardless of cooperation, and increasing international teamwork – provides evidence that deterrence at borders alone is not enough. Trained and vigilant border officials are certainly important, but they cannot be the sole element of modern anti-trafficking strategies. For example, victims are often unaware that they are being trafficked until after they cross the border and their legal documents are confiscated or their visas are forcefully overstayed. Likewise, factors such as the corruption of government officials also create problems with border-focused, national security approaches. Instead, states must keep in mind the migratory pressures caused by globalization and growing economic disparities. Due to these forces, the movement of workers from poor to wealthy nations during the twenty-first century will be impossible to prevent. Thus, the developed countries of the EU should stop focusing on state security and start emphasizing the legal, educational, and other human security means with which they may successfully address this crime against humanity.

Border Controls and State Security

The European and Polish Approaches to Human Trafficking

In the nineteenth and early twentieth centuries, the idea of the nation-state cemented itself into the vocabulary of political and social dialogue. Territories melded with the concept of nationalism and as such, country borders began to delineate not only the physical land of the state, but also the reach of a particular ideological identity. These political membranes that differentiated the acceptable from the unacceptable protected both physical land and abstract values from intrusion. But the aggressive globalization of the latter half of the twentieth century onward eventually challenged such a notion of nation-state borders. New economic interests calling for the liberalization of trade and subsequent “deterritorialization” of states clashed with an enduring need for stable national identity. The Schengen Agreement of 1985, which was eventually incorporated into the European Union (EU) framework in 1999, attempted to deal with this difficulty by abolishing internal borders while maintaining national distinctiveness. Yet after the terrorist attacks of September 11, 2001 the idealism behind such an arrangement was infected with the realization that ease of international access could have negative effects on security. The European response – a securitization of external border policies – appears, however, to cope poorly both with nation versus state tensions and cross-border criminal pressures.

By abolishing internal borders, the Schengen Agreement created one continuous external frontier. In order for such an arrangement to function properly, common rules for short stay visas, asylum requests, and border controls were deemed necessary. Yet the

implementation of legislation recommendations had always remained a function of the individual nations. It was after the Amsterdam Treaty of 1997 adopted the Schengen Agreements into EU law that the European Commission sought to deal with this issue and debate measures to “streamline law enforcement and judicial cooperation among the member states.”²⁹ A lack of urgency, however, prevented advances in discussion and decision-making. For example, proposals for a common European border service were circulating throughout 2001 in anticipation of the significant 2004 EU expansion. But such ideas were overshadowed by other conversations regarding liberalization of immigration policies.³⁰ No alterations were made to the EU’s modus operandi.

This changed with the Extraordinary European Council Meeting of September 21, 2001, the result of which was an emphasis on solidarity, cooperation, and coordination. Security-driven proposals, which had previously been labeled low-priority, were now given the utmost importance. It was evident that, unlike the United States response to the terrorist attacks, the EU plan of action would focus on boosting security measures rather than defense. And, in this 5attempt to guarantee freedom from danger or threats, the European Union turned to the antiquated idea of protection: the border. Christopher Rudolph, author of *National Security and Immigration* writes, “Wartime nationalism produces a ‘rally-round-the-flag’ effect that bolsters social cohesion by mitigating internal differences in the presence of external enemies...”³¹ The EU’s distinct nations were suddenly uniting together in the face of a looming, alien enemy and the only shield

²⁹ David L. Aaron et al, “The Post 9/11 Partnership: Transatlantic Cooperation against Terrorism,” Atlantic Council of the United States, December 2004, p. 5.

³⁰ Christopher Rudolph, “Security and the Political Economy of International Migration,” *National Security and Immigration in the United States after 9/11*, The Center for Comparative Immigration Studies, University of California, August 2007, p. 616.

³¹ Rudolph, 605.

they could raise was that of their external border. Such was the reintroduction of Fortress Europe.

Driving this widespread, European security mindset was the idea that the global developments that opened the way for hyperterrorism were also responsible for other (possibly related) cross-border threats, such as organized crime and illegal migration.³² The result was a securitization of border controls and immigration through conversation and policymaking. (Securitization, coined by Ole Wæver of the Copenhagen School, is the successful, discursive construction of an issue as an existential threat to a particular group, thus justifying actions taken by that group against the threat.) Immigration was no longer seen as an “economic phenomenon to be welcomed” but as a security issue to be feared.³³ The movement of people was presumed to be a suspicious activity, and the crossing of borders was linked to the occurrence of criminal behavior. As Sergio Carrera of the Centre for European Policy Studies explains, this habit of securitization “place[s] certain persons on the move, especially those labeled as ‘immigrants,’ at the heart of insecurity discourses and practices.”³⁴ All discussions regarding migration liberalization were suspended and a grand strategy for controlling illegal immigration into the EU was slowly put in place.

Yet this fearful ideation toward outsiders was not entirely new on the European stage. In the late 1960s onward, Europe began to experience widespread closure directed at third country nationals (TCNs). In France, where the influx of laborers had once been

³² Andrus Öövel, “The Contribution of Border Security Agencies in the War on Terror,” *Combatting Terrorism and its Implications for the Security Sector*, (Geneva: Geneva Centre for Democratic Control and Armed Forces, 2005), p. 186.

³³ Geoffrey Edwards, “Is There a Security Culture in the Enlarged European Union?” *The International Spectator*, March 2006, p. 22.

³⁴ Sergio Carrera, “Towards a Common European Border Service?” *Centre for European Policy Studies*, Working Document No. 331, June 2010, p. 10.

eagerly accepted, attitudes toward migration changed when a lack of adequate housing led to large ethnic enclaves and urban ghettos in industrial cities. Immigrants were then “associated with urban plight and ethnic segregation.”³⁵ In response, the French government halted all recruitment of foreign workers in 1974, stating that “immigration posed a threat to social cohesion.”³⁶ Germany followed a similar pattern, which shaped its attitude toward migration well into the 1990s. For example, the country only allowed Polish nationals visa-free travel through Germany after the Polish government agreed to reaccept “all undocumented TCNs attempting entry into Germany across the German-Polish border.”³⁷ In fact, Germany paid Poland a sum of \$146 million between 1993 and 1997 in order to offset the costs of such demanding border securitization. Thus, it was clear from the start that Polish membership in the EU depended on controlling foreign migrant flows. Thus, even as globalization created an ongoing demand for low-skilled labor throughout Europe, it was the EU’s natural response to ward off the terrorist threat through the tightening of border policies.

One of the first actions of the Extraordinary European Council Meeting was the approval for a common arrest warrant to replace extradition between members. Although state parliaments had to separately pass this piece of legislation, it was an indication that enhancing cooperation across state boundaries (rather than giving law enforcement and judicial authorities new powers) would be the EU’s chosen approach to curbing cross-border crime and migration. This diplomatic attitude immediately after 9/11 aligned with Western Europe’s willingness to reduce the significance of the individual nation-state.

³⁵ Rudolph, 610.

³⁶ Rudolph, 610.

³⁷ Rudolph, 614.

However, Eastern European states preparing to join the EU in 2004 were still undergoing a contrasting process of strengthened national legitimacy over the decade since the Soviet Union's collapse.³⁸ To counteract potential refusals in cooperation – e.g. Poland and Slovenia reacted coldly to the idea of a common EU border service by referring to the impact it would have on their national sovereignty³⁹ – the EU aimed to establish complex network models for both law enforcement and judicial authorities. These networks would aim to support existing national and local services rather than replace them.

Eurojust and Europol were the first of many efforts to implement the theoretical EU commitment to network cooperation and coordination. Eurojust was created in 2002 as an organization of the top prosecutors and judges of each member state; the premise behind its existence was that the post-9/11 fight against terrorism and crime had to be coordinated in the widest international context. It was designed to harmonize judicial policy and practice between members and specifically, to reinforce the fight against cross-border organized crime.⁴⁰ Thus, Eurojust helps members coordinate their prosecution and investigation efforts, occasionally requesting that certain states provide information, set up a Joint Investigation Team, or accept that another state would be better suited for a prosecution or investigation. Conflicts of jurisdiction in cross-border cases are thus frequently resolved through Eurojust. The existence of such an organization has proved especially useful with the introduction of the European Arrest Warrant (EAW). In 2009, 256 cases regarding EAW execution were brought to the organization, with Poland standing third both in number of times requesting and

³⁸ Claes Levinsson, "The Long Shadow of History: Post-Soviet Border Disputes – The Case of Estonia, Latvia, and Russia," *Connections: The Quarterly Journal*, Volume 5, Number 2, Fall 2006, p. 99.

³⁹ Carrera, 2.

⁴⁰ "The History of Eurojust," Eurojust, <<http://www.eurojust.europa.eu/about.htm>>.

requested. Also according to 2009 statistics, the majority of cases brought to Eurojust dealt with drug trafficking (230), fraud (214), money laundering (125), and human trafficking (74 cases, down from 83 in 2008; 52 cases regarded sexual exploitation).⁴¹ Such statistics reflect two important things: first, that Poland, which once viewed cooperation as a threat to national sovereignty, has realized the practical nature of an oversight institution for judicial coordination and second, that the organization originally created for the purpose of fighting terrorism has now made organized crime its number one priority.

Other than coordinating cross-border efforts, Eurojust has also committed itself to cooperating with other EU groups such as Europol. Otherwise known as the European Law Enforcement Agency, Europol works with the law enforcement agencies of EU nations in order to coordinate operations and gather or disseminate important information. Since numerous agencies deal with law enforcement in the various member states (e.g. border guards, police, customs), Europol also assists in aiding the multi-agency approach. After 9/11, the analysis and insight into threats and subsequent aid also began to stress potential terrorist acts and the activities of organized crime. To assist this process, information communication was streamlined through the creation of a database of criminal investigations. By 2009, a majority of the help provided by Europol was in the area of organized crime; outside of drug-related operations, efforts to catch human traffickers have been a main concern. In these cases, Europol is most beneficial through its mobile office, an equipped vehicle that provides real-time access to databases and the

⁴¹ *Annual Report 2009*, Eurojust, (The Hague, Netherlands, 2009), Accessed 09 March 2011, <http://www.eurojust.europa.eu/press_releases/annual_reports/2009/Annual_Report_2009_EN.pdf>.

development of tactical intelligence.⁴² This information reveals the importance of Europol on the investigative level of law enforcement cooperation.

According to recent statistics, Europol has identified trafficking as a growing crime within the EU. Although trafficking in women for the purpose of sexual exploitation has stabilized, trafficking for forced labor, facilitated by inconsistent laws across EU states, continues to increase. Such trafficking frequently occurs across EU borders with the aid of both legitimate and illegitimate documents, yet Europol cites that levels of internal trafficking are also rising. Likewise, a growing number of cases use children in order to hamper investigations with child suspect and witness problems. Details of this nature suggest that although organizations such as Eurojust and Europol are making a positive difference by coordinating operations between member states, the EU's general focus on establishing security through migration and border control is not going to effectively stem the occurrence of transnational organized crimes.

When the EU added ten new members in 2004, an interim Schengen agreement maintained the pre-enlargement borders until the new eastern perimeters had been strengthened.⁴³ Intensive training and technology transfer programs prepared the security services of these countries. For example, through an instrument called the Phare program, \$7.2 million went into reinforcing regional police collaboration against organized crime in the Visegrád Group alone.⁴⁴ Today, Bulgaria and Romania – EU members since 2007 – have yet to join the Schengen Area. This is due to the border guard training and the

⁴² *Europol Review: General Report on Europol Activities*, Europol, Agnieszka Biegaj and Agnieszka Gnutek, eds., (European Police Office, 2010), Accessed 10 March 2011, <http://www.europol.europa.eu/publications/Annual_Reports/Europol_Review_2009.pdf>.

⁴³ Aaron, 3.

⁴⁴ Alice Hills, "Securing Europe's Peripheries: Border Guard Services in East-Central Europe," (paper presented at the International Studies Association 41st Annual Convention, Los Angeles, CA, March 14-18, 2000).

concrete border measures now required by the European Commission for all Schengen members. Meeting the standards of the Union no longer involves simple facilitation of internal migration, but also a willingness to stem migration of TCNs. This normalization of policing migration has involved unquestioned extensions in police activities over the last few years despite the EU's early intentions.⁴⁵ Members cannot simply apply their own rules to their own borders; instead, they have a legal obligation to put in place a long set of EU regulations regarding checks and surveillance.

Immediately after 9/11, there was no harmonized EU legal framework that would supply common rules and approaches for such organized border controls. However, after the creation and/or strengthening of the EAW, Eurojust and Europol, the European Council began to remedy the lack of a relevant corpus of border legislation.

“Technology,” writes Carrera, “in particular the use of (European-wide) large-scale databases and biometric technology, [was] now presented as the ‘ultra-solution’ to any imagined threat to the EU’s internal security (most prominently the phenomenon of irregular migration)...”⁴⁶ The job of border guards was now greater than checking for proper travel documents and identification and refusing entry if such papers did not exist.

“Expected to perform tasks related to border policing, border guarding, and border defense,” the border guard services were now *the* European means of security.⁴⁷

Logically then, the EU Commission wanted to guarantee not only the accuracy, but also the speed of such operations. The goal was responsible governance that did not impede the quick movement of goods and services.

⁴⁵ Carrera, 10.

⁴⁶ Carrera, 7.

⁴⁷ Hills, “Securing Europe’s Peripheries.”

In December of 2003, the European Council adopted a European security strategy, which it called “A Secure Europe in a Better World.” This policy pointed to five principle threats to the EU: terrorism, the proliferation of weapons of mass destruction, regional conflicts, state failure or regional instability, and finally, organized crime.⁴⁸ Furthermore, this strategy claimed that Europe had to think globally but act locally by promoting good governance outside the EU and cooperating within its borders. Part of this latter cooperation would be integrated border management, with common risk evaluation and operational burden sharing. The nature of this institutionalized security policy – which created a European Area of Freedom, Security, and Justice (AFSJ) – paved the way for future measures, including the establishment of Frontex.

Otherwise known as the European Agency for the Management of Operational Cooperation at the External Borders, Frontex is an agency that coordinates border security operations between members. Based in Warsaw, Poland, it ensures that member actions implement EU laws and recommendations. Frontex, by liaising with other organizations such as Europol, is predominantly intelligence driven; it aids members in risk analyses and joint return operations.⁴⁹ The organization has also developed important Rapid Border Intervention Teams (RABIT) for use in exceptional and urgent border situations. Last but not least, Frontex is involved in the training and education of future border guards, an act that reinforces the EU’s desire to field highly skilled, professional forces into border services. Although such operations initially appeared to threaten the national sovereignty of certain states – e.g. many members, including Poland, depend on

⁴⁸ Edwards, 11.

⁴⁹ “More About Frontex,” Frontex, (Warsaw, Poland, 2006), Accessed 10 March 2011, <http://www.frontex.europa.eu/more_about_frontex>.

unspecialized conscript-based armies for border patrol⁵⁰ – Frontex has continued to grow without conflict. In fact, the Agency’s budget increased by €82 million between 2005 and 2009.⁵¹ In the same period, the number of irregular border crossings decreased and refusals of entry remained fairly stable. While such data appears to be encouraging, it may simply mean that criminal organizations involved in cross-border trafficking are finding new methods of dependable moneymaking. It is quite possible that the internal trafficking methods observed by Europol are circumventing increasingly secure external borders rather than halting operations due to their existence.

In addition to Frontex, the European Commission continued to make efforts to strengthen border control cooperation by adapting the Schengen Information System (SIS). The SIS is “a set of linked databases containing visa and other border-entry information maintained by all the Schengen treaty countries.”⁵² In January 2007, a second generation of the system – an incomplete version of SIS II – became effective, integrating the 10 newest EU members. This large-scale information system contains alerts on persons and objects that have been refused entry or stay in the EU. A central data system, along with individual national data systems, exchange encrypted intelligence that border and judicial authorities may access. SIS II thus allows guards to check for matches on the names, fingerprints, or license plate numbers of third country nationals attempting to enter the Schengen Area at external borders. Additions to the database must be based on court and administrative authority, by which a person or object must be proven a threat to public policy, a danger to national or public security, or a previously expelled TCN.

⁵⁰ Dr. Andrzej Karkoszka, “Combating Terrorism and Its Implications for the Polish Armed Forces,” *Combating Terrorism and its Implications for the Security Sector*, (Geneva: Geneva Centre for Democratic Control and Armed Forces, 2005), p. 104.

⁵¹ Carrera, 22.

⁵² Aaron, 15.

Although the idea is reasonable, coordinating the maintenance of SIS II has been a complicated task since the Schengen and EU memberships are not entirely consistent. Currently, the Schengen Area is composed of 22 EU states and four non-EU members (Iceland, Norway, Switzerland, and Liechtenstein). Not only has this had implications on the development of SIS II, it has also had its effects on treating the EU external borders as a clear geographical line. Again Carrera writes: “The imagined uniform, EU external border is rather a patchwork across a hugely fragmented field of points of entry and scattered practices of control.”⁵³ This, however, has not prevented the European Commission from faithfully pursuing its goal of security through border and migration control.

In 2008, an expert group – jointly chaired by Finland and Poland – published the EU’s Schengen Catalogue on Border Management, which identifies four tiers of border security. The first tier encompasses activities in and with third countries, especially in countries of origin and transit, where liaison officers as well those with a consular post abroad could collect information in the process of issuing visas. The second involves operational border cooperation with directly neighboring third countries. The third entails measures taken at external borders, usually in the form of border checks and surveillance. Finally, the fourth tier refers to further security-related activities inside and between the territories of the Schengen states.⁵⁴ The Catalogue also outlines a series of best practices for each tier that should be read and followed (although they are not legally binding). In terms of the external borders, it has been recommended that EU members undergo rapid checks for the validity of their documents only, whereas TCNs should be subjected to

⁵³ Carrera, 15.

⁵⁴ Öövel, 186-7.

thorough inspections that include randomized or risk-based checks for hidden persons through the use of tools such as heartbeat detectors or dogs. The document also states that the interrogation of all detected illegal immigrants should be carried out to identify facilitators.

Several things are troubling about the contents of this 2008 Catalogue. For instance, the first tier should not focus solely on information gathering by consuls and international liaisons. Instead, particular attention should also be given to the issue of corruption, as large numbers of traffickers escort their victims across borders with authentic visas issued by bribed officials. Secondly, by treating properly documented EU members without any suspicion, the border guards ignore the growing trend of trafficking by (and of) citizens of EU states. Lastly, the subjection of illegal immigrants to interrogation could deter them from cooperating. Until recently border guards were not even trained in relevant human rights and refugee law,⁵⁵ meaning that they could have engaged in forms of interrogation that broke these laws and trespassed on the individual dignities of the immigrants. Throughout all of these EU efforts to secure borders and limit migration, it is clear that emerging legislation and recommendations do not reflect the most current security situations, especially in terms of organized crime and human trafficking.

In its latest attempt at securitization of the external borders, the European Council endorsed the Stockholm Programme in December 2009. Concentrating on efficient and effective entry to Europe, a section titled “Access to Europe in a Globalized World” also strives to provide security for EU citizens through border management. As such, the

⁵⁵ Carrera, 19.

Programme reinforces the role of Frontex, maintains its devotion to strong border controls, and advocates a common visa policy.⁵⁶ It also continues to support the 2003 Security Strategy's Area of Freedom, Security, and Justice (mentioned above), which advocates progressing to a single area of justice with effective prosecution and conviction methods. To achieve this, the Programme also proposes the establishment of a European system of border guards (ESBG) by 2014,⁵⁷ a plan that had been considered since border security discussions began in late 2001. However, it is likely that issues of national sovereignty and discrepancies in Schengen versus EU membership will complicate such a serious undertaking. There have already been problems with the formation of normative behavior that would involve cooperation between judiciary, police, and other national security agencies within each of the EU member states.⁵⁸ Thus, to develop strong collaboration across state lines on such a sensitive and demanding project is unlikely to occur easily or quickly.

This is not to say that the EU countries have not been making an effort to participate in the migration securitization approach. Poland – a country with 1,580.78 km of external European Union borders⁵⁹ – participated fully in the implementation of border security measures required by the European Council's increasing list of related laws.

Although the nation once balked at the idea of overseeing organizations invading internal

⁵⁶ A European Pact on Immigration and Asylum proposes 1) the issuing of a return directive for all illegal immigrants present within EU borders and 2) the creation of a Blue Card for skilled immigrants, which could be provided on the basis of member state quotas.

⁵⁷ Carrera, 1.

⁵⁸ For example, the courts of certain states will not admit intelligence reports from other members as evidence; all evidence, in order to be cross-examined by the defense, must be the direct result of police or judicial investigation. (See: Michael Chandler, "Counterterrorism Policies and Strategies: Keys to Effective Interagency Cooperation and National Security," *Combating Terrorism and Its Implications for the Security Sector*, eds. Ambassador Dr. Theodor H. Winkler et. al, (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2005), p. 71.)

⁵⁹ 1,185.47 km of land adjacent to Russia, Belarus, and Ukraine as well as 395.31 km of shoreline constitute this Polish European Union border.

arrangements, it is now home to the institution of Frontex. Yet such a seemingly positive turnaround may in fact be the result of a negative anti-immigrant pattern similar to those that exist(ed) in France and Germany. After the collapse of communism in Poland, factors such as poverty, disorganization, and discontent led to a rise in unemployment and organized crime. The availability of jobs – seen as an inherited entitlement under communist rule – was no longer guaranteed.⁶⁰ This desire for secure employment opportunities was, and continues to be, a likely influence on Polish skepticism toward immigration and the inflow of foreign laborers. Likewise, the country's isolation during communism and its generally ethnically and culturally homogenous population may serve as additional explanations for the lack of interest in migrants. Thus, Poland's willingness to cooperate with EU border legislation and cooperation tactics may stem from an intrinsic impulse to protect scarce jobs in a shifting political and economic climate as much as it may reflect the strong importance given to integration with Europe.

Regardless of the motive, the Polish Border Guard (BWM) has approached the issue of cross-border cooperation in the securitization of migration with the utmost seriousness and dedication. Reading through the mission of the Podlaski Branch of the BWM (which patrols the border with Belarus), it is made clear on several occasions that the agency views itself as the protector of all Schengen citizens; it is the guarantor of and spokesman for the safety and interests of all the member states.⁶¹ In order to fulfill such a role, however, the border guards must clearly adhere to EU legislation and the member

⁶⁰ Gábor Kardos, "Human rights and foreign policy in Central Europe: Hungary, the Czech Republic, and Poland," *Human Rights and Comparative Foreign Policy: Foundations of Peace*, David P. Forsythe, ed, United Nations University, 2000.

⁶¹ Podlaski Oddział Straży Granicznej, "Integracja europejska," Accessed 10 March 2011, < <http://www.podlaski.strazgraniczna.pl/integracja.htm>>.

interests that it reflects. This has been done through an eager commitment to cooperation within and outside of Polish territory.

The internal borders of Poland were abolished 21 December 2007, with air borders following at the end of March 2008. At this time border patrol stations on EU borders were shut down and external EU borders were strengthened. Similarly, the number of mobile patrols circulating throughout Poland was significantly increased in order to supplement the fight against cross-border crime. Tasks of the BWM were expanded to include the following: 1) reporting falsified Polish and/or Schengen documents; 2) implementing actions ordered by competent international authorities through SIS II;⁶² 3) preparing for possible immediate implementation of temporary border controls at internal EU borders; and 4) no longer refusing entry, dictating length of stay,⁶³ or punishing those transporting a person without travel documents at internal borders.⁶⁴ In order to realize these new duties, the BWM reported working more closely with customs officials and police officers (e.g. by using their dogs to detect hidden drugs or humans in vehicles)⁶⁵ within Poland, as well as with border control officers in neighboring EU countries.⁶⁶ In addition to these instances of internal cooperation, an Office of International Relations under the auspices of the BWM features three

⁶² According to statistics provided by the Podlaski Branch of the BWM, 9 out of 190 people rejected at the Belarus-Poland border in January 2011 were turned away due to a “no enter” tag on SIS II or country lists. (See: Podlaski Oddział Straży Granicznej, “Ruch graniczny osób,” January 2011, Accessed 10 March 2011, <http://www.podlaski.strazgraniczna.pl/statystyki/statystyka_styczen_2011.pdf>).

⁶³ Those with Schengen citizenship may stay up to three months (in a six month period) in another Schengen member state without that state’s documents.

⁶⁴ “Straż Graniczna w Schengen,” Straż Graniczna, 13 May 2008, Accessed 10 March 2011, <http://www.strazgraniczna.pl/wps/portal/tresc?WCM_GLOBAL_CONTEXT=pl/serwis-sg/niezbednik_podroznego/straz+graniczna+w+schengen>.

⁶⁵ “Współpraca między służbami,” Straż Graniczna, 24 April 2008, Accessed 10 March 2011, <http://www.strazgraniczna.pl/wps/portal/tresc?WCM_GLOBAL_CONTEXT=pl/serwis-sg/polskie_formacje_graniczne/wspolpraca_miedzy_sluzbami>.

⁶⁶ The BWM boasts that the German-Polish border guard relationship is exemplary within the EU.

departments, which specialize in European, international, and border cooperation. The responsibilities of these departments include management of bilateral cooperation (especially with bordering countries such as Lithuania, Ukraine, Slovakia, and the Czech Republic), Frontex collaboration, and cooperation with the International Organization for Migration and the International Centre for Migration Policy Development.⁶⁷

Additionally, by supervising the activities of BWM liaison officers working abroad and remaining in contact with the foreign border protection authorities stationed in Poland, the border guards have continued to work closely with other Schengen/EU countries in order to guarantee serving the best interests of all members and their citizens.⁶⁸

Along with efforts to strengthen cooperation with neighboring states in order to facilitate internal movements, Poland has also implemented and strictly followed the rules set out by the Schengen Agreement for the purpose of controlling TCN migration. Although the residents of a long list of countries may cross the external EU borders without a visa, most still require special papers to visit and travel through Poland and into the rest of the EU. Generally, TCNs require a valid travel document and a visa in order to enter the Schengen zone. Furthermore, they must meet the following requirements: 1) justification for the purpose of the stay; 2) presentation of sufficient means of subsistence during residence and later travel; and 3) assurance that they are not a threat to policy, security, or international relations (e.g. through SIS II checks). Once such prerequisites have been met, one of the following visas can be issued and accepted: airport transit visa

⁶⁷ The International Centre for Migration Policy Development (ICMPD) is an international organization with 12 member states (including Poland), which does research and program development in the areas of border management, visa regulations, and human trafficking legislation.

⁶⁸ "Współpraca Międzynarodowa," Straż Graniczna, 27 November 2009, Accessed 10 March 2011, <http://www.strazgraniczna.pl/wps/portal/tresc?WCM_GLOBAL_CONTEXT=pl/serwis-sg/polskie_formacje_graniczne/wspolpraca_miedzynarodowa>.

(A – only valid in an airport zone), transit visa (B – valid transit through Schengen zone for no more than 5 days), short-stay visa (C – valid for no more than three months during a six month period), or finally, the long-stay visa (D – residence permit valid only within the issuing state).⁶⁹ For those TCNs applying for work, the visa process must be accompanied by another application for a work permit. Firstly, the foreigner seeking employment must find an employer who will request a work permit in his name and secondly, there must be proof that no Polish counter-candidates are seeking the same position. As such, it is abundantly clear that entering the Schengen zone through Poland's external EU borders is an extremely complicated process, which is made even more difficult for poor laborers seeking work.

The most immediate victims of the new Schengen borders were Poland's closest neighbors. Arguably, the citizens of Ukraine, Belarus, and Russia experienced the greatest impediment to their international mobility with the implementation of the new visa regime. In their eyes, Poland was always an attractive work destination, regardless of EU status. Not only is Poland in close proximity to these countries, but it is also the "only member of the [EU] that has not fallen into a recession and that has continued to grow economically... because of relatively high domestic demand and because foreign trade makes up a small share of Poland's GDP."⁷⁰ Likewise, since the 1990s, Poland continued to experience fairly rapid economic growth, especially in comparison to other Central and Eastern European countries. For all of these reasons, workers from the East often desired to seek employment within Polish borders. But with the increase in border security, a

⁶⁹ "Schengen Agreement," Office for Foreigners, 15 July 2009, Accessed 10 March 2011, <<http://www.udse.gov.pl/Schengen,Agreement,1099.html>>.

⁷⁰ Krystyna Iglicka and Magdalena Ziolk-Skrzypczak, "EU Membership Highlights Poland's Migration Challenges," *Migration Policy Institute*, September 2010, Accessed 11 March 2011, <<http://www.migrationinformation.org/feature/display.cfm?ID=800>>.

decrease in legal border crossings from Ukraine, Belarus, and Russia quickly took place. It is probable that this decline occurred due to the difficult process of gaining a work permit and the expense of obtaining a visa. Krystyna Iglicka and Magdalena Ziolk-Skrzypczak write: Ukrainians, Belarusians, and Russians “need to pay 35 euros for a Schengen visa to enter Poland. The visa is prohibitively expensive for Ukrainians, for whom 35 euros can be half a month’s living expenses, according to the Ukrainian consul general in Warsaw.”⁷¹ Unsurprisingly, such restrictive policies had a negative impact not only on Poland’s neighbors, but also on the country itself.

In the year 2005, Poland was reported as having a zero percent growth rate. Even with a steady flow of immigration taking place, the net migration rate remained negative before and after Poland’s accession into the European Union. Polish citizens had always left their homeland during various turns of the twentieth century history: after the violence of World War II, the establishment of communism, the imposition of martial law by Wojciech Jaruzelski, and the economic hardships associated with a transitional democracy. Poland’s status as a country of emigration continued after joining the EU in 2004 when countries such as the United Kingdom, Sweden, and Ireland immediately opened their labor markets to citizens of the new member states.⁷² As such, Poland experienced the phenomenon called “brain drain,” well known throughout the former Eastern bloc. However, low-skilled laborers also sought opportunities for higher paying jobs in Western Europe. In fact, about 2 million people left the country after 1 May 2004.

⁷¹ Iglicka and Ziolk-Skrzypczak, “EU Membership.”

⁷² Stefan Alscher, “Poland: Country Profile,” *Focus Migration*, No. 3 January 2008, Accessed 11 March 2011, <http://focus-migration.hwwi.de/typo3_upload/groups/3/focus_Migration_Publikationen/Laenderprofile/CP03_Poland_Update.pdf>.

This mass exodus left Poland with a net migration rate of -0.6 migrants/1,000 people between the years 2005 and 2010 along with a serious labor shortage.

It was this lack of workers that quickly forced Poland to lift some of the EU restrictions on migrant movements from neighboring countries. Beginning on 31 August 2006, Polish employers in the agricultural sector could hire Ukrainian, Belarusian, and Russian laborers without work permits for up to three months in a six-month period. In June 2007, this concession was extended to cover all sectors. Yet even these leniencies in the law did not prove sufficiently effective in filling the demands of the labor market after Schengen accession. Thus, in February 2008 “the duration of legal work [for citizens of neighboring countries] without a work permit was extended from three to six months in any given period of twelve months.”⁷³ Also, in order to ameliorate the burden posed by an expensive visa application fee, Ukrainian and Belarusian residents living near the Polish border could pay twenty euros for a two-year permit to travel within thirty kilometers of the border and stay no more than three months within a six-month period after the summers of 2009 and 2010, respectively.

Passing such arbitrary and intermittent exceptions to Schengen border security laws, however, sends the wrong message to Poland’s eastern neighbors and creates conditions for corruption on both sides of the border. As employers in Poland stop applying for work permits, they will be able to hire migrants for jobs with horrible and potentially abusive conditions without any risk of undergoing checks. Unskilled workers – especially young women – incapable of finding an employer and ineligible for the

⁷³ Krystyna Iglicka, “The new Eastern border of Schengen area and the irregular immigration into and from Poland,” *Real Instituto Elcano*, 12/5/2008, <http://www.realinstitutoelcano.org/wps/portal/riecano_eng/Content?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/ari49-2008>.

twenty-euro permit will look to other means of irregular border crossing, potentially falling into the hands of human traffickers. As for those who do qualify for and receive short-term employment or a special two-year border pass, who will guarantee that they return back to their homeland? By creating these small gaps in the EU trend of border securitization, Poland is only putting itself in greater danger of experiencing organized and cross-border crime.

The European Union's goal of integrated border management (IBM) aspires to enhance trade facilitation and border security simultaneously. The Schengen's external borders are to be as friendly as possible for legal migration while being as tight as possible for illegal migrants. But this is a difficult objective to successfully attain.

“Between 1996 and 2006, 43,283 people were seized at the Polish border. 18,688 of these people were trying to enter Poland illegally and 24,595 were attempting to illegally travel through Poland to an adjacent country.”⁷⁴ These already large numbers grew after Poland joined the Schengen Area. In fact, the BWM caught more illegal immigrants in the first month after joining Schengen than in all of 2007.⁷⁵ In the year 2009, Poland had to deport 1,514 foreigners and issue deportation orders for another 8,527 people. Clearly, these are large numbers to handle for a country with little over 38.1 million people and an extensive exterior EU border; errors will undoubtedly occur. In fact, according to the Migration Policy Unit at the Ministry of Interior and Administration, one in two Vietnamese⁷⁶ living in Poland is an illegal immigrant not apprehended by the BWM.⁷⁷

To expect that the border guards of Poland, or even potentially assigned EU border

⁷⁴ Alscher, “Poland: Country Profile.”

⁷⁵ From December 2007 to January 2008, 600 illegal immigrants were caught; in 2007, only 423 were apprehended. (See: Iglicka and Ziolk-Skrzypczak, “EU Membership”).

⁷⁶ It is estimated that anywhere from 30 to 50 thousand Vietnamese immigrants live in Poland.

⁷⁷ Iglicka and Ziolk-Skrzypczak, “EU Membership.”

guards, will have the ability to stop illegal immigration is an unrealistic notion. With the pressure on EU's borders constantly increasing, especially from the governments and citizens of neighboring countries, there is no chance that borders will remain tight enough to keep out the unwanted.

My interest in the EU's fixation with border securitization and Poland's own attempt to bring such a concept into fruition grows out of the belief that this idea regarding borders as the first line of defense against cross-border crime and human trafficking is outdated. Although traffickers and their victims often cross physical state borders, this should no longer have the same meaning as it did in the nineteenth and early twentieth centuries. As discussed in the beginning of this chapter, the state "deterritorialization" caused by globalization and more so by the creation and expansion of the EU should instead pull focus away from physical borders as barriers to crime. Designing countless police task forces, border guard units, supervisory agencies, and cooperation strategies will not end a problem with deeper roots. The cliché phrase "where there is a will there is a way," applies best to this twenty-first century irregular (criminal) migration issue. The poor and desperate around the world (and close to home) will often do everything in their power in order to improve their living conditions and futures.

Likewise, as human traffickers have become aware of the increasing focus on external borders, they have also changed their methods. In Poland, for example, of the 3.7 thousand victims of human trafficking perceived, only 815 were foreigners. Today, trafficking victims in Poland usually come from Ukraine or Belarus and are young

women (16-20 years old) who are unemployed, uneducated, and poor.⁷⁸ Clearly, the strict border checks and policies imposed by the EU and Schengen requirements are not effective. Visas, work permits, length-of-stay orders, and an influx of deportation papers will not hinder the profitable processes of traffickers and the hopeful actions of potential victims. Borders and the widespread European fear of migration are not the solution to ending crime and protecting human rights. Thus, it is my goal to use the next few chapters to explore human trafficking trends as well as other, more successful means of combating this form of modern slavery.

⁷⁸ “How to combat human trafficking,” Ministry of the Interior and Administration, Accessed 10 March 2011, <http://www.mswia.gov.pl/portal/en/l/631/How_to_combat_human_trafficking.html>.

Trafficking Trends

Understanding Human Trafficking Patterns in Poland and Abroad

When attempting to understand any global phenomenon, it is first necessary to establish a widely accepted definition that will ease conversation and investigation. In the context of modern slavery, the aforementioned Palermo Protocol remains the most universalized explanation of this terrible occurrence. This document describes trafficking in human beings (THB) as the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion... for the purpose of exploitation.”⁷⁹ The necessary event is the existence of exploitation, as this event differentiates THB from smuggling, an act that involves the illegal transport of people across borders and nothing more. Exploitation, a term which means, “to utilize for one's own ends, treat selfishly as mere workable material (persons, etc.),”⁸⁰ is thus the defining characteristic of trafficking. Yet, it is most important to remember that the development of such unfair conditions is oftentimes not immediate. In fact, today many people enter into the world of slavery voluntarily although ignorantly. For this reason, it is often made clear that the initial consent of an individual is irrelevant⁸¹ once psychological manipulation or physical force come into play.

⁷⁹ “UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime,” United Nations, 2000, <http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf>.

⁸⁰ Oxford English Dictionary, s.v. “Exploit.”

⁸¹ Under the U.S. Trafficking Victims Protection Act of 2000, “individuals may be trafficking victims regardless of whether they once consented, participated in a crime as a direct result of being trafficked, were transported into the exploitative situation, or were simply born into a state of servitude.” “What is Modern Slavery,” Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, <<http://www.state.gov/g/tip/what/index.htm>>.

According to Cornelius Friesendorf, there are currently five leading approaches to the study of THB. The first focuses on the problem of organized crime as a fuel behind the issue. The second method of study centers on the question of prostitution and whether its criminalization affects the prevalence of sex trafficking around the globe. The third approach believes that THB is a result of human rights violations caused by traffickers and states with border security obsessions. Finally, the fourth method emphasizes the dynamics of the contemporary labor market and the fifth approach examines the increase in mobility and desire to migrate at a time of increased border controls.⁸² Considering the border securitization trends of the EU as outlined in the previous chapter, and realizing that many people do give consent before entering situations of THB, it appears that the fourth and fifth approaches are the best means of understanding and tackling this terrible phenomenon. Instead of focusing solely on exploitation, they both consider the root causes behind trafficking, such as the extensive willingness of people to migrate to foreign countries through unknown hands.

Throughout the developing world, large growth rates are met with exceedingly high unemployment levels, wars and military conflicts, as well as poorly managed political and economic situations. Likewise, in a considerable number of countries, women and certain economic and religious sectors of society continue to suffer from human rights abuses and unfair treatment that often involve a lack of educational and occupational resources and opportunities. These so-called push factors create a supply of workers eager to fill the demand for labor present throughout the industrialized world,

⁸² *Strategies Against Human Trafficking: The Role of the Security Sector*, Cornelius Friesendorf, ed., United Nations Office on Drugs and Crime and the Geneva Centre for the Democratic Control of Armed Forces, September 2009.

especially the European Union, where population growth rates continue to decrease.⁸³ In fact, various sources claim that it is the “labor intensive needs of developed nations that fuel the trafficking industry.”⁸⁴ It is this steadily rising desire for cheap, unregulated labor that poses the greatest danger, for as Sally Cameron and Edward Newman write, “People are trafficked into certain regions because there is a demand for their services.”⁸⁵ Stuck in countries of origin where there is no prospect of progress or improvement of life, many people decide to migrate, hearing and hoping that they will find employment somewhere far from their homes.

Of approximately 214 million migrants today, the vast majority obtained full authority to work in, or travel to, their chosen country of destination. Of these travelers, only about ten to fifteen percent are currently in an irregular situation, most having intentionally overstayed their legally obtained visas.⁸⁶ However, for the remaining millions, administrative obstacles or a general lack of information may have led to their easily exploitable, irregular status. Thus, the increasing complexity of visa and border-crossing procedures only exacerbate many migrants’ positions. As Jayati Ghosh explains, “Quite paradoxically then, increased control over migrants’ mobility is likely not to lessen but rather to heighten the involvement of organized crime.”⁸⁷ The stricter

⁸³ According to the CIA World Factbook, the European Union’s growth rate in 2010 was 0.098 percent. Many of the Central European countries, including Poland, have negative growth rates. “European Union,” The Central Intelligence Agency, The World Factbook, 8 March 2011, <<https://www.cia.gov/library/publications/the-world-factbook/geos/ee.html>>.

⁸⁴ Terry Coonan and Robin Thompson, “Ancient Evil, Modern Face: The Fight Against Human Trafficking,” *Georgetown Journal of International Affairs*, Volume 6, Number 1, Winter/Spring 2005.

⁸⁵ “Trafficking in Humans: Structural Factors,” *Trafficking in Human\$*, Sally Cameron and Edward Newman, eds, (United Nations University Press), 2008, p. 28.

⁸⁶ “World Migration Report 2010 – The Future of Migration: Building Capacities for Change,” (Geneva: International Organization for Migration), August 2010, <http://publications.iom.int/bookstore/free/WMR_2010_ENGLISH.pdf>, p. 29.

⁸⁷ Jayati Gosh, “Migration and Gender Empowerment: Recent Trends and Emerging Issues,” United Nations Development Programme, April 2009.

immigration controls observed throughout the EU and Schengen Area in recent years thus constitute a grave addition to the proliferation of THB as migrants seek creative ways to circumvent this obstacle. In this way, state security measures become threats to human security.

Information released by the U.S. State Department claims that 12.3 million adults and children around the world are in situations of forced labor and prostitution.⁸⁸ As stated by the International Labour Office, more than a third of these trafficking victims obtained their job offers through social connections. Yet the statistic is nearly the same in the case of successful migrants. On the other hand, “victims of forced labour also obtained job offers via intermediaries (35.1%), which more successful migrants did to a lesser extent (10.3%).”⁸⁹ Furthermore, the successful migrants heavily relied on family connections that rarely exist as an option for those forced into labor. As such, it is clear that the migrants who fall into the category of victims are those who have few social resources at their disposal and must therefore rely on unknown, mysterious middlemen. It is at this point that migrants’ financial and informational constraints place them in a position of increased vulnerability.

Among the 12.3 million victims of forced labor, it is estimated that about seventy-five percent of those in industrialized countries are exploited as a result of the trafficking

⁸⁸ The International Labour Organization “suggests that most people are trafficked for commercial sexual exploitation (43 per cent) or for economic exploitation (32 per cent).” Francesca Bosco, Vittoria Luda di Cortemiglia, Anvar Serodjtinov, “Human Trafficking Patterns,” *Strategies Against Human Trafficking: The Role of the Security Sector*, Cornelius Friesendorf, ed., United Nations Office on Drugs and Crime and the Geneva Centre for the Democratic Control of Armed Forces, September 2009, p. 39.

⁸⁹ Beate Andrees, “Forced labour and trafficking in Europe: how people are trapped in, live through and come out,” (Geneva: International Labour Office), February 2008, p. 19.

process.⁹⁰ More specifically, a U.S. State Department report released in 2006 stated that as many as 800,000 people,⁹¹ if not more, are trafficked across international borders every year. “Research claims that approximately 80 percent of transnational victims are women and girls and that up to 50 percent are minors.”⁹² These groups, along with all victims, are usually the weakest and most desperate members of the migrant society, easily separated by traffickers from their homes and friends in order to be trapped in unfamiliar surroundings. Determined to cross borders that are under strictly controlled conditions, these migrants create a market for traffickers’ services. As a result, a migration mediation industry flourishes under the auspices of undercover organized crime networks, which are easily disguised and accessed through rapid twenty-first century communication methods.

Just as globalization affects responses to social inequalities and labor market demands, so modernization influences the frequency and success of trafficking networks. The wide range of travel methods, reduced costs of transportation, and availability of the Internet around the world are all catalysts for the spread of THB. Each of these factors also contributes to the relatively cheap nature of the trafficking business. Organized criminal networks invest little money in comparison to their eventual yields. In fact, it is estimated that trafficking is a \$32 billion dollar industry, which spans the territory of 161

⁹⁰ “Never Work Alone: Trade Unions and NGOs joining forces to combat Forced Labour and Trafficking in Europe,” International Trade Union Confederation (Brussels, Belgium), February 2011, Accessed 20 March 2011, <http://www.itucsi.org/IMG/pdf/Forced_labour_EN_FINAL.pdf>, p. 8.

⁹¹ This does not include victims of internal trafficking.

⁹² Child Trafficking in the European Union: Challenges, perspectives and good practices,” European Union Agency for Fundamental Rights, (Luxembourg: Office for Official Publications of the European Communities), July 2009, p. 20.

countries worldwide.⁹³ Today, profits from trafficking in women for prostitution alone exceed the amount of money made from trafficking in firearms and drugs.⁹⁴ Yet these moneymaking criminals are not the typical clichéd mafia men in black muscle shirts and reflective sunglasses. Although part of an international syndicate, many people involved in trafficking are independent agents simply linking their services to a long, transnational chain. As the United Nations Office on Drugs and Crime points out: “Networks are one of the defining features of the twenty-first century.”⁹⁵ The people who make up these networks include travel agents, friendly neighborhood brokers, and inconspicuous criminals who exude an aura of trustworthiness and care for their unsuspecting victims.

The entire trafficking network process begins with the recruiter, who is ordinarily of the same nationality as, and a supposed friend of, the potential victim. He or she approaches the usually unemployed prey and, in most cases, deceives the person about the wages, working and living conditions of a certain job abroad or at home.⁹⁶ For this reason, many willing victims remain unaware of their fate while traveling and crossing borders. It is only after they reach their final destinations that their legal documents and visas are confiscated or forcibly overstayed and that all illusions are shattered. This is one of the many reasons why even trained and vigilant border guards may not serve as a sufficient anti-trafficking strategy.⁹⁷ At the border, there may still be no signs of

⁹³ “International Trafficking,” Polaris Project, 2010, Washington, D.C., <<http://www.polarisproject.org/human-trafficking/international-trafficking>>.

⁹⁴ Richard Poulin, “Legalizing Prostitution Increases Human Trafficking,” *Human Trafficking*, Christina Fisanick, ed., (Detroit : Greenhaven Press), 2010, p. 35.

⁹⁵ “Promoting health, security, and justice: cutting the threads of drugs, crime and terrorism,” United Nations Office on Drugs and Crime, 2010, < http://www.unodc.org/documents/frontpage/UNODC_Annual_Report_2010_LowRes.pdf>, p. 13.

⁹⁶ In some countries, women are hired as recruiters of other women.

⁹⁷ Helga Konrad, “The fight against trafficking in human beings from the European perspective,” *Trafficking in Human\$*, Sally Cameron and Edward Newman, eds., (United Nations University Press), 2008, p. 163.

trafficking, even when future experiences of travelers will be extremely exploitative. As for very young victims including children and adolescents, most are presented as traffickers' children or given falsified documents obtained through corrupt officials. Other times, unchecked border crossings are used in order to avoid all chances of detection. In any case, the victim incurs the expenses of any documents purchased, and traveling arrangements made, on his or her behalf.

Since victims of THB are predominantly poor and unemployed, they frequently cannot pay the initially charged fee of the trafficker or they find themselves penniless after spending their savings on the journey. At this point that they become increasingly vulnerable to debt bondage, a situation in which labor is used as a form of loan repayment. For example, women and girls are forced to pay off debts – accumulated from transportation, recruitment, and sale expenses – through continued prostitution before they can be set free.⁹⁸ Under pressure to repay their debts, all types of unsuspecting migrants find themselves the subjects of exploitation and extortion. “Moreover,” writes Beate Andrees, “employers often ‘test’ the resistance of workers before they squeeze them into more exploitative situations.”⁹⁹ Using debt as an excuse, traffickers can learn more about their employees' reactions and use the appropriate methods to make them submit to their wishes. Even after debts are technically repaid, the amount of money owed can be increased through inflated charges for food and accommodation. As a result, wages are withheld and threats of denunciation (regarding illegal stays) as well as actual violence are used against victims. In this way, traffickers make known their position of power and mastery.

⁹⁸ Office to Monitor and Combat Trafficking in Persons, “What is Modern Slavery?”

⁹⁹ Andrees, 22.

Once migrants undergo this process of victimization, they become difficult to detect and rescue. As the majority of trafficked human beings are, or eventually become, undocumented workers, they remain “outside of host countries’ legal framework and [are] therefore highly vulnerable to [continuous] exploitation by predatory employers.”¹⁰⁰ This lack of documentation also leaves trafficked migrants with no legal basis behind their potential claims to owed wages and poor working conditions. Employers take advantage of this, drawing up fraudulent, attractive contracts during the recruitment stage and then switching them for contracts outlining less favorable conditions in the final hiring stage. “Related issues include unpaid overtime, excessive working time, lack of breaks and/or rest days, and others.”¹⁰¹ Yet the victims’ lack of legal papers and their existence on the margins of society deter and prevent them from reporting such obviously abusive conditions to the police. As such, restrictive and stringent immigration policies exacerbate the persistent existence of this hidden population.

Although state acts of curbing migration do in fact drive THB further underground and increase the occurrence of violence and abuse, the nature of migrants’ employment also has a major effect on their condition. For example, victims of sexual exploitation are easier to detect due to the nature of their work. Since they usually depend on advertisements, visits from customers and their own work on street corners, their position is one of greater visibility. As such, most victims of human trafficking identified by authorities in the last decade were sex workers, a fact that has caused many to view

¹⁰⁰ Basav Sen, “The World Trade Organization’s Migrant Worker Policies Worsen Human Trafficking,” *Human Trafficking*, Christina Fisanick, ed., (Detroit : Greenhaven Press), 2010, p. 123.

¹⁰¹ “Labour inspection in Europe: undeclared work, migration, trafficking,” Labour Administration and Inspection Programme, (Geneva: International Labour Organization), January 2010, p. 29.

THB only in the context of sexual exploitation.¹⁰² Yet it is becoming increasingly clear that sex trafficking rates are stabilizing and in its stead, trafficking for forced labor is increasing. For example, in 2004, “Ukraine’s identified cases of trafficking for sexual exploitation were more than double those for labour exploitation... [but] in the first six months of 2008, the number of labour exploitation cases exceeded those of sexual exploitation.”¹⁰³ Such a turnaround is troubling news for law enforcement officials, as most victims of forced labor are concealed in fairly hidden locations and industries. Construction, drug production, and begging are some of the more popular activities involved in trafficking; however, many victims are also employed in rural areas, mining camps, private homes (as domestic servants) and garment factories that are far from civilization and/or the eyes of the police. “As a consequence, the detection of victims of trafficking for forced labour is less probable than the identification of victims of trafficking for forced prostitution.”¹⁰⁴ In most cases, these workers continue work under their state of exploitation with little hope of being discovered or assisted.

Similar obstacles to THB identification are found in the growing trends of trafficking in children and domestic trafficking. According to Europol, an increasingly large number of children are trafficked throughout the EU for the purpose of illegal labor, domestic servitude, or sexual exploitation.¹⁰⁵ The difficulty with this is the fact that children often delay or trick the law enforcement response. “Where child victims have

¹⁰² “Global Report on Trafficking in Persons,” Global Initiative to Fight Human Trafficking, United Nations Office on Drugs and Crime, February 2009, <http://www.unodc.org/documents/humantrafficking/Global_Report_on_TIP.pdf>, p. 51.

¹⁰³ “Labour inspection in Europe: undeclared work, migration, trafficking,” 30.

¹⁰⁴ “Global Report on Trafficking in Persons,” 51.

¹⁰⁵ A study by the European Union Agency for Fundamental Rights “reveals that the disappearance of children from shelters and similar facilities is widespread, and that there is a high risk of these children falling victim to trafficking.” “Child Trafficking in the European Union: Challenges, perspectives, and good practices,” 7.

been identified it has been observed that their willingness to cooperate with the authorities is almost nonexistent.” This non-cooperative behavior is paired with frequent attempts at escape from the hands of the authorities. Says Europol: this “indicates the level of control exercised by their traffickers.”¹⁰⁶ As for domestic trafficking, there is a large likelihood that many instances of exploitative trafficking are misjudged for crimes such as pandering and slavery, which may ignore factors such as deceit or forcible transport. For all of these reasons, it is impossible to accurately estimate just how many people are trafficked on national, regional, and global levels. Most scholars and researchers agree that numbers such as 12.3 million and 800,000 do not nearly reflect the exact THB situation of today.¹⁰⁷ And the hidden nature of THB makes the hope of gathering a statistical pool indicative of the true numbers impossible. Likewise, the majority of irregular migrants are not recorded and when they are, enforcement agencies rarely make such information available to the public. Because of this it is reasonable to assume that the global problem of modern slavery is even more serious than already presented in various publications.

As already implied, the problem of human trafficking is not unknown to the European Union. Sources suggest that about 120,000 women and children alone are trafficked into the EU every year, mostly from the Balkans. In order to better understand this statistic, it may be helpful to examine a few other characteristics of human trafficking. First of all, there are several primary patterns of THB: the movement of

¹⁰⁶ “EU Organized Crime Threat Assessment,” Europol, (The Hague, Netherlands), 2009, <[http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_\(OCTA\)/OCTA_2009.pdf](http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_(OCTA)/OCTA_2009.pdf)>, p. 21.

¹⁰⁷ For example, “about 111 countries provided data on the number of victims officially identified in 2006, which totaled about 21,400.” This underlines the fact that guesses as to the number of trafficking around the world are just that: guesses. “Global Report on Trafficking in Persons,” 48.

victims can be transcontinental, trans-regional, intraregional, or domestic.¹⁰⁸ Whereas transcontinental trafficking is rather self-explanatory, the others are in greater need of explanation and often forgotten. Intraregional trafficking occurs between different countries that are geographical neighbors frequently separated by only one or two borders. Trans-regional trafficking involves victims from one region being transported to another region, typically of the same continent. The women and children trafficked from Eastern Europe into Western Europe would be part of this latter category of the phenomenon. Finally, domestic trafficking entails the exploitation and movement of citizens of a certain country within the borders of their homeland. Surprisingly, the incidence of domestic trafficking has been detected throughout Europe, even within the borders of some of its wealthiest member states.¹⁰⁹ In fact, each of these types of THB is rather common within the confines of the Schengen Area.

Secondly, in order for the business of trafficking to flourish, it typically depends on the solid organization of criminal networks, as mentioned above. These offenders rely on guaranteed victims who want to escape “unemployment, poverty, crime, discrimination, corruption, political conflict” and the lack of educational opportunities within their homelands.¹¹⁰ Logically, such candidates for trafficking are most easily found in institutional vacuums and post-conflict areas where the enforcement of justice and the rule of law are weak and unstable. Likewise, recruiters, traffickers and future employers all take advantage of gaps in national legislation (e.g. no mention of human

¹⁰⁸ “Global Report on Trafficking in Persons,” 57.

¹⁰⁹ As mentioned by the Global Initiative to Fight Human Trafficking: “Interestingly, evidence indicates that domestic trafficking does not occur only in large transitional countries, such as India and Brazil, where the dimensions of the country can explain the existence of trafficking internally between poor and rich areas. Domestic trafficking also exists in relatively small and wealthy countries, such as those in Europe.” “Global Report on Trafficking in Persons,” 57.

¹¹⁰ Office to Monitor and Combat Trafficking in Persons, “What is Modern Slavery?”

trafficking as a crime within the penal code) and the existence of corrupt government officials abroad and at the borders. In fact, “research indicates that corrupt government officials located in origin, transit, and destination countries are often part of the networks facilitating migrant smuggling and human trafficking.”¹¹¹ The existence of such conditions allows criminals to profit greatly in a few regions just outside of Schengen borders.¹¹² These areas include Southeast and post-Soviet European countries where high levels of criminal activity and violence persist years after fighting or occupation have come to an end. During the past periods of transition and/or revolution, many criminals were able to gain a secure footing in these countries; such positions were strengthened over time, especially as EU border securitization following the terrorist attacks of 9-11 put their migration mediation services in greater demand.

Just as countries of origin feature widespread poverty and little to no economic development, countries of destination are characterized by high expectations of cheap labor and entertainment. This dichotomy is compounded when unequal countries with different standards of living and opportunities are neighbors, as “the more affluent and attractive country will act as a powerful magnet to citizens from poorer countries.”¹¹³ This potential problem was made even worse after the 2004 and 2007 expansions of the EU and Schengen borders. Suddenly, migration policies restricted the free flow of people across nearby borders at a time when globalization trends such as cross-border trade and

¹¹¹ “World Migration Report 2010,” 40.

¹¹² In many places “tour agencies that recruit and transport victims promise visas to the Schengen zone in their advertisements, making their services essential for those wishing to migrate for work.” Gulnara Shahinian, “Trafficking in persons in the South Caucasus – Armenia, Azerbaijan and Georgia: New challenges for transitional democracies,” *Trafficking in Human\$, Sally Cameron and Edward Newman*, eds, (United Nations University Press), 2008, p. 261.

¹¹³ Leslie Holmes, “Human Trafficking & Corruption: Triple Victimization?” *Strategies Against Human Trafficking: The Role of the Security Sector*, Cornelius Friesendorf, ed., United Nations Office on Drugs and Crime and the Geneva Centre for the Democratic Control of Armed Forces, September 2009, p 94.

demand for low-skilled labor required the opposite. To make matters worse, the ease of travel once within the EU made the desire to infiltrate its borders even greater. Thus, the continued tension between a high need for workers and a low availability of legal migration methods in Europe within the past decade inevitably led to increased flows of undocumented migrants – predominantly from the newly independent states and Eastern Europe¹¹⁴ – through the hands of criminal networks.

Last but not least, it is important to keep in mind that, although sex trafficking does appear to be decreasing, the migrant population bears an increasingly feminine face. Jayati Ghosh writes, “In general, despite adverse conditions of work and life, most female migration (except in very adverse and oppressive trafficking circumstances) provides some redeeming features for the women concerned, mainly through an increase in their own autonomy, agency and self-confidence.”¹¹⁵ This relates back to the claim that women are often most vulnerable to THB recruiters due to their position of subordination in many parts of the world. For them, migration is a means of escape from oppression and discrimination and a way to start life anew with a degree of independence and dignity. Because of this, many women may not see themselves as victims trapped in a criminal web until it is too late; rather they view themselves as challenging the widespread opinion that migration is a criminal activity that must be curbed. Willing to do anything to leave behind their old life, they place their trust in the hands of smugglers and traffickers who will “negotiate borders and locate work far from home.”¹¹⁶ As such, the statistic that 120,000 women and children are yearly trafficked into the EU and are predominantly

¹¹⁴Shahinian, 253.

¹¹⁵ Ghosh, 36.

¹¹⁶ Terry Coonan and Robin Thompson, “Ancient Evil, Modern Face: The Fight Against Human Trafficking.”

from the Balkans – a nearby unstable area – perfectly reflects these dominant features of the modern slavery phenomenon in the EU and around the world.

The European expansions of the last ten years resulted in an external land border of 11,000 km and a sea border of approximately 74,000 km. Writes Europol: “Combine this with the freedom of movement across the EU offered by the Schengen Convention and the EU’s exposure to organised criminality has never been greater.”¹¹⁷ By spreading so far eastward, the EU prompted a situation in which the frequent incidence of undocumented migration promptly clashed with strict border and immigration policies. This resulted in the rise of trafficking networks as one of the only available means of obtaining forged documents, cross-border transportation, and foreign employment as part of informal labor migration. What did not result, however, was an end to the occurrence of immigration into the European Union. In fact, the ILO estimates that “in a good number of European countries, the foreign born proportion of the work force is ten percent or more.”¹¹⁸ According to a 2007 study done by the European Commission, this undeclared workforce within its bounds is chiefly male (62%) except in France, Spain, and Italy where percentages are either evenly split between men and women or in favor of women. Likewise, the majority of undeclared workers are under the age of forty, with the youngest (15-24 years old) tending to work in continental and Nordic countries as opposed to Central Europe.¹¹⁹ These figures can be explained by the differing patterns in sex versus labor trafficking in the EU. Although these criminal currents are by no means mutually exclusive, there is a tendency for sex trafficking to take place into Western

¹¹⁷ “Trafficking in Human Beings in the European Union: A Europol Perspective,” Europol, June 2009, <http://www.europol.europa.eu/publications/Serious_Crime_Overviews/Trafficking%20in%20Human%20Beings%20June%202009.pdf>.

¹¹⁸ “Labour inspection in Europe: undeclared work, migration, trafficking,” 28.

¹¹⁹ “Labour inspection in Europe: undeclared work, migration, trafficking,” 2.

Europe and recent labor trafficking to lean toward Central Europe. After the fall of the Berlin Wall, women and girls from Moldova, Belarus, Ukraine, Bulgaria, Romania, and the Russian Federation desired to escape their homes and work abroad; many began to replace trafficking victims from Latin America and Asia in the highly demanded sex trafficking industry of Western Europe. Today, these nationalities continue to constitute the majority of THB victims in the EU.¹²⁰ As for Central Europe, their new acceptance into the EU, along with their “relatively well performing economies, demographic stagnation, continued emigration to Western Europe of especially skilled professionals, and labour market mismatches” form strong pull factors for typically mature Eastern European men who will eagerly fill gaps in the workforce and leave behind the unemployment and poor pay of their countries.

With this information in mind, it is easier to understand the situation and role of Poland in the human trafficking industry. As mentioned in the previous chapter, Poland had always been a country of emigration from which its citizens fled to escape the oppressive conditions of war and communism. But Poland’s accession into the European Union and eventual entrance into the Schengen zone aided the country in its transformation from a source state into a land of transit and destination, as well. This conversion resulted even as high- and low-skilled laborers continued to flow out of Poland into Western Europe (especially the United Kingdom and Ireland) with little intention of quickly returning home.¹²¹ It was the resulting labor shortages of this country with a population of 38,500,696 (July 2008), which prompted Poland to consider and

¹²⁰ Silvia Scarpa, *Trafficking in Human Beings: Modern Slavery*, (New York: Oxford University Press), 2008, p. 23.

¹²¹ As a note, Poland was ranked the fifth largest recipient of remittances as late as 2009. “Poland,” International Organization for Migration, January 2010, < <http://www.iom.int/jahia/Jahia/activities/europe/central-europe/poland/cache/offfonce/>>.

implement measures that would attract foreign labor, especially from bordering countries such as Ukraine and Belarus. As described by Beate Andrees, “Crime depends not on victims, but on customers.”¹²² Thus, Poland became, and continues to be, a destination country based on its needs and demands. But unlike the case for many other countries, the chief demand in Poland is not for cheap goods and services, but rather for the simple availability of workers.

To show Poland’s transition more clearly, one can observe statistics provided by institutions such as the International Organization for Migration (IOM). According to its 2010 World Migration Report, “over a thousand human trafficking victims from Ukraine and Belarus were helped by IOM, whereas less than 10 from Poland were assisted in the same time frame.”¹²³ This data may suggest that first, fewer people are leaving Poland and second, even fewer are being trapped in situations of trafficking. Furthermore, 500 to 1,000 victims assisted by IOM were found in Poland as their country of destination, indicating that an increasing number of victims are making their way into Polish territory. According to Polish police and border guards, endemic forms of THB in Poland, including labor and sex trafficking, have been growing by the day. Again, this is plainly demonstrated by reports made by La Strada, a non-governmental organization (NGO) focused on assisting victims of THB in Poland. In data collected, the following numbers were observed: In 2005, 224 victims were assisted (147 Polish women); in 2006, there were 230 victims (198 Polish women); in 2007, 276 victims (200 Polish women) and finally, in 2008, there were 306 victims (253 Polish women) assisted by La Strada. Likewise, in the same period of time, 6-10 child victims (ages 15-17) were found by the

¹²² Andrees, 30.

¹²³ “World Migration Report 2010,” 250.

NGO every year.¹²⁴ Data from the Polish Ministry of Interior show even graver numbers: “in 2002-2006, sixty victims under the age of 15 and ten aged 16-17 were identified.”¹²⁵ This demonstrates that trends such as the rise in domestic and child trafficking have been observed in Poland as well as the rest of the EU. Even more troubling is the fact that, due to the hidden nature of trafficking, such numbers are probably a tiny sample of a much larger reality.

Although it is anticipated that labor trafficking is a greater problem in Poland than sex trafficking, this does not remove the latter as a current threat. Since 1990, brothels disguised as massage parlors and day spas have become a popular Polish front for prostitution activities controlled by organized criminal networks. Similarly, the Ministry of the Interior’s Unit for Trafficking in Human Beings cited a surge in roadside prostitutes often located near border checkpoints and in possession of Polish tourist visas.¹²⁶ Yet, sex trafficking in Poland remains comparatively small and the country serves customarily as a country of transit for such activities. The more serious issue is the significant increase in unregulated employment of foreign nationals due to relatively easy access to the Polish labor market.¹²⁷ In particular, employers in seasonal industries such as agriculture and construction (as well as criminals working in begging) frequently take advantage of the uncomplicated process of recruiting nearby foreign migrants on short notice. Recalling information from the preceding chapter, it is understood that Poland is

¹²⁴ Joy Ngozi Ezeilo, “Report of the Special Rapporteur on trafficking in persons, especially women and children: Mission to Poland,” UN Human Rights Council, 2 June 2010, <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/138/76/PDF/G1013876.pdf?OpenElement>>.

¹²⁵ “Child Trafficking in the European Union: Challenges, perspectives, and good practices,” 51.

¹²⁶ “Trafficking in Human Beings in Poland,” (Warsaw: Ministry of Interior and Administration), Unit for Trafficking in Human Beings, 2008, <<http://prostitution.procon.org/sourcefiles/PolandTraffickingInHumanBeingsReport2008.pdf>>, p. 16.

¹²⁷ Ezeilo, 6.

desperate to attract foreign labor, as evidenced by increasingly lenient border-crossing rules between the country and its eastern neighbors, Ukraine and Belarus. Such permissiveness at the borders creates conditions ripe for abuse. For example, intermediaries and employers may exploit migrants from these countries who are unaware of their ability to move easily between the two particular places for the purpose of seeking legal, temporary work.¹²⁸ Furthermore, once such migrants enter Poland, they may remain ignorant of their ability to leave the country without punishment during a period of three to six months. Once again, this puts them in a position of vulnerability.

The U.S. Department of State claims that geographical proximity and language linkages play a key role in the prevalence of Eastern European victims in Poland. From 1995-2007, the Ministry of the Interior identified 245 victims from Belarus, 198 from Ukraine, 28 from Bulgaria, 18 from Romania, 17 from Moldavia, and 12 from Russia. But the prevalence of these nationalities may have more to do with the politics of their home countries than the language they speak. For example, as a result of Ukraine's Soviet past, infrastructure was never developed on the northern and eastern borders of the country, leaving these areas with lenient controls and limited enforcement capacity today.¹²⁹ As such, many asylum seekers and trafficked victims easily flow through the porous land of Ukraine in the hope of entering the EU. It is quite possible that the pressure from this migration route also sparked and facilitated the movement of many Ukrainians. As for Belarus, the administration under President Alexander Lukashenka boasts a horrible human rights record. This record only appeared worse after the

¹²⁸ Andrees, 20-1.

¹²⁹ "Ukraine: On the Margins," Human Rights Watch, 29 November 2005, <<http://www.hrw.org/en/node/11521/section/4>>.

administration refused to permit the United Nations special rapporteur on human rights in Belarus, Adrian Severin, into the country back in 2005.¹³⁰ Such examples demonstrate why there is such a strong incentive for both Ukrainians and Belarusians to flee their country in favor of their stable and close neighbor, Poland.

It is not the case, however, that only citizens of Eastern Europe find their way into Poland as victims of trafficking. Information gathered by the U.S. Department of State also shows that men and women from Bangladesh, China, and the Philippines have been found in conditions of forced labor within the country. Similarly, citizens of Thailand, Nigeria, Iraq, Mongolia, Vietnam, Turkey, Djibouti, and Uganda have been trafficked into Poland to work in situations of forced begging and debt bondage. THB is a global phenomenon that affects nearly every country in the world; the diverse backgrounds of the victims found in Poland highlight this overwhelming and dreadful truth. Yet there are a few undeniable particulars regarding the nature of THB in Poland. The information discussed up till this point emphasizes that Poland is a source, transit, and destination country for human trafficking. It is especially linked into the chain of intra- and trans-regional trafficking movements within Europe, particularly stemming from post-conflict and transitional areas in the east. Women from such unstable countries constitute a large portion of the victims trafficked into and around Poland and lastly, it is assumed that domestic, child, and labor trafficking trends pose the most serious and growing threats within Poland's borders.

Unfortunately, when referring to these rising threats, there is no available, solid proof to back the theory. In terms of labor trafficking, this is the case for several reasons:

¹³⁰ "Belarus," Human Rights Watch, 2005, < <http://www.hrw.org/en/world-report-2006/belarus>>.

1) this form of trafficking is very hidden and difficult to detect; 2) until late 2010, Poland only had partial criminalization of THB in its penal code; 3) the increasing efforts of police and NGOs remain behind in recognizing the increased victimization of men and rising occurrence of labor trafficking. Since the first reason has already been discussed in detail, focus must be directed to the second and third points. For example, although Poland signed and ratified the UN Convention on Organized Crime and its accompanying Palermo Protocols, it did not immediately update its national legislation to cover the entire definition of human trafficking as presented in Article 3 of the UN Trafficking Protocol. Although several articles of the penal code prohibited sex trafficking (including that of minors), no provisions specifically defined and addressed trafficking for forced labor until 2010.¹³¹ This fact made Poland last – among countries in the EU – to put an accurate and universal definition of trafficking into its laws.¹³² It also created an extreme obstacle for the identification of forced laborers as exploited victims rather than illegal immigrants. As such, it is possible that Poland quickly deported thousands of undocumented migrants without ever considering their possible need of protection or help.¹³³ In this way, the lack of proper criminalization of THB certainly affected the possibility of assessing Poland’s trafficking situation.

The third reason behind the lack of solid evidence in the rise of labor trafficking correlates strongly with the second. After joining the European Union, Poland visibly put

¹³¹ “Trafficking in Persons Report,” 10th edition, June 2010, U.S. Department of State, <<http://www.state.gov/documents/organization/142979.pdf>>, p. 273.

¹³² “In 2008, most of the countries [of the EU] had a trafficking in persons offence in place that included the criminalization of trafficking for forced labour, but this is a recent development. For instance, about 10 European countries expanded their definition of trafficking to include forced labour during the years 2005-2008.” “Global Report on Trafficking in Persons,” 51.

¹³³ Office to Monitor and Combat Trafficking in Persons, “Topics of Special Interest,” U.S. Department of State, <<http://www.state.gov/g/tip/rls/tiprpt/2010/142750.htm#top>>.

in large amounts of time and energy into combating human trafficking. For example, in 2008, about 500 officers were assigned to a “Central Team for Combating Trafficking in Human Beings [that] was established in 2006 as a special unit in the police headquarters.”¹³⁴ In order to improve and facilitate their work, similar small units were created at local levels. Likewise, the Polish labor inspectorate was given access to tax authority records, social insurance institution registers, and central citizen identification systems in order to ease the detection of undeclared work.¹³⁵ In 2009, training programs for national police, social workers, border guards, and members of the Internal Security Agency were provided for the purpose of strengthening victim identification and trafficking awareness. Prosecutors were also given specialized training as part of this program. Furthermore, the Polish Border Guard was recently given the right to carry out independent investigations into cases of THB. Last but not least, the Programme for Support and Protection of Victims/Witnesses of Trafficking in Human Beings was also implemented in 2006 to aid foreign nationals; as part of this, La Strada began running a National Intervention and Consultation Centre for Victims of Trafficking, which includes a 24-hour hotline for victims and shelters.¹³⁶ This rapid rise in new institutions, laws, and anti-trafficking endeavors, suggest that Poland understands the severity of the problem and is willing to identify victims of THB and battle their persecutors. However, a lack of appropriate focus prevents successful results from taking place more frequently.

Numerous programs and people have devoted time to the identification of victims, but the numbers of those found pale in comparison to the estimates of victims around the

¹³⁴ “Trafficking in Person’s Report,” 269.

¹³⁵ “Labour inspection in Europe: undeclared work, migration, trafficking,” 10-11.

¹³⁶ This hotline helped over 191 people between the months of April-December 2009. Ezeilo, “Report of the Special Rapporteur.”

world. The U.S. Office to Monitor and Combat Trafficking in Humans states that the ratio of victims identified to estimated victims is about 0.4 percent worldwide. The same is likely true in Poland, where attention remains on sex trafficking despite all efforts to the contrary.¹³⁷ For example the Central Police Team of 2006 is specifically devoted to combating trafficking in human beings, human organs, child pornography and pedophilia. As such, the continued emphasis on the sex industry is unmistakable. Similarly, even as an increasing amount of THB shelters opened throughout the country after 2004, still none were dedicated to men as of 2009.¹³⁸ This poses a grave problem, as the majority of victims trafficked for the purpose of forced labor are likely to be male. Finally, this may aggravate the fact that a large number of men refuse to see themselves as victims of trafficking and therefore refuse to cooperate with police or seek assistance.¹³⁹ If the Polish government and NGOs continue to stress sex trafficking over labor trafficking, this tendency will continue, preventing even more people in need of help from finding the assistance they require.

Modern slavery is a sharp thorn tearing at the skin of humanity. Yet this crime against man is not easy to remove or eliminate. Transcontinental sexual exploitation has long been considered the foremost disaster within the realm of human trafficking, with governments and NGOs devoting much of their time and resources into combating its continuation. Celebrities and the media have publicized the story, hoping to make a difference in people's awareness of the problem. And although such efforts are commendable and necessary, they remain insufficient. As the case of Poland suggests,

¹³⁷ However, "the government has yet to conduct a specific campaign to reduce the demand for commercial sex acts targeted at potential clients of prostitution." "Trafficking in Persons Report," 274.

¹³⁸ The Polish government did make specific efforts to ensure identified male victims of forced labor were given necessary assistance through a government-run crisis center. "Trafficking in Persons Report," 272.

¹³⁹ Ezeilo, 7.

human trafficking is a much more layered and complex issue than many realize. It does not need to cross the world or involve a wide range of cultures; trafficking can take place within one's own country and among one's fellow citizens. Likewise, this growing crime does not always result in sex work by women and children. Men constitute a large portion of the victim population; looking for work at a time of decreased mobility, they can be caught in situations of forced labor and debt bondage. As demonstrated, human trafficking is a horrible offense fueled by the unstoppable forces of globalization. It is only with true knowledge and understanding of the many facets of this crime that governments and institutions around the world can begin to put an end to its growth.

Challenges to Criminalization

Obstacles to the Successful Prosecution of Traffickers in Poland

While border securitization transformed into an *idée fixe* of the twenty-first century European Union, a sweeping misunderstanding of the true nature and extent of human trafficking plagued its member states, including Poland. This combination proved inimical to human security; as border patrols and police focused on illegal immigrants crossing Schengen borders, criminals turned to ever more discreet methods of human trafficking. As a result, cases that once constituted the exception within the EU – labor, domestic, and child trafficking – have slowly evolved into an expected norm. This vicious cycle, a direct result of increased state security after the terrorist attacks of 2001, was born of the misconceived practices propagated by international human trafficking legislation of an earlier year. In fact, the Palermo Protocols of 2000 – supplements to the United Nations Convention against Transnational Organized Crime – are the source of many of the errors present in today's *modus operandi* to this widespread atrocity.

Within these protocols, attention centers on the three Ps of trafficking: prosecution of traffickers, protection of victims, and prevention of the crime. Although such goals are noble and indisputably important, the documents' recommended strategies for their implementation are generally unsound and nominally concerned with human rights. As such, prevention through migration suppression as well as prosecution of transnational traffickers gain the greatest amount of attention; however, no clear guidelines are given for the accomplishment of either. Thus by signing the Convention, 117 countries agreed to a vague yet clearly biased state security approach in the battle

against THB; by analyzing the contents of this legislation, this chapter shall strive to understand the effects of such bias on anti-trafficking operations of Poland.

Protocol Against the Smuggling of Migrants by Land, Sea and Air

Smuggling of migrants, although not the focus of this thesis, is undeniably correlated to the crime of trafficking, as many initially willing migrants have been found in positions of exploitation and human trafficking. Relying on the assumption that smuggling is voluntary, this protocol unfortunately ignores such a relationship. Thus, the document ignores all human rights issues and promotes the view that improved border management is a panacea for all occurrences of smuggling. It is this latter conviction that may elucidate opinions expressed within the protocol on trafficking and explain many of the problems faced in the modern fight against THB.

In the very beginning of the Protocol Against Smuggling, attention is quickly turned to migration control. Article 3 begins this trend by defining forged travel documentation: “For the purposes of this Protocol: ... (c) ‘Fraudulent travel or identity document’ shall mean any travel or identity document... (ii) That has been improperly issued or obtained through misinterpretation, corruption or duress or in any other unlawful manner...”¹⁴⁰ Shortly after, Article 6 explains the reason for this detailed clarification: “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences... (i) Producing a fraudulent travel or identity

¹⁴⁰ “Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime,” United Nations, 2000, < http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_smug_eng.pdf>, p. 2-3.

document; (ii) Procuring, providing or possessing such a document...¹⁴¹ Finally, in addition to criminalizing the production and procurement of fraudulent travel documents, the Protocol also states that “each State Party shall take such measures as may be necessary, within available means: ... (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.”¹⁴² Thus, signatories are obligated to design visas, work permits, and other related papers in a manner that will be difficult to reproduce. Overall, the purpose of these articles is to stem corruption and unapproved cross-border travel at the first stop of migration preparation: consular offices at home and abroad. However, there are a few blatant problems with such directives.

Tackling the issues of fraudulent travel papers and corruption is by no means a laughable pursuit. Indeed, a fair amount of human trafficking literature expounds on the existence of corrupt officials as an underlying fuel for the modern slave trade.¹⁴³ There have been many incidents of border guards, police, and consular officials issuing unauthorized documents or tipping off traffickers before raids. Such episodes are especially prevalent in the post-communist states of Europe – in particular, ones that serve as source countries – where fiscal problems associated with political transitions often meant that officials were paid late, not in full, or not at all.¹⁴⁴ Presented with increasingly closed borders, desperate customs officials and border guards gained additional income by accepting bribes from organized criminal networks in exchange for

¹⁴¹ “Protocol Against the Smuggling of Migrants,” 3.

¹⁴² “Protocol Against the Smuggling of Migrants,” Article 12, p. 8.

¹⁴³ In fact, between 2001-2006, there were several reported instances of Polish border guards aiding gangs in trafficking. Leslie Holmes, “Human Trafficking & Corruption: Triple Victimization?” *Strategies Against Human Trafficking: The Role of the Security Sector*, Cornelius Friesendorf, ed., United Nations Office on Drugs and Crime and the Geneva Centre for the Democratic Control of Armed Forces, September 2009.

¹⁴⁴ Holmes, 102.

their help and cooperation. Professor emeritus Ray Godson of Georgetown University terms this resulting relationship the political-criminal nexus, in which state officials become facilitators rather than inhibitors of crime, blurring the lines between justice and criminality.¹⁴⁵ Similarly, corruption also worsens the nature of human trafficking. For example, bribes are a major expense for criminal networks and the cost is frequently passed down to victims in the form of debt bondage. Likewise, corruption may be a significant reason explaining victims' unwillingness to turn to, or cooperate with, the police: they presume many officials will simply ignore conspicuous wrongdoing for profit. Logically then, countries must strive to end all corruption.

Chapters 2 and 3 of this thesis attempted to demonstrate that increased border security measures primarily result in the aggravation of an already horrible crime. The same is likely to take place under the anti-corruption legislation of the Protocol Against the Smuggling of Migrants. As governments begin to closely observe those officials most susceptible to bribes, smuggling activity will necessarily become ever more hidden and unobtrusive. As a result, administrators deciding to continue collaboration with criminal networks will run greater risks and naturally charge larger fees for their services. As explained, these burdensome prices will eventually transfer over to the consenting migrants who will become less likely to afford high prices. With no other options, these vulnerable migrants may be forced into debt bondage and consequently, exploitation and trafficking.

Careful supervision and well-researched laws should exist for the purpose of curbing corruption and fraudulent documentation. However, it should be incontrovertibly

¹⁴⁵ Phil Williams, "Trafficking in women: The role of transnational organized crime," *Trafficking in Human\$,* Sally Cameron and Edward Newman, eds.,(United Nations University Press), 2008, p. 147.

clear that focusing on the creation and distribution of travel documents is insufficient in the face of such a large problem. But the writers of this Protocol cannot escape the border-centric ideology. Later in the document, Article 11 says: “States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants,” as well as, “States Parties shall consider strengthening cooperation among border control agencies...”¹⁴⁶ Consideration of methods to combat migrant smuggling outside of the state security context is barely visible. States are encouraged to implement preventative measures that target root socio-economic causes of such activity (poverty, underdevelopment); however, no actual examples or specific guidelines are given in these few lines. The suppression of the movement of people is thus the dominant concept throughout this Protocol.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

Written from the same viewpoint as the Protocol on Smuggling, this document focuses on the criminalization of an action with little regard for concomitant outcomes. In the words of Article 4: “This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established...where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.”¹⁴⁷ A couple points should immediately attract the reader’s attention: firstly, the contents of the Protocol apply only to traffickers and

¹⁴⁶ “Protocol Against the Smuggling of Migrants,” 7-8.

¹⁴⁷ “Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime,” United Nations, 2000, <http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf>, p. 3.

victims who cross national borders and function under the umbrella of a criminal network; secondly, victim protection appears to be treated as a mere digression or awkwardly attached afterthought. As such, occurrences of domestic or small ‘family-run’ trafficking operations are not recognized as criminal offences within this text.¹⁴⁸ Furthermore, by focusing on criminalization and prosecution, this document encourages traffickers to explore these latter forms of trafficking, thus creating yet another catch-22. These conflicting contents may explain the EU and Poland’s widespread ignorance regarding new trafficking phenomena as well as the occasionally injudicious actions taken against THB.

As mentioned, the attention to border controls which plagues the Protocol Against the Smuggling of Migrants is greatly present within the Protocol on THB. In fact, the most important articles on the subject are nearly written verbatim from the previous document. For example, Article 11 specifies: “Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.”¹⁴⁹ Similarly, the preceding article states that signatories “shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons.”¹⁵⁰ Once again, officials who are seen as relevant to the prevention of this crime are all involved with the policing and monitoring of borders and documents. Yet as core security sector forces are isolated as the prominent entity in the fight against THB, both the role of judicial personnel (judges,

¹⁴⁸ “Child Trafficking in the European Union: Challenges, perspectives and good practices,” European Union Agency for Fundamental Rights, (Luxembourg: Office for Official Publications of the European Communities), July 2009, p. 30.

¹⁴⁹ “Protocol to Prevent, Suppress and Punish Trafficking,” 6-7.

¹⁵⁰ “Protocol to Prevent, Suppress and Punish Trafficking,” 6.

prosecutors) and civil organizations (IOs, NGOs) in crime prevention is completely dismissed.

The prevalence of such clauses in both protocols undoubtedly contributed to the European propensity for border securitization and the tendency to view trafficking as just another form of illegal immigration. Sadly, this bad habit has led many trafficked victims to be treated as prostitutes or illegal aliens who are quickly deported to countries of origin rather than assisted as casualties of terrible crime. Similarly, traffickers are often prosecuted for crimes relating to immigration violations rather than human rights abuses, resulting in disproportionately mild punishments that do little to dissuade future criminals.¹⁵¹ Because of these misguided methods of dealing with THB, many traffickers have been reported to capitalize on their victims' fears of law enforcement, reminding them of the dangers associated with falling to the hands of police or immigration officers.¹⁵² Clearly, the emphasis on trafficking prevention through migration control is an inappropriate priority for such a Protocol.

The Trafficking Protocol does not, however, completely disregard the need for victim protection; relevant information is contained within three short provisions. The first, Article 6, says the following: "Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons..."¹⁵³ The use of the word 'consider' should be carefully noted, as it places no obligation on signatories. States 'shall' criminalize trafficking and strengthen

¹⁵¹ *Trafficking in Human\$,* Sally Cameron and Edward Newman, eds, (United Nations University Press), 2008, p. 7.

¹⁵² Kinsey Alden Dinan, "Globalization and national sovereignty: From migration to trafficking," *Trafficking in Human\$,* Sally Cameron and Edward Newman, eds, (United Nations University Press), 2008, p. 72.

¹⁵³ "Protocol to Prevent, Suppress and Punish Trafficking," 3-4.

borders, but providing assistance to victims remains a simple suggestion throughout the protocol. In the second instance, Article 7 states that “in addition to taking measures pursuant to Article 6...each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.”¹⁵⁴ Finally, Article 8 contains these written instructions: “When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national [or permanent resident]...such return shall be with due regard for the safety of that person...and shall preferably be voluntary.”¹⁵⁵ These two stipulations are central aspects of victim protection, as studies confirm that up to fifty percent of victims immediately deported are reintroduced into the criminal cycle.¹⁵⁶ Likewise, the families and communities of the sexually exploited often reject the returning victim; sending victims home may simply put them in a position of further punishment and societal isolation. But these important articles are simply recommendations, containing words such as ‘preferably’ and ‘consider’. Furthermore, the Protocol does not protect victims of trafficking from prosecution for illegal border crossing. The lack of such a provision constitutes a major oversight on the part of the Protocol’s writers, while the tenuous quality of the victim protection articles may explain why many European countries have developed minimal victim assistance programs.

Regardless, there are a few valuable provisions within the Trafficking Protocol that cannot be disregarded. For example, Article 9 states that signatories should “endeavor to undertake measures such as research, information and mass media

¹⁵⁴ “Protocol to Prevent, Suppress and Punish Trafficking,” 4.

¹⁵⁵ “Protocol to Prevent, Suppress and Punish Trafficking,” 4-5.

¹⁵⁶ Helga Konrad, “The fight against trafficking in human beings from the European perspective,” *Trafficking in Human\$*, Sally Cameron and Edward Newman, eds, (United Nations University Press), 2008, p. 162.

campaigns and social and economic initiatives to prevent and combat trafficking in persons.”¹⁵⁷ This is closely related to another significant directive within the same article: “States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures...to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”¹⁵⁸ Unlike the Protocol Against the Smuggling of Migrants, this document moves beyond push factors in the country of origin in order to emphasize the pull factors which exist within the territories of destination states. In fact, this attention to demand positively influenced future legislation of certain EU states such as Sweden, which passed legislation prosecuting customers and decriminalizing the activities of prostitutes.¹⁵⁹ As a result, Sweden is now the only Western European country not flooded by girls from Eastern Europe escaping their homes after the fall of the Berlin Wall.¹⁶⁰ Since the introduction of the Sex Purchase Act, “it has been estimated that there are only about 100 prostituted people in the country for around 9 million inhabitants.”¹⁶¹ Just as fighting demand alleviates trafficking problems, it is likely that a lack of laws dealing with demand may aggravate THB trends. By highlighting this, the Protocol encourages countries to follow in the steps of Sweden and battle trafficking by means other than border controls. However, the document as a whole under-appreciates the value of this method.

¹⁵⁷ “Protocol to Prevent, Suppress and Punish Trafficking,” 5.

¹⁵⁸ “Protocol to Prevent, Suppress and Punish Trafficking,” 6.

¹⁵⁹ Norway, Bulgaria, and Estonia have also made the purchase of sex illegal.

¹⁶⁰ “Russian suppliers of trafficked women have redirected their attention to countries such as Germany, where prostitution was *de facto* made legalized from the beginning of 2002.” Holmes, 111.

¹⁶¹ Richard Poulin, “Legalizing Prostitution Increases Human Trafficking,” *Human Trafficking*, Christina Fisanick, ed., (Detroit : Greenhaven Press), 2010, p. 34.

Overall, the Protocol to Prevent, Suppress and Punish Trafficking forms a shaky foundation for THB legislation and governmental action in Poland, Europe, and around the world. Priority is given to immigration and border controls at the expense of human security and victim protection. Likewise, the convoluted structure of the trafficking definition¹⁶² within the Protocol – although necessary – makes real-life translation and application difficult. For this reason, countries lacking their own definition of trafficking find the Palermo Protocol an unwieldy substitute; as a result, prosecutors and judges rarely use it in relevant cases. Furthermore, the vague nature of the definition has led to discrepancies in the legal frameworks of states, creating a fundamental impediment to an effective response to trafficking.¹⁶³ This, when combined with provisions dedicated to victims' rights that are few and uncommitted, provides signatories with biased demands and little solid direction. Based on these grounds, it is evident that the nature of the Trafficking Protocol was a source of inspiration for the renewed construction of Fortress Europe; member states were advised to secure their own borders and keep out the unwanted as a means of stemming terrorism and transnational crime.

European Convention on Action against Trafficking In Human Beings

It was not until 16 May 2005 that the European Council released this document for accession in Warsaw, Poland as a means of directing both European and outside signatories toward a human rights mindset on the subject of human trafficking. Unlike the preceding protocols, the text of this Convention gives the greatest priority to the rights of

¹⁶² See the Introduction of this thesis.

¹⁶³ Francesca Bosco, Vittoria Luda di Cortemiglia, and Anvar Serojtidinov, "Human Trafficking Patterns," *Strategies Against Human Trafficking: The Role of the Security Sector*, Cornelius Friesendorf, ed., United Nations Office on Drugs and Crime and the Geneva Centre for the Democratic Control of Armed Forces, September 2009, p. 72.

victims and the need to discourage demand for their services. However, some elements of the Palermo Protocols' mentality remain: Articles 7 and 8 reiterate the Trafficking Protocol's dedication to strengthening border controls and cooperation between security agencies, Article 18 criminalizes all activity as defined in the Protocol's definition of trafficking, and Article 20 establishes the forging and procurement of fraudulent travel documents as criminal offences. Yet the change in focus is also quickly apparent; added to the Protocol's definition of trafficking is item (e), which clarifies that "'Victim' shall mean any natural person who is subject to trafficking in human beings as defined by this article."¹⁶⁴ Although rather ordinary phrasing, the inclusion of this meaning automatically differentiates the European Convention from its precedent, the Palermo Protocol, by treating victims as more than an afterthought.

The new humanitarian attitude of the Convention is reinforced several times within the preamble. First, it is written that "respect for victims' rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives..." of those tackling the crime.¹⁶⁵ Unlike the Protocol, the protection of victims is thus given greater consideration than criminal prosecution and crime prevention. In fact, the preamble acknowledges this need for change in the following line: "Taking due account of the United Nations...Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children with a view to improving the protection which they afford and developing the standards established by them..." As such, the European Convention realizes the faults that were present within the Protocol

¹⁶⁴ "Council of Europe Convention on Action against Trafficking in Human Beings," Council of Europe, 16 May 2005, Warsaw, <<http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>>, p. 3.

¹⁶⁵ "Council of Europe Convention on Action against Trafficking," 1.

and aims to correct them, beginning with the expansion of the terms of the Convention to all forms of trafficking, whether domestic or transnational, whether connected to organized crime or not.¹⁶⁶

Another manner in which the Convention demonstrates its serious dedication to a human rights approach to trafficking as well as demand reduction is through Articles 5 and 6, whose contents say that Parties: 1) shall strengthen effective policies and programs for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings; 2) shall promote a human rights-based approach; 3) shall disseminate accurate information to all seeking legal entry into their territory, and 4) shall discourage demand through target information campaigns and education programs. Although attention is still paid to prevention of unsafe or unnecessary border crossing, the dominant focus is given to prevention of victim exploitation. Likewise, the words ‘consider’ and ‘preferably’ that were so characteristic of the Palermo Protocol on Trafficking are nowhere to be found. As a result, these directives are neither vague nor optional; signatories are expected to follow every instruction. And in terms of victim protection, these instructions are many.

Of the sections dealing exclusively with victims’ rights, Article 10 is one of the first, claiming that a victim of trafficking shall not be removed from a Party’s territory until the identification process is completed and that person has received assistance.¹⁶⁷ Even after the creation of the Palermo Protocol, many signatory states only provided support programs and assistance to those victims willing to cooperate with authorities; all others were summarily deported. This new convention, however, included provisions

¹⁶⁶ “Council of Europe Convention on Action against Trafficking,” Article 2, p. 2.

¹⁶⁷ “Council of Europe Convention on Action against Trafficking,” 5.

ensuring that such activity could not take place. Article 12 states: “Each Party shall adopt legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery...[as well as] to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.”¹⁶⁸ Yet these stipulations were not enough, another article insisted that signatories provide a reflection period of at least 30 days for all presumed victims and Article 14 asked that states issue renewable residence permits to victims under special circumstances or requiring a prolonged stay for continued cooperation with police investigations or judicial proceedings. By providing this vast range of non-coercive options for victims, it is possible that country authorities could foster trust as well as a proclivity for cooperation among future victims. In this way, the Convention’s human security focus may actually promote national security better than any border controls currently in place.

In terms of legal action taken against perpetrators, the Convention guarantees that the nature of proceedings effectively punish traffickers and support victims. Article 15 demands that states offer free legal aid to victims and “provide, in [their] internal law, for the right of victims to compensation from the perpetrators.”¹⁶⁹ Later, Article 23 asks Parties to adopt effective, proportionate, and dissuasive sanctions that are commensurate with the punishments for similar crimes. While punishing traffickers, the Convention also ensures that victims do not receive similar treatment. Article 26 instructs that, “Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful

¹⁶⁸ “Council of Europe Convention on Action against Trafficking,” 5-6. Similarly, article 27 states that “Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim...” “Council of Europe Convention on Action against Trafficking,” 10.

¹⁶⁹ “Council of Europe Convention on Action against Trafficking,” 7.

activities, to the extent that they have been compelled to do so.”¹⁷⁰ As previously discussed in this chapter, many countries continue to treat victims as illegal immigrants who qualify for quick deportation. But as Helga Konrad writes, “Though the struggle against human trafficking is connected with the struggle against illegal migration, it should be clearly understood...that only the traffickers should be prosecuted for illegal border crossing, and not the victims of trafficking.”¹⁷¹ After five years, the European Council finally recognized the value in this view; as a result, the words of the European Convention impose it on all signatories.

Furthermore, acknowledging the importance of legislative and judicial branches in the fight against trafficking, the Convention outlines certain aggravating circumstances that should prompt increased penalties for traffickers. According to Article 24, such situations include: “(a) the offence deliberately or by gross negligence endangered the life of the victims; (b) the offence was committed against a child; (c) the offence was committed by a public official in the performance of her/his duties; (d) the offence was committed within the framework of a criminal organization.”¹⁷² These conditions cover many of the stipulations within the Palermo Protocols, including trafficking through organized criminal networks and corruption. However, among these, the mention of child trafficking is most important; convictions against child traffickers are very rare within the European Union and child victims are rarely identified. In fact, between the years 2000-2007, final convictions for this crime were only reported in four EU member states.¹⁷³ Of course, the Convention’s content on child and other rare forms of trafficking could be

¹⁷⁰ “Council of Europe Convention on Action against Trafficking,” 10.

¹⁷¹ Konrad, 176.

¹⁷² “Council of Europe Convention on Action against Trafficking,” 9.

¹⁷³ “Child Trafficking in the European Union,” 14.

more specific and severe, but its acknowledgement is still a significant step in the right direction. It is evident that the European Council understands some of the gravest trafficking problems faced within the EU and has undertaken steps to address them.

Yet despite the prevailing concern with human security, the European Convention still has its flaws. For example, Article 12 stipulates that victims lawfully resident within a Party's territory shall be given access to the labor market as well as vocational training or education.¹⁷⁴ Although such a provision is good and necessary, victims that entered without a valid work visa are still not granted the one benefit they want most: the right to work. Yet in the end, such misguided directives are a very small part of this assertive document, which has already been ratified by 34 countries and signed by nine others. Poland signed the document on its release date of 16 May 2005, ratified on 17 November 2008, and finally implemented it on 1 May 2009 as a supplement to the already applied Palermo Protocols.¹⁷⁵ Unfortunately, GRETA (the Group of Experts on Action against Trafficking in Human Beings), a monitoring committee established in Article 36 of the Convention, just began its first evaluation of Poland's progress on February 2011. Although the results of this investigation are currently unavailable, further analysis of Poland's recent changes to its legislation and victim protection programs should reveal an the impact these documents have made on the country's fight against human trafficking.

¹⁷⁴ "Council of Europe Convention on Action against Trafficking," 6.

¹⁷⁵ It may be important to note that Ukraine has signed and ratified the document, which entered into force 1 March 2011. However, Belarus has neither signed nor ratified the document, reflecting a continuation of its poor attitude toward human rights.

Poland's Implementation of International Trafficking Law

As examined in Chapter 2, Poland's border-crossing and visa policies generally follow the European Union's stringent attitudes and requirements, which likely stem from state security directives within the Protocols on both Smuggling and Trafficking.¹⁷⁶ However, as a member of the EU, the country has also made recent strides in conforming to the European Convention's instructions in areas such as victim assistance, trafficking prevention, and transnational cooperation. Surprisingly, it is in the area of criminalization that Poland has encountered the most difficulty implementing international law expectations. Yet, as will be demonstrated in the remainder of this chapter, this one factor may explain the rather slow progress Poland has made in developing a long-term, successful anti-trafficking strategy for the country.

Recalling the information provided within the chapter on trafficking trends in Poland and the European Union, it is logical to suppose that Poland is home to a much larger number of trafficking victims than officially reported or found. For instance, it is estimated that anywhere between 300,000 and 500,000 Ukrainians currently work illegally on Polish territory, while only about 3,000 are in the country with valid work permits. Likewise, "while Polish consulates in Vietnam issue from 500 to 700 visas annually, the number of Vietnamese people in Poland is estimated at 50,000 to 60,000."¹⁷⁷ The disproportionate amount of undocumented workers and residents within

¹⁷⁶ For example, "since 24 August 2005, it is an offence to cross the border...with use of violence, threat, deceit or while cooperating with other persons (Article 264 (2) of the Penal Code), as well as to facilitate others to cross the border of the Republic of Poland in defiance of the law (Article 264 (3) of the Penal Code)." Marcin Wisniewski, "Trafficking in Human Beings – Statistics," *Trafficking in Human Beings in Poland*, Ministry of Interior and Administration, Warsaw 2008, <http://www.mswia.gov.pl/portals/pl/683/8973/Trafficking_in_Human_Beings_in_Poland.html>, p. 61.

¹⁷⁷ Zbigniew Lasocik and Łukasz Wieczorek, *Trafficking for Forced Labor in Poland*, European Institute for Crime Prevention and Control, 1 April 2011, Warsaw, <<http://www.heuni.fi/Satellite?blobtable=>

the country leaves plenty of room for trafficking activity, especially in less visible employment sectors. Not long ago, Poland attempted to handle this problem; for example, the National Labour Inspectorate was vested with the obligation to oversee the legality of the employment of foreigners in 2007. Nonetheless, this power excluded supervision over farms and households, two hidden areas that frequently employ trafficked victims and undocumented workers. Thus, although it is noteworthy that Poland is tackling the issue of illegal workers as a possible pool of trafficking victims, there is still much room for improvement.

The work of the Labour Inspectorate does not, however, constitute Poland's only efforts at victim identification and protection. In accordance with the European Convention's mandate, the country amended both the Aliens Act and the Act on the Protection of Aliens on the Territory of the Republic of Poland in April of 2005. Through these amendments, victims considering whether to cooperate with law enforcement officials could be granted residence permits as suggested within the Palermo Protocol. Since January 2009, soon after the ratification of the European Convention on Trafficking, these provisions were broadened. First of all, the reflection period for all foreign victims was extended from two to three months. (The term 'reflection' is used, as this three month-long period gives victims time to reflect on whether their desire to participate in criminal proceedings.) Secondly, if a victim decides to cooperate with judicial actions, he/she may apply for a six-month residence permit, which may be

MungoBlobs&blobcol=urldata&SSURiapptype=BlobServer&SSURIcontainer=Default&SSURIsession=false&blobkey=id&blobheadervalue1=inline;%20filename=Polish%20report.pdf&SSURIsscontext=Satellite%20Server&blobwhere=1296728243686&blobheadername1=ContentDisposition&ssbinary=true&blobheader= application/pdf>, p. 172.

renewed if necessary.¹⁷⁸ Thirdly, and most importantly, such victims may apply for a work permit from regional (Voivode) authorities.¹⁷⁹ This latter fact demonstrates that Poland went a step further than the Convention required, providing work permits based, not on the legal status of a victim's entry status, but rather on the readiness to cooperate with investigations or prosecutions.

After the passage of these victim-rights amendments and the signing of the European Convention, there was an immediate increase in the number of identified victims in Poland. Whereas 1,834¹⁸⁰ victims were registered during the period of 1995-2006 (on average, 152 victims per year), 1,021 were disclosed in 2007 alone, and 315 were uncovered in 2008. Yet, sadly, figures suggest that this flood of discovered victims was not correlated with the increased availability of victim service and assistance programs. For example, between 2002-2006, the police provided protection to only 16 victims while the La Strada Foundation – an NGO – assisted 36 victims. These small numbers (especially when compared to 152 victims a year) imply that few victims made use of accessible help or had knowledge of these services. Unfortunately, the numbers did not change significantly following the 2007 improvements to victim assistance laws. To illustrate this point, not one victim took advantage of the three-month reflection period in 2009 and only two foreign victims were granted temporary residence. Although

¹⁷⁸ “Poland has thus transposed the Council Directive 2004/81/EC (on the residence permit issued to third country nationals who are victims of trafficking of human beings or who have been the subject of an action to facilitate illegal immigration.” “Poland,” European Commission Fight against Trafficking in Human Beings, Europa, 16 December 2010, < <http://ec.europa.eu/anti-trafficking/showNIPsection.action;jsessionid=1vZSNVgZhpjM2vxz8PQ1n3XcFN2h1WTjpPnhShlBJ0sWvl3HhJKk!1145937442?sectionId=7ff7f8e1-11b0-421a-a7e8-000f64613a2b>>.

¹⁷⁹ According to the European Commission Fight against Trafficking in Human Beings, future amendments to the Aliens Act already include the possibility for cooperating victims to work without first obtaining permission.

¹⁸⁰ Only 16 of these victims were from outside of Europe. Wisniewski, 56.

there was an increase in cooperating victims – 21 in 2008 and 22 victims in 2009 –these numbers remain unexpectedly small. For this reason, it is necessary to assume that there is a secondary obstacle to improvement, which may in fact be Poland’s lag in the effective criminalization of trafficking.

Before examining Poland’s trafficking laws, it should be noted that the country has also enhanced work in trafficking prevention and transnational cooperation over the last few years. Since 2007, Poland has conducted an information campaign on trafficking for forced labor, particularly targeting Polish nationals seeking employment in other EU states. “The Ministry of Interior and Administration, in cooperation with the La Strada Foundation, published a guidebook for Poles working abroad, warning them about the dangers of labour exploitation.”¹⁸¹ Through this operation, Poland has significantly decreased its role as a source country for trafficking in human beings. Likewise, government-produced leaflets containing similar information were distributed in Polish consular offices located in three of the largest source countries of trafficking victims in Poland: Ukraine, Belarus, and the Russian Federation. Rather than focusing on legal border crossing, these pamphlets warn future migrants of the signs of human trafficking networks and list the places to get help if exploitation takes place. It is possible that this rise in visible information prompted the increased number of victims seeking freedom from their persecutors in the years of 2007 onward.

As for transnational cooperation, Poland’s police and prosecution offices have formed bilateral agreements with quite a few countries. For instance, signed pacts regarding operational information sharing now exist with almost every European country

¹⁸¹ “Poland,” European Commission Fight against Trafficking in Human Beings.

as well as with various third countries. Likewise, “cooperation between liaison officers...has been crucial, especially with countries such as Belarus, Bulgaria, France, Germany, Italy, Netherlands, Spain, Sweden, Ukraine and the United Kingdom.”¹⁸²

These treaties proceed from the realization that human trafficking is most often a chain of activities that crosses borders; as such, these transnational movements require a transnational response. This is especially true with regard to countries whose citizens are most often found within Polish borders. For example, from 2002-2006, 362 people were accused of trafficking; 82 were foreigners,¹⁸³ most of whom were Bulgarian and Ukrainian citizens. Thus, it is logical for Poland to form strong ties with these countries. According to the National Prosecutor’s Office, bilateral agreements with Ukraine allow for direct contact between police officers, without the need for involvement of the Ministry of Justice. This allows for quick extradition of criminals from Poland to Ukraine: “[As of 2 June 2010, there have been] 3 cases of extradition for trafficking-related crimes and 12 trafficking-related cases using the European arrest warrant procedure.”¹⁸⁴ Clearly, it is indisputable that such transnational cooperation is both taking place and proving useful to the Polish fight against THB. With continued practice, such partnerships may even lead to necessary data collection¹⁸⁵ and improved anti-trafficking methods throughout the region.

¹⁸² “Poland,” European Commission Fight against Trafficking in Human Beings.

¹⁸³ Thus Polish nationals are the main culprits of trafficking on Polish soil. (See: Wisniewski, 57.)

¹⁸⁴ Joy Ngozi Ezeilo, “Report of the Special Rapporteur on trafficking in persons, especially women and children: Mission to Poland,” UN Human Rights Council, 2 June 2010, <<http://daccess-ddsny.un.org/doc/UNDOC/GEN/G10/138/76/PDF/G1013876.pdf?OpenElement>>, p. 28.

¹⁸⁵ Data collection efforts in the EU have remained difficult: there is currently no data on irregular/labor migrants who are victims of trafficking nor is there information on the numbers/characteristics of most traffickers. Such intelligence would greatly facilitate police investigations and prosecutions. Bosco, di Cortemiglia, and Serojitdinov, 47.

Yet such human security improvements cannot make a large difference in Polish trafficking patterns without the presence of appropriate legislation and judicial action against the crime. Successful prevention of THB necessarily includes effective prosecutions that will deter traffickers from entering or operating in a specific country. Such prosecutions will not take place, however, without a clear definition of trafficking in a country's legislation as well as grave criminal sanctions that, in the words of the European Convention on Trafficking, are effective and dissuasive. A lack of such measures will only continue to attract traffickers and their activities. Unfortunately, until May 2010, Poland lacked both the definition and criminal sanctions recommended throughout all international trafficking legislation. For this reason, in order to better understand the Polish trafficking and victim assistance patterns of the first decade of the twenty-first century, one must first be aware of the laws that existed prior to the definition's introduction.

Prior to 2010, three articles in the Polish *Kodeks Karny* (Penal Code) were used to prohibit all forms of trafficking in humans: Article 203, Article 204 (sections 3 and 4), and Article 253. In this first article, it was provided: "If someone uses force, threats, deceit or abuses the dependent or vulnerable state of another person in order to get them to perform prostitution, he/she will be subject to 1-10 years in prison."¹⁸⁶ The next article also dealt with the issues of prostitution and sexual exploitation. Section 1 stipulated that if, for the purpose of material gain, someone persuades another person to perform prostitution, that persuader may receive up to three years in prison. Section 2 further elaborated this first claim, stating that whoever takes money from the person's

¹⁸⁶ "Kodeks karny," Art. 203, Sejm, 6 June 1997, Dz.U. 1997 nr 88 poz. 553, <[http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970880553+2010\\$06\\$08&min=1](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970880553+2010$06$08&min=1)>.

prostitution is also eligible for a similar punishment. As for paragraphs 3 and 4 – those most often used in trafficking cases – they stipulate that “If the prostituted person is a minor, the perpetrator is subject to 1-10 years in prison” and “If a person recruits or takes other people with the purpose of their prostitution abroad, they are also subject to 1-10 years in prison.”¹⁸⁷ Although these old provisions were detailed – covering domestic, transnational, and child sex trafficking – they completely ignored all other forms of THB, including crimes such as trafficking for labor, adoption, or organ removal.

In order to solve this problem, the Penal Code also included the ambiguous but all-inclusive Article 253. Paragraph 1 of this provision stated, “Whoever traffics in human beings, even with their consent, is subject to at least three years in prison.”¹⁸⁸ Section 2 expanded upon this law, saying that whoever organizes illegal adoptions for the purpose of material gain is subject to a punishment of 3 months to 5 years in jail. This second stipulation is rather surprising as cases of trafficking for illegal adoption are scarce within Poland, especially in comparison to other forms of trafficking which are completely ignored throughout the Penal Code. So even though a comprehensive prohibition of trafficking existed in Polish law, the lack of a detailed definition of THB, paired with the earlier emphasis on sexual exploitation, created an inevitable obstacle to the prosecution of a variety of criminals. There was, however, one redeeming aspect to these laws: their recommended disciplinary sanctions were well chosen, commensurate with punishments for other crimes such as rape. Unfortunately, without a description of trafficking existing within Polish criminal legislation, such sanctions were rarely penalties.

¹⁸⁷ “Kodeks karny,” Art. 204, §3, 4.

¹⁸⁸ “Kodeks karny,” Art. 253, §1.

The lack of an appropriate definition of trafficking compelled prosecutors on trafficking for forced labor cases to draw upon any alternative laws they could find. As such, Article 253 was often combined with organized crime and/or employment statutes. These laws included, but were not limited to: Article 218 of the Penal Code, which provides penalties for the malicious or persistent violation of employees' rights; Article 220, which criminalizes the exposure of employees' lives or health to danger; and Article 221, which makes the failure to notify of an accident at work, or an occupational disease of a person who performs paid work, into an illegal action.¹⁸⁹ Prosecutors also employed the contents of Article 27 from the Act on the Employment of Temporary Workers: "Any party, being a user employer or acting on behalf of a user employer, that fails to provide the temporary worker with safe and hygienic working conditions at the place assigned for the performance of temporary work...shall be subject to a fine."¹⁹⁰ Each of these statutes criminalized actions associated with, and regularly included in, actual forced labor cases. Even so, they did little to cover the unique, aggravated nature of trafficking.

In addition to the use of other Polish laws, prosecutors occasionally attempted to invoke international treaties and agreements in order to prove the occurrence of crime. For example, the International Labour Organization's Convention No. 29 – signed and ratified by Poland in 1958 – requires the criminalization of forced labor, which it defines as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."¹⁹¹ Since, under Article 91 of Poland's Constitution, all international treaties and agreements that are ratified by

¹⁸⁹ Lasocik and Wieczorek, 180.

¹⁹⁰ "Act on the Employment of Temporary Workers," *Suprimo*, 9 July 2003, <http://www.suprimo.pl/download/act_of_9_july_2003.pdf>, p. 7.

¹⁹¹ "C29 Forced Labour Convention," Article 2 (1), International Labour Organization, 1939, <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>>.

Poland automatically become part of the Polish legal system,¹⁹² the above definition of forced labor is binding in all Polish courts, as is the UN Protocol's definition of human trafficking. But according to Poland's National Action Plan Against Trafficking in Human Beings for 2009-2010, years of research show that Polish court judgments were not always in accordance with the letter or spirit of these definitions and that such definitions were also applied inconsistently.¹⁹³ For all of these reasons, since 2007, Poland's National Programmes on Trafficking recommended the addition of an amendment defining THB to the Penal Code. Yet the process of drafting such an amendment lasted over three years, impeding any future progress in the field of punishing traffickers.

Meanwhile, Poland attempted to compensate for its insufficient laws through other methods, such as the training of prosecutors. For example, in June 2007, "prosecutors acting as consultants to trafficking in human beings issues were appointed throughout the appeal prosecutors' offices."¹⁹⁴ In fact, these measures were met with some degree of success; the number of closed proceedings related to THB in 2007-2008 increased by nearly fifty percent compared with the years 2004-2006. But this was not enough; a large number of cases continued to be dismissed, pointing to the need for more extensive educational opportunities for prosecutors and judges.¹⁹⁵ This can be seen from statistics over the period of 1995-2006, when 77.88 percent of cases were discontinued

¹⁹² Lasocik and Wieczorek, 168.

¹⁹³ "National Action Plan Against Trafficking in Human Beings for 2009-2010," <http://ec.europa.eu/anti-trafficking/download.action;jsessionid=3b3vNw2fQpVXH3tf rLBYhpWdzfXkrM2pRJJyPGnBydNwjnTwwJnT!-403728570?nodeId=6661ae04-66bc-4342-839c-fea25433b55d&fileName=National+Action+Plan+against+ Trafficking+in+ Human+Beings+in+2009-2010_en.pdf&fileType=pdf>, p. 11.

¹⁹⁴ "National Action Plan Against Trafficking," 5.

¹⁹⁵ "The issues related to the scope of the concept of trafficking in human beings as well as to the rights and role of a victim in the criminal procedure are of particular concern." "National Action Plan Against Trafficking," 14.

due to the non-existence of an offence. Even as late as 2005, 12 out of 31 cases were dropped for this same reason. Information indicating that such patterns were ongoing in 2007-2008 was undoubtedly troubling and served as yet another argument for the passage of a definition of THB into the Penal Code.

For all of the above reasons, convicting criminals for their participation in THB activities was always a difficult task in Poland. From 1998-2003, only 64 individuals were validly convicted and imprisoned for this crime, while 24 were granted conditional suspension of the execution of their penalty.¹⁹⁶ Although numbers significantly increased after 2007, problems remained. For example, from the 122 alleged trafficking violations investigated in 2007, only 62 individuals were actually prosecuted and furthermore, only 43 were convicted. After post-appeal sentencing, 24 convicted traffickers received suspended sentencing and the remaining convicts were given prison sentences of one to five years. Similar patterns were detected in 2008 and 2009. In the latter year, Polish police investigated 105 alleged cases of trafficking, after which authorities prosecuted 79 individuals and convicted 52 of them under Articles 253 and 203.¹⁹⁷ After the appeals process, approximately 40 cases resulted in an enforced indictment. Exacerbating this poor rate of final conviction and punishment was the actual length of the THB cases; preliminary proceedings (such as investigations) generally lasted around nine months and “the time between the referral of a case to court and the start of the trial [was] often long – between five and eight months.”¹⁹⁸ Realizing that judicial training and victim assistance programs were not effective in the important process of punishing traffickers, Poland

¹⁹⁶ Wisniewski, 59.

¹⁹⁷ “Trafficking in Persons Report,” 273.

¹⁹⁸ Ezeilo, 26.

finally decided to adopt an amendment that defined trafficking in human beings for the Penal Code in May 2010.

This new definition of human trafficking was added to the Penal Code's chapter titled, Clarification of Important Terms. Labeled Article 115, paragraph 22 this clarification reads as follows:

“Trafficking in human beings is the recruitment, transportation, transfer, harboring or receipt of persons with the use of:

- 1) violence or threats,
- 2) abduction,
- 3) deceit,
- 4) misrepresentation or exploitation of others' ignorance,
- 5) misuse of an employment contract or the exploitation of a vulnerable situation or a state of helplessness,
- 6) the award, acceptance, or promise of material or personal benefit to a person having custody over another person

- in order to exploit, even with consent, especially in prostitution, pornography or other forms of sexual exploitation, or in forced work or services, in begging, in slavery or other forms of degrading exploitation, or in order to obtain the cells, tissues or organs in violation of the law. If the perpetrator's behavior applies to a minor, it is trafficking in human beings even when the methods of paragraphs 1-6 are not used.”¹⁹⁹

It is immediately apparent that this definition is closely modeled on the articles and trafficking descriptions present within both the UN Protocol and the European Convention; as such, it successfully covers all trafficking acts criminalized by these two international documents. As for a provision that specifically criminalizes these trafficking acts, the new Article 189a was added, saying: 1) Whoever commits trafficking in persons shall be subject to the penalty of imprisonment for a minimum term of 3 years; 2) Whoever makes preparations to commit the offense of THB shall be subject to the

¹⁹⁹ “Sprawozdanie z wykonania Krajowego Planu Działań przeciwko Handlowi Ludźmi na lata 2009-2010,” Zespół do Spraw Zwalczenia i Zapobiegania Handlowi Ludźmi, Warszawa, 25 January 2010, <http://ec.europa.eu/anti-trafficking/download.action;jsessionid=3b3vNw2fQpVXH3tfrLBYhpWdzfXkrM2pRJyPGnBydNwjnTwwJnT!-403728570?nodeId=cd8952a3-dad8-4d81-9f11-e063d3b59b6b&file Name=Report+on+the+implementation+of+National+Action+against+trafficking+in+human+beings+for+the+period+2009-2010_pl.pdf&fileType=pdf>, p. 8-9.

penalty of imprisonment for 3 months to 5 years.²⁰⁰ This stipulation is especially important as it criminalizes not only the action but also the intent, thus displaying an obvious commitment to the persecution of traffickers. This serious attitude toward trafficking is also visible by the physical relocation of the law within the Penal Code: whereas Article 253 (now removed²⁰¹) had been located under the chapter “Crimes against Public Order,” Article 189a is currently placed in the chapter “Crimes against Freedom.” The text of the original article, numbered 189 states: “Whoever takes away someone’s freedom is subject to 3 months to 5 years in prison. If unlawful deprivation of freedom lasts for more than 7 days or is paired with harassment/torment, they are subject to 1 to 10 years in prison.”²⁰² Moving anti-trafficking law into this realm consequently shifts the focus away from THB’s effects on the public and the role of the perpetrator and toward the negative influence on the victim; actions done *against* people are penalized rather than simple actions themselves.

The recent date of the trafficking amendments prevents the analysis of victim- and prosecution-related results, but it is likely that the new definition, phrasing, and placement of trafficking in human beings within the Polish Penal Code will make a significant, positive impact. Although the criminalization of trafficking for forced labor is still lacking, the new definition does acknowledge the existence of trafficking for work or service of a compulsory nature. This change, along with the removal of Article 204(4), may eventually cause police, prosecutors, and judges to expand their personal ideas of trafficking beyond the sexual exploitation of women. As a result, a greater assortment of

²⁰⁰ Lasocik and Wieczorek, 179.

²⁰¹ Article 204, §4 was also removed.

²⁰² “Sprawozdanie.”

criminals may be given the punishment they deserve and likewise, a larger number of victims may receive the assistance they so greatly need.

Most importantly, however, Poland finally concluded that the border securitization and migration control methods propagated by the Palermo Protocols are not sufficient in the fight against trafficking in human beings. Strengthening the role of border guards, creating strict visa policies, and building transnational cooperation between countries' security sectors may have led to minor improvements, but without effective legal action against trafficking criminals, such measures could have no lasting influence. As demonstrated, the number of irregular migrants and trafficking cases flowing into the country has only increased in spite of all state security efforts. At the same time, all attempts to boost human security through victim assistance have been unsuccessful without proper criminal legislation. Thus, it can be seen that the previously recommended strategies implemented to stem traffickers' willingness to enter Poland were inadequate. Alternatively, after careful research, it is clear that quick investigative procedures, consistent legal actions and strict prison terms will be more powerful deterrents to crime. As such, if Poland remains committed to its current human rights-based actions under its new legislation, it is quite possible that the fight against trafficking within the country and the European Union may truly begin to take place.

Conclusion

Non-Governmental Organizations and Human Security

Like the raging waters of a flood, the forces of human trafficking will not stop at man-made walls; instead, these fluid elements will always manage to find ways around them. While water seeps through cracks and turns inevitable corners, human traffickers adopt increasingly hidden operational methods. For this reason, Chapters 1 and 2 were juxtaposed to reveal the discrepancy between strengthened border controls and rising trafficking numbers. Although the European Union's emphasis on state security through border surveillance was an understandable – even logical – response to the terrorist attacks of 2001, this war-like strategy remains antithetical to the protection of human rights. Trafficking in human beings should not be treated as an assault on states but rather as a crime against humanity. Yet as Chapter 3 demonstrated, such an attitude has been especially difficult to cultivate after the ratification and acceptance of the Palermo Protocols, which propagate prevention through state securitization.

Luckily, the European Union and its member state Poland, eventually realized that combating THB requires the successful prosecution of traffickers and protection of victims. For example, Poland finally made changes to its Penal Code in 2010, criminalizing human trafficking in a blatant manner and removing the subtleties of its previous laws. Likewise, the EU drafted a Convention compelling signatories to take steps in the assistance of trafficking victims, which quickly led to the expansion of victim-based programs throughout Poland. But even with a rise in the serious consideration of a human rights approach to THB, states still refuse to let go of the old

approach of migration control. As such, a lack of resources and time for victim assistance and criminal prosecution development has prohibited a notable impact on trafficking trends. Predictably, EU member states will continue protecting their territories from unwanted infiltration; other changes will be made only in response to EU demands and funding promises. For this reason, the Conclusion of this thesis will argue that, with some changes, the inherent nature of non-governmental organizations (NGOs) may make them the best vehicles of change to modern anti-trafficking policies. Through the continual research and work of NGO staff, the human security approach may finally gain enough momentum to compel a significant change in the current government approaches to this multi-layered phenomenon.

Today, NGOs are perceived as both agents and products of such forces as globalization and democracy. Acting as representatives of civil society, they stand in positions of power analogous to those of governments and international corporations, participating “in value creation and governance around the world.”²⁰³ Typically separated from both state and market, these NGOs are formed out of the interests, will, and organization of dedicated groups of people for the purpose of meaningful collective action. It is this very root independence from the state that makes NGOs particularly effective in the fight against trafficking. For example, states often ignore certain human rights issues, fearing that necessary responses would infringe upon their sovereignty,²⁰⁴ yet NGOs have no need to consider such a possibility. Likewise, third-party status allows NGOs to assess the work of public- and private-sector actors within society and to

²⁰³ Hildy Teegen, Jonathan P. Doh, and Sushil Vachani, “The Importance of Nongovernmental Organizations (NGOs) in Global Governance and Value,” *Journal of International Business Studies*, Vol. 35, No. 6, November 2004, p. 464.

²⁰⁴ Here, it could be argued that states see the movement away from border controls and toward victim assistance (through extended residency, etc) as a form of infringement on their sovereignty.

determine the quality and success of their anti-trafficking actions. Last but not least, due to their highly specialized experts and resources, these organizations may contribute to the re- building of social capacity and the closing of governance gaps in countries of origin, transit, and destination.²⁰⁵

According to Dina Francesca Haynes, “When countries simply adopt legislation in order to secure entry into the European Union or to meet financial assistance requirements, there is no real ownership or commitment to eradicating trafficking. The legislation...will not be fully or adequately implemented at the local level without serious political will.”²⁰⁶ However, NGOs are generally immune to these impulses of ‘selling out’ or conforming for money. Having rallied and come into existence around a particular idea, they are unlikely to give up quickly or lose dedication. Thus, because of their commitment to social welfare ideals and people with unmet needs, NGOs are often trusted by broader segments of society than states.²⁰⁷ This makes them effective in the use of advocacy and operational means for the achievement of social benefit. Anti-trafficking NGOs can work with states to develop legislation, spread human rights ideas, and gather attention of lawmakers while simultaneously assisting those ‘dormant’ members of civil society with the greatest need of help. Once again, this combination of insider and outsider activities allows NGOs to reach the greatest number of people and

²⁰⁵ Teegan, Doh and Vachani, 468.

²⁰⁶ Dina Francesca Haynes, “Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers,” *Human Rights Quarterly*, Vol. 26, No. 2, May 2004, p. 233.

²⁰⁷ Teegan, Doh and Vachani, 468.

form an ideological bridge between policymakers and actual victims, without the use of law enforcement or border controls.²⁰⁸

In the Council of Europe Convention on Action against Trafficking in Human Beings (discussed in Chapter 3), Article 5 states “Measures established in accordance with this article shall involve, where appropriate, non-governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance.”²⁰⁹ This Convention acknowledges the necessary role of NGOs in the fight against THB and asks signatories to work with these organizations whenever possible. This is made even clearer in Article 27:

“Each Party shall ensure, by means of legislative or other measures, in accordance with the conditions provided for by its internal law, to any group, foundation, association or non-governmental organization which aims at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence established in accordance with Article 18 of this Convention.”²¹⁰

Once again, the writers of the Convention realize that the state apparatus does not necessarily serve as the best instrument for victim care and therefore, aim to ensure that third-parties take care of the human security aspect of human trafficking. Although such a view is reasonable and arguably correct, it may continue to deter the interest of governments in developing their own human rights mindset. However, for the purpose of

²⁰⁸ For example, NGOs and policymakers can team up to create economic and social systems that will address the root causes of human trafficking. This is something border guards and police could never do. (See: Charlene Porter, “European Alliance Combats Human Trafficking,” *Global Issues*, Volume 8, Number 2, June 2003, p. 29.)

²⁰⁹ “Council of Europe Convention on Action against Trafficking in Human Beings,” Council of Europe, 16 May 2005, Warsaw, <<http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>>, p. 3.

²¹⁰ “Council of Europe Convention on Action against Trafficking in Human Beings,” 10.

concluding this thesis, focus will be placed on the potential long-term role of NGOs in the battle against THB in Poland.

Created in 2004, the Polish Team on Prevention and the Fight Against Trafficking in Human Beings includes seats for the representatives of three Polish NGOs related to THB: La Strada Foundation, Caritas – Poland, and Nobody’s Children Foundation. In order to understand the possible contribution of these NGOs to anti-trafficking efforts in the country, it is first necessary to understand their current work in the field. First off, Fundacja Dzieci Niczyje (Nobody’s Children Foundation) was founded in 1991 for the purposes of protecting children from abuse and helping abused children and their caregivers through psychological, medical, and legal assistance. Likewise, the Foundation runs a program that cares for the needs of trafficked and/or unaccompanied foreign children. The principle goal of this latter program is to prevent child trafficking by raising the knowledge and awareness of professionals who may potentially come into contact with such children. Yet it also strives to develop child identification and assistance systems that will be effective and based in a respect for human rights. All of this is pursued through means such as publications, training events, lobbying, research, and assessment.²¹¹ Although the Foundation was not created with the explicit intention to oppose the new forces of child trafficking, it has recognized the seriousness of the new issue and made arrangements to confront it. Similarly, Caritas – Poland was created in 2004 to serve the needs of Poland’s poor and disadvantaged; yet as human trafficking emerged as a significant issue, the NGO began to run programs for countering social exclusion, including care centers for victims of forced prostitution and services that

²¹¹ “Projects and Programmes,” Nobody’s Children Foundation, 2010, < <http://fdn.pl/en/projects-and-programmes>>.

enable migrants and refugees to integrate into Polish society.²¹² Caritas – Poland also runs programs for women searching for legal work abroad, especially in Germany.

However, the leading NGO concerned with human trafficking in Poland is the La Strada Foundation. Established in 1995, La Strada International began as a collaboration between NGOs in the Netherlands, Poland, and the Czech Republic and has slowly grown into a unique combination of national direct assistance branches and an international advocacy group. Concerned with spreading accurate information, the website of the international headquarters stresses facts such as “trafficking does not only concern women and is not limited to the sex industry.”²¹³ A published flyer also states, “Although trafficking in human beings is recognized as a gross violation of human rights, current national and international anti-trafficking policies are instruments to fight organized crime and do not effectively address the root causes of trafficking nor do they deal with the human rights violations that trafficking causes.”²¹⁴ Throughout the website, the mission of the international NGO is clear: to influence the narrow-minded legislation of states through a human security example that focuses on active victim care. Unfortunately, although the goals of the organization are noble, they often remain unfulfilled within the Polish branch.

As written on the Polish NGO’s website, “The La Strada Program seeks to make the issue of traffic of women visible and to influence the authorities and public opinion to address the topic from a human rights perspective. The program also seeks to refer victims to support networks and to educate women and girls against potential dangers of

²¹² “Caritas Polska,” Caritas Internationalis, <<http://www.caritas.org/worldmap/europe/poland.html>>.

²¹³ La Strada International, 2011, <<http://lastradainternational.org/?main=home>>.

²¹⁴ La Strada Flyer, La Strada International, 2010, <<http://lastradainternational.org/lssidocs/LSI%2015%20Years%20flyer.pdf>>.

trafficking.” Here is the first glaring problem: although a human security strategy is embraced, its application is clearly limited to the female gender. In fact, when describing the nature of human trafficking in Poland, the organization only emphasizes the disproportionate effect of transitional economic depressions on women and claims that in the early 1990s “renewed gender discrimination infiltrated state institutions and the labor market,” resulting in a reserve army of feminine labor in Eastern Europe.²¹⁵ Although such information may certainly be true and may explain the increased number of trafficked women into the West, it ignores the issue of trafficking in men and children, and likewise forgets about trafficking for purposes other than sexual exploitation. In fact, many sources complain, “Poland actually has no such system for providing assistance to forced labor victims...”²¹⁶ Nobody’s Children Foundation focuses on trafficked children and youth, Caritas – Poland stresses help for victims of forced prostitution (essentially women), and La Strada – the only NGO completely dedicated to anti-trafficking efforts – has also chosen to place its attention on trafficked women. As such, the wise words of La Strada International have been widely ignored within the Polish non-governmental organization system.

Regardless of its gender-biased activities, La Strada carries out a great deal of necessary work. Functioning under a tripartite campaign structure, it covers the areas of (1) press campaigns and lobbying, (2) prevention and education campaigns, and (3) social

²¹⁵ “Why does trafficking occur in Central and Eastern Europe?” La Strada Foundation, <http://www.strada.org.pl/index_en.html>.

²¹⁶ Zbigniew Lasocik and Łukasz Wieczorek, “Trafficking for Forced Labour in Poland,” Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia, Anniina Jokinen, Natalia Ollus and Kauko Aromaa, eds., (Helsinki: Hakapaino Oy), 2011, <<http://www.heuni.fi/Satellite?blobtable=MungoBlobs&blobcol=urldata&SSURIdapptype=BlobServer&SSURIdcontainer=Default&SSURIdsession=false&blobkey=id&blobheadervalue1=inline;%20filename=Polish%20report.pdf&SSURIdcontext=Satellite%20Server&blobwhere=1296728243686&blobheadername1=Content-Disposition&ssbinary=true&blobheader=application/pdf>>, p 288.

assistance campaigns. In the first instance, La Strada conducts many “press interviews and conferences, participates in seminars and international conventions, and develops practical training sessions for professionals who confront trafficking in Poland.”²¹⁷ In this manner, La Strada engages in the advocacy aspect of NGO work, operating as an insider in the world of politics and influencing political actions and initiatives. In the second category, the NGO addresses potential victims through mass information distribution and school visits. It also runs a telephone hotline, offering advice and information to those considering migration.²¹⁸ Last but not least, in the third category, La Strada targets present victims of trafficking through direct assistance, counseling, as well as referrals to legal and medical help. “La Strada may also provide support to women who wish to file charges against their traffickers.”²¹⁹ Again the focus remains on women, but these grassroots prevention activities remain important due to their personal approach and target audience methods. In fact, the constant emphasis on informing Polish citizens considering migration may explain the recent decreases in Polish victims of human trafficking as explored in Chapter 2.

Yet La Strada does not solely focus on Polish citizens contemplating the possibility of work abroad. In 2006, the Ministry of the Interior and Administration formed the concept for a Support and Protection Programme for Victims of Trafficking in Human Beings; a year later, the La Strada Foundation won tender for its

²¹⁷ “Our Activities,” La Strada Foundation, <http://www.strada.org.pl/index_en.html>.

²¹⁸ For example, the website provides a booklet on factors to consider before traveling abroad for work; it recommends taking phone numbers of Polish embassies as well as extra money, cell phones, translation dictionaries, etc. This has been of even greater concern since the beginning of January 2011, when Polish workers could finally travel to Germany to work in hotel, food, and agricultural services without obtaining a work permit.

²¹⁹ “Our Activities,” La Strada Foundation.

implementation.²²⁰ According to the Ministry, the main objective of this program is to provide all trafficking victims with information, decent and safe conditions, and the possibility of advice and support at all stages of their crisis situation. Under the auspices of this program, La Strada also won an open competition in 2009 in order to appoint and operate the National Consulting and Intervention Centre for Victims of Trafficking.²²¹ The Centre – in conjunction with Program IRIS, developed in 2006 to offer Polish nationals a full program of support – offers assistance to victims or witnesses of trafficking, whether they are Polish citizens forced to work abroad or foreigners trafficked into Poland. As part of this goal, the Centre helps foreign victims legalize their stays and/or organizes their return home.²²² It also hires employees and volunteers willing to accompany victims to meetings with police and prosecutors and runs a shelter for victims, which provides safe accommodation, food, and clothing. Last but not least, the Centre also runs a 24-hour helpline for victims and witnesses of trafficking. The Centre claims that each of these means of assistance secure basic living necessities for victims and “build trust in regards to law enforcement and judicial bodies.”²²³ As such, human security methods are used in the hope of achieving state security objectives. Although Chapter 3 demonstrated that this had not been entirely effective in the past two years, it is

²²⁰ “Janet Johnson included in the support and protection programme for victims of trafficking in human beings,” Ministry of the Interior and Administration, Poland, 9 May 2007, <http://www.mswia.gov.pl/portal/en/1/267/Janet_Johnson_included_in_the_support_and_protection_programme_for_victims_of_tr.html?search=453470>.

²²¹ “Since its establishment in April 2009 until 31 March 2010, the Centre provided support to a total of 287 victims of trafficking by rendering interpretation services, legal consultations, psychological care, providing them with company during meeting with police officers and prosecutors. In 2009 a total of 77 Polish citizens and 116 foreigners received assistance at the Centre. In 2009 the Centre gave advice to victims and their families through phone and e-mail in 322 cases.” Marcin Czarnecki vel Sarnecki, “Assistance to Victims of Trafficking,” Ministry of the Interior and Administration, 4 August 2010, <http://www.mswia.gov.pl/portal/en/1/615/Assistance_to_victims_of_trafficking.html?search=453470>.

²²² Czarnecki vel Sarnecki, “Assistance to Victims of Trafficking.”

²²³ “What is the National Consulting and Intervention Center for the Victims of Trafficking?” Krajowe Centrum Interwencyjno-Konsultacyjne dla Ofiar Handlu Ludźmi, <<http://www.kcik.pl/en/index.html>>.

likely that the new definition of human trafficking in the Penal Code will begin to create positive changes.²²⁴ As traffickers recognize that victims in Poland no longer lack social and legal protection, their use of threats will lose in efficacy and they may choose to avoid the country altogether. In this way, a Polish NGO may finally act as a successful bridge between civil society and the state, resulting in the decreased occurrence of THB in the country.

Although Nobody's Children, Caritas – Poland, and La Strada are the only NGOs represented on the Polish Team on Prevention and the Fight Against Trafficking in Human Beings, one other organization remains consistently active in anti-trafficking efforts throughout Poland: namely, the Polish branch of the International Organization for Migration (IOM). Supporting the humane treatment of migrants, the organization is best known for its public awareness campaigns. For example, “Human Trafficking Knows No Limits” is a mobile exhibition of pictures and advice organized by IOM, the Ministry of the Interior and Administration, and the U.S. Embassy in Poland. First presented in late 2008, the mobile was taken to various locations around the country, including seven central train stations. Likewise, it was exhibited at relevant schools and academies and placed in the Warsaw train station during 2009. Finally, the gallery was also displayed in nine Ukrainian train stations and a short video summary was played on screens in select train wagons.²²⁵ In this way, IOM aim to target future professionals, possible Polish victims, and potential migrants coming from Poland's largest source country. Similarly, the organization teamed up with Poland's MTV, VH1, and Comedy Central to create an

²²⁴ However, even the Centre's website refers to all victims as 'she'. The continuation of such bad habits may also have a negative effect on the number of victims receiving assistance as well as the number of criminal proceedings against human traffickers for forced labor.

²²⁵ “Wystawa Handel Ludzmi Nie Zna Granic,” International Organization for Migration Polska, <<http://www.iom.pl/default.aspx?id=32>>.

ongoing campaign on popular television networks. A thirty-second commercial now asks people to research employment locations abroad before leaving for their unknown destination and also refers viewers to an informational blog.²²⁶ Once again, such bottom-up prevention efforts are likely to be more effective than laws or border controls. By placing images and information in places seen by many cross-border travelers, IOM is likely to reach the greatest amount of people at the most personal level possible.

The International Organization for Migration also undertakes the popular NGO activity of assessment. Most recently, it conducted a February 2010 door-to-door survey of 1005 Poles in the attempt to determine Polish knowledge of human trafficking. An article published by the British Embassy of Warsaw – the survey’s chief sponsor – concludes that Polish knowledge of THB exists only on a surface level and that ignorance is especially rampant in the area of safe practices when searching for work abroad.²²⁷ Furthermore, certain details of the survey reveal important facts regarding the Polish human trafficking situation. For example, interviewed Poles strongly linked human trafficking with prostitution, slavery or organ trade, whereas forced labor and begging were mentioned far less frequently.²²⁸ This is reflective of the attitudes of many policymakers and NGOs in Poland; thus, without strong programs and campaigns targeting victims of forced labor, it is clear that Polish citizens will remain ignorant and vulnerable to this ongoing problem. However, even more important to note is the following: “Poles believe that prevention of [THB] is primarily a responsibility of the

²²⁶ This commercial, like the mobile exhibit, is also sponsored by the Polish Ministry of Interior and Administration. “Kampania Handel Ludzmi Jest Faktem,” International Organization for Migration Polska, <<http://www.iom.pl/default.aspx?id=31>>.

²²⁷ “Badanie Opinii Publicznej” International Organization for Migration Polska, <<http://www.iom.pl/default.aspx?id=33>>.

²²⁸ “Public Awareness of Risks Involved in Human Trafficking and Taking Up Work,” British Embassy of Warsaw, February 2010, <http://www.iom.pl/Shared%20Documents/wersia_uk.pdf>, p. 8.

police (73%). A half of those polled think that this problem should be handled by governmental agencies. 36% of the respondents mention NGOs, 28% point to the media, 19% to local governments and 14% think it should be handled by...religious organizations.”²²⁹ Yet when asked who should help victims of trafficking, an increased number of Poles mentioned NGOs (49%). This change in answers demonstrates the fact that most people do not associate human trafficking prevention with the human security approach of protecting victims; rather, trafficking prevention is seen as a matter of state security. However, if NGOs expanded their activities and diminished the social exclusion of victims (as mentioned above), it is likely that such an attitude would fade away. In all, it is evident that Poles’ attitudes toward trafficking are an accurate indicator of the current policies and attitudes of the Polish government.

Although NGOs with a focus on human rights do exist in Poland, a large number of problems remain. First and foremost is the issue of ignoring forced labor victims; Lasocik and Wieczorek write, “there is only one organization in Poland providing assistance to victims of trafficking in human beings, but it is mainly oriented at helping the victims of trafficking in human beings for sexual abuse.”²³⁰ Thus, there is an urgent need to expand the orientation of available victim assistance provided by La Strada as well as a general need to create more care centers. The second problem goes hand in hand with this latter necessity; the activities of La Strada’s victim assistance are limited to Warsaw, an inconvenient location for many of the forced labor victims found in agricultural fields and rural construction or mining sites. Thus resources should be funneled into the creation of branches of care throughout Poland’s territory. This leads to

²²⁹ “Public Awareness of Risks Involved in Human Trafficking and Taking Up Work,” 14.

²³⁰ Lasocik and Wieczorek, 229.

the third point: “In the opinion of NGO experts, and those representing the labour and social policy area, the amounts allocated for [victim assistance] from the State budget are insufficient.”²³¹ For example, in 2009, the Ministry of the Interior and Administration earmarked PLN 950,000 for this purpose and the Ministry of Labour and Social Policy allocated PLN 120,000 for staff training in victim and witness treatment.²³² Altogether, this amounted to approximately 388,780 USD of aid, a number that seems absurdly small and ineffective for such an important policy initiative. Such a sum will barely suffice in the implementation of current plans; expansion of services and centers would require much larger degrees of funding.

Lastly, according to Filip Jasinski of the European University Institute, there are two other NGO-related problems in Poland: (1) “perceived coordination of the anti-THB activities between different national and international, governmental and NGO actors is seen as disappointing” and (2) “there truly exists a competition between various international and national anti-trafficking actors.”²³³ After researching the four dominant trafficking-related NGOs in Poland, it is extremely clear that such an observation is correct; there is little or no cooperation between these organizations. Even La Strada points to this fact:

“...The attempt to halt trafficking has been divided between organizations each of which works with a different aspect and from a different perspective. This leads to a fragmented line of battle against an increasingly well-organized and entrenched phenomenon. The Church sees victims as corrupted girls. Police view them as criminals or illegal

²³¹ Lasocik and Wieczorek, 229.

²³² “National Action Plan Against Trafficking in Human Beings for 2009-2010,” Ministry of the Interior and Administration, Warsaw, 2009, <http://www.mswia.gov.pl/portal/pl/682/8972/National_Action_Plan_against_Trafficking_in_Human_Beings.html>.

²³³ Filip Jasinski, “National Co-ordination of the Fight against Trafficking in Human Beings: Recommendations for Poland as a ‘New’ EU Member State,” European University Institute, Robert Schuman Centre for Advanced Studies, Working Papers No. 2006/16, p. 22.

migrants. Judges want their testimony. The media want a sensational story. Government is afraid they will become a social liability. Traffickers want to make a profit off them. La Strada, as a non-governmental organization, understands them as young women robbed of their human rights and puts their immediate needs first, often dealing with the symptoms rather than the causes of trafficking.”²³⁴

In this case, La Strada is criticizing the lack of cooperation and acknowledging its negative effects, but ironically, it achieves this through disapproval of its counterparts. For example, by condemning the Church, La Strada ignores the good work of Caritas – Poland in the field of migrants and sexually abused women. When attacking the media, the NGO forgets that the press is an important vehicle for spreading information to a scattered audience. However, if such criticisms were forgotten and an actual attitude of cooperation and respect were adopted, it is likely that significant progress could be made quickly and successfully.

Overall, it has been the goal of this thesis to analyze current anti-trafficking methods in the European Union, and specifically Poland, after the Palermo Protocols shifted universal focus on the prosecution of criminals, protection of victims, and prevention of the crime. Chapter 1 examined the EU’s fixation with border securitization and Poland’s faithful reaction to these demands for migration control. Referencing the desperate situation of many of the world’s poor, the chapter also emphasizes the fact that stopping traffickers and creating disincentives for migration through border controls is an unrealistic goal. The very nature of trafficking demonstrates that migrants are willing to take extraordinary measures for the possibility of a better life abroad; stringent immigration policies will only put them in a position of greater vulnerability. Next,

²³⁴ La Strada Foundation, “Why does trafficking occur in Central and Eastern Europe?” <http://www.strada.org.pl/index_en.html>.

Chapter 2 discussed the trends of trafficking throughout the EU and Poland and stressed that criminals are increasingly resorting to more hidden and unknown methods of trafficking as a means of evading law enforcement. Most importantly, this chapter highlights the disproportionate amount of government attention currently placed on sex trafficking and argues that ignorant policies and discussions reflect a fundamental lack of understanding. Last but not least, Chapter 3 predominantly explores the difficulties in criminalizing human trafficking in Poland and recognizes that effective prosecution is a key step in the fight against inhumane criminals. Until these persecutors are given adequate punishment, advancements in victim protection will be stifled. Thus, the chapter ends on a hopeful note, believing that the new changes to Poland's criminal code will allow the country to move forward in victim care and protection.

Throughout these chapters, however, it became increasingly clear that the three Ps of human trafficking do not sufficiently address the root causes of this terrible occurrence. Suggested multiple times throughout this thesis, it is clear that the forces of globalization have pushed for national borders that are open to the “international exchange of capital and goods, but also to increasing labor migration.”²³⁵ For example, as multinational corporations and structural adjustment policies infiltrate the territories of developing countries, millions of low-skilled workers are thrust into situations of low-paying jobs, social benefit cuts, and atmospheres that propagate Western values of consumerism and capitalism. For some, such contradictory combinations form a strong incentive for migration. More generally, it is an undeniable reality that the wealth gap between rich and poor countries and communities continues to widen, producing a steady

²³⁵ Janie Chuang, “Beyond a Snapshot: Preventing Human Trafficking in the Global Economy,” *Indiana Journal of Global Legal Studies*, Vol. 13, No. 1, (Indiana University Press), Winter 2006, p. 140.

flow of survival migrants²³⁶ looking for a chance at new life in the West, particularly Europe. This migration trend is further aggravated by pull factors such as the aging populations, labor shortages, and increased tax burdens on workers present within most of the wealthy countries, which are becoming increasingly dependent on migrants to fill labor gaps (as is the case in Poland). Yet the poor's desperate need to migrate and the wealthy nations' lack of labor are met with today's devotion to strict border controls, "render[ing] these migrants highly vulnerable to trafficking."²³⁷

Janie Chuang describes governments' resistance to freer immigration flows as the result of citizens' mistaken concerns about the possible negative impacts "on employment, national security, welfare systems, and national identity."²³⁸ She goes on to argue that lawmakers prefer to stay away from this controversial issue of confronting xenophobic reactions for the purpose of their own political advantage. Thus, the focus of governmental anti-trafficking efforts remains on restrictive migration controls and criminal justice issues rather than on long-term issues such as labor migration problems, which require more time and money. Similarly, by emphasizing the problem of sex trafficking and avoiding discussion of forced labor, it is likely that states are simply further denying the major obstacle of modern labor migration patterns. All of this points to the fact that, although maintaining state security and possessing extensive monetary resources, governments are inherently faced with a conflict of interest and therefore, ill equipped for an effective and extended fight against trafficking in human beings.

²³⁶ Janie Chuang defines survival migrants as those who "seek employment opportunities abroad as a means of survival as jobs disappear in their countries of origin." This is contrasted with "opportunity-seeking migration." Chuang, 138.

²³⁷ Chuang, 138.

²³⁸ Chuang, 146.

However, the inadequacy of states in this battle does not imply that non-governmental organizations are, by default, the best policymakers on the trafficking issue. As demonstrated throughout this conclusion, the few NGOs of Poland have many faults including narrow priorities, a lack of cooperation, and very limited resources. Likewise, operational activities inevitably give attention to informational campaigns and victim assistance, yet none of these preventative and protective measures deal with the forces of labor migration; people helped by these NGOs “are still left facing the socioeconomic conditions that rendered them vulnerable to abuse in the first instance.”²³⁹ But although there are many barriers to the proper functioning of anti-trafficking NGOs in Poland, these organizations still play an important role and serve as a constant reminder of the human security perspective that is so necessary to the fight against THB. Firstly, NGOs go beyond the minimal requirements of the Palermo Protocols on Trafficking and Smuggling, providing safety and care to victims who, for many years, fell between the cracks of anti-trafficking legislation. Secondly, by maintaining an identity separate from the state, NGOs are in a position to advocate human rights approaches to trafficking without any conflict of interest and with greater potential of gaining citizens’ trust. This image of independence also gives NGOs the unique ability to assess the effectiveness of governments’ anti-trafficking policies. Lastly, the issue-driven nature of NGOs makes them the ideal choice for long-term expert research and project development. Knowing that targeting root causes such as globalization and the push for labor migration will require creative, long-term strategic thinking, this last factor may prove to be the most important attribute of anti-trafficking NGOs.

²³⁹ Chuang, 139.

As a new member of the European Union, Poland was obligated to reinforce its borders with the East and act appropriately as the gateway to ‘Fortress Europe’. In this process, the citizens of Poland’s direct neighbors – Ukraine, Belarus, and the Russian Federation – were especially struck with a sense of social isolation and rejection. Now seen as *persona non grata* throughout Europe, these men and women continue to struggle between rising unemployment at home and the desire for cheap labor in the West; inevitably, many still realize that illicit means of travel are their only hope for a better life. Human trafficking has flourished in this area of the world and it is abundantly clear that even greater border controls and police activity will make little difference in the face of such migration pressures. Instead, gateway countries such as Poland must embrace a culture of human rights through improved criminal prosecution and victim assistance. Such an approach will likely deter the willingness of traffickers to risk entrance into the country and will likewise encourage victims to stand up to their persecutors and seek help without fear. In this manner, trafficking in human beings will lose its high profitability and possibly decrease in occurrence. Yet, without strategies targeting the socioeconomic root causes of trafficking and opening borders to greater flows of migration, extensive change will be impossible. For this reason, NGOs should dedicate their time to comprehensive research and assessment of this situation and – by gaining public trust through continued good works – attempt to create a fundamental change in citizen’s attitudes toward immigration. Only after this potential alteration of beliefs will states finally have the opportunity to answer the cries of the poor migrant and effectively end this terrible crime against humanity.