

2015

# Exploitation in Migration: Unacceptable but Inevitable

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## EXPLOITATION IN MIGRATION: UNACCEPTABLE BUT INEVITABLE

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*For the millions of people who want or need to move, migration has become progressively more expensive and perilous. Legal access to preferred destinations is now an option only for the privileged few. The rest are forced into the arms of those able to help them circumvent ever-increasing controls and deterrents. Migrant smuggling, the business of moving people across borders for profit, is a sordid and dangerous enterprise, often placing lives and well-being at serious risk. And the dangers do not end there. Many of the world's migrants find themselves deeply in debt to recruitment agencies, brokers, and sometimes their own employers before they even start work. In too many cases, these asymmetrical arrangements reach the level of human trafficking: Victims are tricked or coerced into situations of exploitation from which they cannot escape. This article argues that such practices, while unacceptable, are also inevitable. Without profound reforms to global migration regimes—and indeed to the organization of the global economy—there is likely no effective solution to migration-related exploitation. But important steps can be taken, even within the limits of current political constraints, to minimize vulnerability and harm. These include promoting political and legal acceptance of basic rights for all migrants, developing quality control systems for international labor recruitment, eliminating recruitment fees and sponsorship schemes, and co-opting civil society in an effort to increase transparency and accountability of governments and business activities.*

In October 2013, an overcrowded fishing boat, carrying smuggled migrants from Libya to the Italian coast, was set on fire to draw the attention of rescuers.<sup>1</sup> Over a hundred passengers were rescued after the vessel capsized, but more than 360 women, men, and children perished. It was alleged that vessels in the area ignored distress signals and failed to come to the rescue of drowning passengers, perhaps fearing prosecution for abetting migrant smuggling. Investigations revealed that some of the passengers had been subject to severe exploitation and that many had been forced to pay smugglers for their freedom from a detention center in Libya and the onward journey to Europe.<sup>2</sup>

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Each month, tens of thousands of Nepali citizens travel to the Gulf countries for work, contributing to remittances that make up close to a quarter of Nepal's gross domestic product (GDP).<sup>3</sup> The costs are high. A "ladder of intermediaries," essential to navigating the complex emigration and placement process, ensures that most migrants are heavily in debt before even leaving home.<sup>4</sup> At their destination, they are at high risk of exploitation and physical and sexual abuse, routinely excluded from the protection of national labor laws, and prevented from changing jobs without the permission of their employers. Whether abroad or back home, there is no effective access to justice for even the very worst cases of exploitation.<sup>5</sup>

The overland routes from Central America and Mexico to the United States expose migrants to "disproportionate levels of risk of human rights violations, disappearance, and death."<sup>6</sup> Organized criminal gangs extort fees from their "human cargo" for safe passage through Mexico and across the U.S. border, sometimes also forcing them to carry narcotics. Those who cannot pay are frequently injured or killed. The Mexican Human Rights Commission has estimated that around 20,000 migrants are kidnapped for ransom each year, sometimes with the complicity of national authorities.<sup>7</sup>

Over the past decade, Yemen has emerged as a major transit point and destination for smuggled migrants from the Horn of Africa, many of them Somali and Ethiopian asylum seekers. A recent meta-analysis of available information confirms that throughout their journey and at their destination, these migrants are highly vulnerable to physical violence, sexual assault, extortion, trafficking, and detention by national authorities.<sup>8</sup> The journey of female migrants is particularly hazardous. Many thousands have disappeared, presumably abducted for purposes of exploitation.<sup>9</sup>

For the millions of people who want or are forced to move, international migration has become increasingly expensive and hazardous. This is not surprising. Contemporary migration regimes deliberately aim to restrict the ability of individuals to secure legal access to preferred destinations. This forces migrants, including refugees who are compelled and have a legal right to seek asylum, into the arms of those who are able to help them circumvent ever-increasing controls. Migrant smuggling, the business of moving people across borders for profit, is reported to be one of the fastest-growing and most lucrative forms of organized criminal activity. Smugglers crowd their human cargo into shipping containers and onto boats and trucks. Many arrive safely and consider the investment well spent.

But migrant smuggling is a dirty business. Criminality and excessive profiteering routinely place lives and well-being at serious risk. Each year, thousands of smuggled migrants drown trying to get into Europe across the Mediterranean, cast adrift on unseaworthy vessels once they had paid for their passage.<sup>10</sup> Similar stories

are told of those trying to get into Australia from transit points in Indonesia, and into the United States across its vast, hostile southern border with Mexico.<sup>11</sup>

Smuggling fees are just one way to make a profit out of the very human desire to better one's life through migration. Debt-financed migration, the only way many people will ever be able to afford to move, is closely linked with highly exploitative labor. Hundreds of thousands, perhaps millions of migrants, are currently working to pay off grossly inflated debts that are imposed by recruitment agencies, brokers, and sometimes their own employers. In too many cases, these arrangements reach the level of human trafficking: Victims are tricked or coerced into situations of exploitation from which they cannot escape, laboring for months or even years in brothels and factories, and on fishing boats and construction sites, under terrible conditions for little or no payment.<sup>12</sup>

**Debt-financed migration, the only way many people will ever be able to afford to move, is closely linked with highly exploitative labor.**

Despite a growing awareness of the scale and seriousness of exploitation in migration, the international response has been piecemeal and inconsistent. Widely accepted treaties impose obligations on states to criminalize trafficking, and those who have been trafficked are generally entitled to immediate protection and support, at least in theory. Current estimates, almost of all them empirically feeble, speak of 30 million or more victims of trafficking.<sup>13</sup> But the number of migrants formally identified as trafficked remains stubbornly low and, despite strong laws, prosecutions for trafficking-related exploitation are rare in all parts of the world.<sup>14</sup> Other treaties oblige states to criminalize migrant smuggling. But members of this group are considered to be somehow complicit in their own misfortune and thereby not to be "victims" deserving of protection and support. The issue of exploitation through debt-financed migration is not even on the table: Too many states benefit from the current arrangements to create and sustain a momentum for change. Even international human rights law provides precious little comfort. States have been very careful over the years to restrict the rights of migrant workers—particularly those in an irregular situation. And states are not averse to using the specter of exploitation in migration to justify increasing securitization of their borders, often to repel asylum seekers who, if able to reach their borders, would be entitled to seek and obtain protection from persecution.

In this article, these complicated matters are considered through the lens of the two practices identified through the introductory case studies: migrant smuggling and human trafficking. How do they happen, to whom, and why? Where

are the distinctions and the overlaps? This analysis also considers the responses of states and the international community, interrogating underlying motives and the effectiveness of current responses in addressing the real drivers of exploitation in migration. After concluding that exploitation is an inevitable consequence of the tensions between immigration restrictions, pressures to move, and relentless demand for cheap, flexible labor, a number of potential opportunities are identified to break the current deadlock.

## **MIGRANT SMUGGLING**

The term “migrant smuggling” refers to the unauthorized movement of individuals across national borders for the financial or other benefit of the smuggler.<sup>15</sup> This definition, which was agreed upon by the United Nations (UN) in 2000 in the context of establishing a uniform criminal offence, deliberately excludes those who are helping to move people purely for humanitarian reasons.<sup>16</sup> But it remains sufficiently broad to apply to a wide range of facilitators of irregular migration including recruiters, organizers, transporters, and providers of fraudulent travel and identity documents. The identity of the smuggled migrant is not relevant: The cross-border movement of refugees is still considered “smuggling” when it involves a financial or other reward.

Attempts to estimate the number of migrants smuggled each year are stymied by the absence of reliable data. But it is reasonable to presume that most of the world’s 30 million or so irregular migrants have used the services of smugglers at one or more points in their journey.<sup>17</sup> That presumption is based on our imperfect but improving understanding of how irregular migration actually works in practice: It seems to be near-impossible for an undocumented migrant to make the trip across the Mediterranean from North Africa to Southern Europe without the help of a paid intermediary.<sup>18</sup> Accordingly, it is likely that most, if not all, of the 276,000 illegal border crossings in that region during 2014 involved smuggling.<sup>19</sup> Similarly, while asylum seekers from Iran or Afghanistan may be able to get to Indonesia or Malaysia on their own, the final leg of their journey by sea to Australia will always require costly third-party assistance.<sup>20</sup> Many individuals still seek to travel through Mexico to the U.S. border independently, but the combination of tightened border controls and monopolization of major routes by criminal groups is making independent travel much more difficult.<sup>21</sup>

Despite a growing body of empirical research, our understanding of how migrant smugglers operate is similarly incomplete. Certainly there are significant regional/route differences in *modus operandi*. For example, the involvement of drug cartels appears to be limited to smuggling operations around the U.S.-Mexico border. This same region and parts of Africa have become sites for kidnapping

and extortion; practices that are not reported in other smuggling hot spots. While migrant smuggling has been frequently associated with organized crime, researchers increasingly speak of an “enterprise model, involving large numbers of smaller, flexible criminal networks, organizations[,] or individuals interacting where necessary.”<sup>22</sup> Fluidity and decentralization appear to be critical to success, enabling smugglers to adapt quickly to changes in demand and law enforcement pressures.<sup>23</sup>

Available information does confirm, very clearly, that exploitation and mistreatment are common parts of the migrant smuggling experience. The case studies set out in the introduction are illustrative of practices and trends that are widespread in facilitated illegal migration. For all smuggled migrants, the clandestine nature of their journey; the often unscrupulous and corrupt conduct of their facilitators and collaborators; and the extent to which some states will go to prevent their departure, transit, or arrival all operate to create or exacerbate serious risks to personal security and well-being. Migration-related mortality is a poor proxy measure of overall exploitation but is the only one currently available. Over 4,000 “migrant border-related” fatalities, inevitably involving smuggling—and most the result of drowning, dehydration, and asphyxiation—were officially recorded in the first nine months of 2014.<sup>24</sup> Given the invisibility of smuggled migrants in life and death, this number likely represents just a fraction of the real total.

The extent to which some states will go to prevent migrants’ departure, transit, or arrival creates or exacerbates serious risks to personal security and well-being.

## **THE INTERNATIONAL RESPONSE TO MIGRANT SMUGGLING**

International action against migrant smuggling is very recent. In fact, it was only in the early 1990s that a small group of relatively wealthy destination countries, worried that the involvement of well-organized facilitators in irregular migration presented an additional and serious threat to the integrity of their borders, managed to get the issue on the international agenda.<sup>25</sup> While some, including the United States, had begun to take unilateral action earlier, the limits of a purely national approach were increasingly apparent.<sup>26</sup> In 1993, European ministers convened in Budapest and jointly affirmed that: “It should be a criminal offence to smuggle or to attempt to smuggle illegal migrants.”<sup>27</sup> Seven years later, in the context of a broader agreement on transnational organized crime, the UN General Assembly (UNGA) adopted the first-ever international agreement on migrant



smuggling, the Protocol against the Smuggling of Migrants by Land, Sea, and Air (“Migrant Smuggling Protocol”).<sup>28</sup> This treaty, to which 141 countries are now party, requires states to criminalize smuggling and work together in prosecuting smugglers and preventing future smuggling.<sup>29</sup> It acknowledges the risks of exploitation but makes clear that smuggling (unlike trafficking of persons) is not of itself exploitative by explicitly declining to identify smuggled migrants as “victims.”<sup>30</sup> States may not use the protocol itself to criminalize smuggled migrants, but they are not prevented from otherwise doing so.<sup>31</sup>

The Migrant Smuggling Protocol proved to be just the first step in a comprehensive and increasingly relentless attack by the powerful states of destination on the facilitators of irregular migration. For those states most affected, this approach to dealing with irregular migration made strong political sense. Criminalization of irregular migrants themselves is always an option but one that is often problematic for liberal democracies—especially given the reality that many asylum seekers, including those with genuine claims to refugee status, use the services of smugglers in their often desperate search for protection. Criminalization of the facilitation of such migration can be seen and sold quite differently: less an attack on individual migrants than on those who are profiting from their vulnerability and desperation. In 2009, justifying an increasingly hard line against the facilitated movement of asylum seekers into that country, the Australian prime minister declared, “People smugglers are the vilest form of human life. They trade on the tragedy of others, and that’s why they should rot in jail and, in my own view, rot in hell.”<sup>32</sup> More recently, European Union (EU) officials responding to the novel and alarming phenomenon of “ghost ships”—decrepit container ships full of up to 1,000 migrants who are abandoned by smugglers at or close to shore—have called for “more means, more instruments, [and] more money” to counter those who are “employing new methods in order to exploit desperate people.”<sup>33</sup>

Further, by emphasizing the connection with transnational organized crime, states are more easily able to characterize migrant smuggling as a threat to public order and national security. This in turn helps to both justify and explain the growing externalization of border controls and the increased militarization of migration management. Examples of this new approach are plentiful. European states now operate within a complex web of laws and policies that enable them to conduct surveillance and interdiction operations throughout the Mediterranean, including in the territorial waters of third countries.<sup>34</sup> Some have paid dearly for this privilege. Between 2007 and 2008, Italy concluded a series of secret deals with Libya, promising payment of €5 billion in exchange for Libyan cooperation in the interception, detention, and return of “clandestine immigrants.”<sup>35</sup> This amount is likely less than what the Australian government has spent over the past several

years waging an aggressive, military-led “war against people smuggling” that has involved interceptions and turn-backs at sea, as well as mandatory off-shore detention of all irregular maritime arrivals.<sup>36</sup>

## **HUMAN TRAFFICKING**

Human trafficking can be distinguished from migrant smuggling on a number of grounds, but the most important is purpose: migrant smuggling seeks to facilitate a person’s illegal movement for profit; trafficking seeks their exploitation. In a classic migrant smuggling situation, the relationship between the smuggled migrant and his or her facilitator ends when the journey is completed. In cases of trafficking, both profit and purpose are directly tied to the exploitation of the migrant’s labor. Of course, the lines are not always clear. Many migrants who end up in a situation of trafficking are first smuggled across national borders. Sometimes, smugglers themselves decide to take on the role of trafficker: using their clients for extortion, selling them into sexual enslavement or forced labor. And even when they have paid off their smugglers, migrants can remain in debt to those who funded their trip, making them highly vulnerable to exploitation in the destination country.<sup>37</sup>

**Recruiters are skilled in selling stories of a better life abroad.**

Trafficking can take place within the borders of a single country. The practice of bonded labor in India, for example, bears many of the hallmarks of trafficking, as does the use of forced child labor in the Uzbek cotton industry.<sup>38</sup> But migration presents an additional vulnerability. Recruiters are skilled in selling stories of a better life abroad: promising Thai laborers, for example, that they can make much more money as farm hands in Hawaii, or deceiving Ukrainian construction workers about the conditions of work available to them on building sites in Russia.<sup>39</sup> Sometimes deception goes much deeper. When Eastern Europe opened up in the early 1990s, many thousands of women from former Soviet states were lured to the West and Israel with the promise of waitressing and care jobs, only to find themselves forced into prostitution.<sup>40</sup> Even those who were prepared to work in the sex industry never understood the extent of the exploitation they would suffer.<sup>41</sup>

Migrants are also highly vulnerable to the tactics used by traffickers to exert and maintain control. Victims are frequently trafficked to places where they cannot speak the language and have few or no contacts. Often their passports and identity papers are confiscated, increasing their sense of isolation and dependence. While physical restraints are sometimes used to prevent victims from escaping,

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traffickers will often use less direct methods that can be just as effective. For example, a threat to turn victims over to authorities can be especially powerful when used against someone who is in the country unlawfully and who expects law enforcement agencies to be violent and corrupt. Debt bondage is one of the most frequently reported methods used by exploiters to control trafficked persons. Debts can relate to the initial transport or to a recruitment or “service” fee, but usually bear little relation to actual costs incurred. Often, the debt is not fixed,

**We know enough about trafficking trends and patterns to understand that millions of people, many of them migrants, are likely trapped in situations of exploitation.**

increasing to take account of real or imaginary expenses in a way that keeps victims trapped for extended periods. Migrants’ heavy reliance on debt to fund their travel renders them especially vulnerable to trafficking through debt bondage.

While irregular migrants are at particular risk, legally sanctioned migration can also be a route to trafficking-related exploitation, with laws and policies in destination countries operating to create or

compound vulnerability. For example, in many countries, migrant workers are tied to a particular employer, prohibited from changing jobs without that employer’s permission. They are often excluded from the protection of national labor laws and not allowed to join trade unions. The situation of female migrant domestic workers in the United Arab Emirates (UAE) provides a case in point. Under the *kafala* sponsorship system, employers act as visa sponsors and are thereby able to retain tight control over their domestic workers, exacerbating their isolation and vulnerability to abuse and exploitation.<sup>42</sup> The UAE’s labor laws do not apply to “domestic servants working in private residences and the like.”<sup>43</sup> This gives employers virtually unfettered freedom to regulate their working hours, sick days, and days off. It also means that there are few or no remedies available for unpaid wages, contract substitution, or excessive recruitment fees.<sup>44</sup>

We know enough about trafficking trends and patterns to understand that millions of people, many of them migrants, are likely trapped in situations of exploitation. But attempts to calculate the scale of the trafficking problem have invariably ended badly. For years, the U.S. State Department’s Trafficking in Persons (TIP) Report confidently reported numbers of dubious credibility. Only in 2014 did the State Department come clean, acknowledging that, “Reliable statistics related to human trafficking are difficult to find. Human trafficking is a clandestine crime and few victims and survivors come forward for fear of retaliation, shame, or lack of understanding of what is happening to them.”<sup>45</sup> The privately funded Global

Slavery Index represents the most recent effort to quantify exploitation that would fall within the international legal definition of trafficking.<sup>46</sup> The present author is not the only one to draw attention to the Index's mysterious, inconsistently applied methodology and the raft of unverified assumptions that compromise its findings.<sup>47</sup> It is evident that much more work will need to be done to establish the parameters of trafficking (e.g., How do we distinguish between a bad employment situation and one that constitutes trafficking?), and to investigate practices within specific settings and industries, before we are able to speak with authority about the true extent of the phenomenon.

## THE INTERNATIONAL RESPONSE TO HUMAN TRAFFICKING

In contrast to migrant smuggling, international attention to human trafficking is long-standing, dating back at least to the first decade of the twentieth century when European states decided to cooperate in fighting the “white-slave” traffic of women and girls.<sup>48</sup> For the rest of that century, trafficking, which was understood as referring solely to the cross-border movement of women and girls into prostitution, remained a constant, if low-level concern.<sup>49</sup> Other matters, with which trafficking has since become closely associated, such as slavery, forced labor, and debt bondage were dealt with separately, although also at a low level.

Everything changed in 1998 when trafficking, along with migrant smuggling, was singled out for attention in the context of international action against transnational organized crime.<sup>50</sup> The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children was adopted in December 2000, at the same time as the Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the UN Convention against Transnational Organized Crime.<sup>51</sup> It set out a definition of trafficking—the first ever—that broadened the previous international understanding considerably. Under this instrument, trafficking in persons is the movement, placement, or maintenance of a person in a situation of exploitation through fraud, coercion, abuse of vulnerability, or other means. Critically, “exploitation” is not defined. Rather, the protocol sets out an open-ended list that includes slavery, forced labor, and sexual exploitation. State parties (of whom there are currently 166) are required to criminalize trafficking, cooperate with each other to prevent and address trafficking crimes, and provide some minimal protections for victims.<sup>52</sup>

As one who was directly involved in the drafting of this instrument, I can say with confidence that none of those present during the negotiations had any idea of what was to follow. In the fifteen years since the protocol was adopted, the landscape around trafficking has changed radically and irreversibly. New international laws modeled on the protocol have been adopted, new institutions have been

established, and hundreds of millions of dollars have been spent by international organizations and bilateral donors to support prosecutions, victim protection, and prevention.<sup>53</sup>

While concern about exploitation clearly provided some impetus for concerted international action, other inducements have helped enormously. Chief among these is the annual TIP report, which, since 2001, has assessed and graded each country's response to trafficking. Failure to meet stipulated standards renders the

Thousands of groups are leading the charge against the scourge of so-called modern slavery.

country concerned liable to a range of economic sanctions. No country likes to be publicly identified as a failure, and many have proved willing to take significant steps to avoid or repair a negative assessment.<sup>54</sup> Civil society has also taken up the cause of trafficking with enthusiasm. Thousands of groups, from small victim support agencies to vastly wealthy private foundations, are leading the charge against the scourge of so-called modern slavery.<sup>55</sup>

These international developments have had a profound impact on national responses to trafficking. In 2000, many countries strenuously denied the existence of a serious problem in which they themselves could be implicated.<sup>56</sup> Today, the overwhelming majority of states have now criminalized trafficking in persons according to the international legal definition, thereby bringing within their national criminal law many of the situations in which migrants are severely exploited for private profit.<sup>57</sup> And the majority of states now acknowledge a legal obligation, at least in principle, to provide those who have been trafficked with some measure of protection and support. Some have taken their commitment well beyond law and policy by establishing new institutions, structures, and procedures. For example, within the United States, specialized units now oversee federal trafficking investigations; a federally-funded victim assistance program serving foreign nationals has been in operation for over a decade; and a system of immigration relief ensures, at least in principle, that migrants who have been trafficked are not automatically deported.<sup>58</sup>

But progress on the front line is agonizingly slow. Prosecutions for trafficking, a debatable measure of advancement in any event, are very few relative to the presumed size of the problem.<sup>59</sup> In 2013, only 9,460 trafficking prosecutions were reported worldwide, the vast majority relating to sexual exploitation. Of these, less than 6,000 resulted in convictions.<sup>60</sup> In addition to exposing the difficulties being experienced by even the most advanced criminal justice systems, these figures appear to confirm that the old, tired idea of trafficking—as being solely about sexual exploitation—is alive and well, despite the legal and policy changes outlined

above.

While states have agreed that victims of trafficking are entitled to different and better treatment in comparison with other irregular migrants, most victims see little or no benefit. The greatest obstacle relates to identification: As long as trafficked persons are not identified as such, they will never receive the rights to which they are entitled, and states will never be called to account for failing to discharge their obligations. During 2013, only 44,758 victims were identified worldwide and just 20 percent of that number represented victims of labor exploitation, a risible number.<sup>61</sup> Even identified victims are still regularly denied the rights to which they are entitled under national and international laws. For example, in a number of Southeast Asian countries, trafficked migrants are locked up in shelters, sometimes for years, while cases drag through the courts or half-hearted efforts to trace families come to nothing.<sup>62</sup> Most never receive compensation for lost wages or the damage they have suffered.<sup>63</sup> The right of migrant victims to be returned safely and reintegrated back into their communities is too rarely respected in practice.<sup>64</sup>

## **THE INEVITABILITY OF EXPLOITATION IN MIGRATION**

The stories behind migration are as varied as the individuals involved. Many people are forced to flee their countries because of war, conflict, or the threat of persecution. Others migrate to escape poverty and support their families. Some simply seek to take advantage of opportunities that are not available at home. Most of the world's migrants travel well and arrive safely. However, a significant proportion of those whose compulsion to move is strongest do not have access to safe and legal migration channels.

The situation is especially acute for refugees. The rules of international refugee law are complex, but in essence, they provide everyone with the right to seek and enjoy asylum from persecution.<sup>65</sup> Those same rules also prevent states that have signed up to them (just about all the major Western countries of destination) from returning a person with a valid claim for asylum back to a situation of persecution.<sup>66</sup> But asylum seekers must be outside their country in order to make a claim for protection. Countries that are easy for asylum seekers to reach are often unable or unwilling to provide them with the protection and support they need.<sup>67</sup> It follows that the strengthening of border controls is detrimental to asylum seekers because it closes off the opportunity for such persons to reach a country in which they can claim and receive protection. Particularly over the past decade, restrictions on entry to the preferred countries of asylum have become more onerous and appear increasingly directed toward thwarting the arrival of those who may claim asylum.<sup>68</sup> As noted previously, securitization of borders is commonly linked to fighting organized crime, including migrant smuggling, and this development

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has had the effect of pushing individuals who want or need to cross international borders into the hands of smugglers.<sup>69</sup> It follows that truly effective international action against migrant smuggling would likely operate to obstruct a crucial avenue of escape for refugees. For some advocates, that is enough to call into question the criminalization and demonization of migrant smugglers.<sup>70</sup>

Governments are heavily conflicted, as demonstrated by recent debates in Europe about how to manage rescues of smuggled migrants in distress at sea,

Ending unwanted migration can only be effectively achieved through the continuous deployment of massive force and violation of individual rights that offends liberal values.

many of them severely exploited asylum seekers. After the October 2013 incident recounted in the introduction, the Italian government established “Operation Mare Nostrum” in the straits of Sicily with the aim of providing more effective rescue services and seizing the “mother ships” that tow smaller boats close to the Italian coast.<sup>71</sup> Mare Nostrum ran for a year at a cost of around €9 million per month, resulting in the rescue of 150,000 migrants and the apprehension of 330 smugglers.<sup>72</sup> Efforts to replace Italy’s program with a comparable EU-funded and -operated initiative failed, apparently because of

concerns that effective rescue operations were acting as an unintended pull factor, encouraging more migrants to attempt the dangerous sea journey.<sup>73</sup>

Certainly when it comes to smuggling, it is apparent that, absent significant structural change to global migration regimes, there is really no “solution.” This is, in fact, a textbook example of the “wicked problem:” one that is hard to define, that keeps changing, and that fails to present a clear solution because of preexisting factors that are themselves highly resistant to change.<sup>74</sup> In the case of migrant smuggling, those preexisting factors include the very existence of states, gross inequalities among them, and strong motivations on the part of some to keep out others.<sup>75</sup>

Perhaps it is also necessary to acknowledge that the modern, liberal, democratic state is not really up to the task of stopping facilitated irregular migration—at least not in the long term.<sup>76</sup> As the United States has already learned, and as countries of southern Europe are coming to appreciate, ending unwanted migration in the face of strong counter-forces can only be effectively achieved through the continuous deployment of massive force and violation of individual rights on a scale that grossly offends liberal values. It should come as no surprise that authoritarian states are not experiencing much of a migrant smuggling problem.

Exploitation of migrants through onerous debt and trafficking, which often

but not necessarily involves irregular migration facilitated by smugglers, presents slightly different but equally insurmountable challenges. Our globalized world, which embraces the free movement of goods, capital, and services but resists the free movement of people—which creates and sustains an insatiable demand for cheap labor while restricting its capacity to be delivered legally—ensures a well-stocked pond from which traffickers, and indeed smugglers, can easily fish. Despite their professed outrage at trafficking and so-called modern slavery, governments often have a direct interest in maintaining these contradictions. Many national economies rely heavily on cheap foreign labor that, deliberately left unprotected by law, can be moved on if and when circumstances require. Some governments that virtuously maintain a strong policy position against prostitution are nevertheless comfortable with a marginalized sex industry composed principally of exploited foreign workers.<sup>77</sup> Countries of origin often rely heavily on the remittances of their overseas workers and may be reluctant to interfere with a system that brings economic benefits—even if it is clear that some of their citizen migrants are being severely exploited.<sup>78</sup>

## **BREAKING THE DEADLOCK**

The task of identifying possible ways out the current impasse is not for the fainthearted. It first requires an acknowledgment of the very basic limitations outlined above—most critically, that markets are the key drivers of illegality and exploitation, and, that without profound reforms to global migration regimes—and indeed to the organization of the global economy—there is likely no effective solution to migration-related exploitation.<sup>79</sup>

But accepting the inevitability of exploitation is not the same as giving up. Steps can be taken, even within the limits of current political constraints, to minimize the vulnerability of the world's migrants to abuse and exploitation at the hands of profiteers including traffickers and smugglers. The following proposals, which range from the immediately possible to the more ambitious, are intended to open up a conversation about what could and should change.

### **Abolish recruitment fees**

Excessive recruitment fees lock migrant workers into cycles of debt that cause and exacerbate vulnerability to exploitation. The abolition of fee-charging recruitment agencies in countries of origin and fee-charging employment agencies in countries of destination—along with their myriad sub-agents that create, transfer, and enforce migrant debt—should be identified as an international priority. Governments at both ends must take responsibility for maintaining this prohibition through appropriate monitoring and regulation of formal and informal



employment networks. Governments in countries of destination have an additional, vital role in ensuring their workers are free of recruitment and placement debt and able to keep or remit their full wages. The success of any international campaign to abolish recruitment fees will require the active involvement of business. By entering into a commitment to not use the services of hiring companies and subsidiaries that impose, transfer, or enforce worker debt, corporations could fatally undercut these predatory networks.

## The international community has failed to develop strong legal protections for the world's migrants.

### **Abolish sponsorship systems and the exclusion of migrants from national labor protections**

Whether on their own or in combination with onerous recruitment debt, sponsorship schemes that tie a migrant's legal status to a particular job for a particular period of time are used to exploit many of the world's most vulnerable and isolated workers. Sponsors routinely confiscate passports and identity documents and force workers to remain in abusive situations by threatening them with deportation and withholding of wages.<sup>80</sup> The international community and individual states should commit to the abolition of these schemes. Further, states should be pressured to abolish tiered protection systems whereby migrant workers—or certain categories of migrant workers, such as those in domestic service—are excluded from application of basic labor laws. More consistent pressure from countries of origin is critical in this regard, but their unequal bargaining position must be bolstered by support from others.

### **Expand application of anti-trafficking laws and policies**

The international community has failed to develop strong legal protections for the world's migrants. While a patchwork of protections can be extrapolated from general international human rights law, there is no appetite to make these more specific. The only dedicated treaty, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, took ten long years to negotiate and a further thirteen years to secure enough ratifications to enter into force.<sup>81</sup> Leaving aside some glaring problems of substance, the convention's effectiveness is seriously compromised because, with only minor exceptions, countries of destination have refused to sign up.<sup>82</sup> International action against trafficking in persons provides a valuable opportunity to redress the current protection gap. While not all exploitation directed at migrants can be characterized as "trafficking," a great deal of the debt bondage, forced labor, and abuse of migrants detailed in this article does indeed reach the required threshold of seriousness. The

tools now available to deal with trafficking are considerable. They include strong international and national legal frameworks, dedicated criminal justice institutions, powerful oversight and reporting mechanisms, and a vigorous civil society. These must all be directed toward exposing exploitation in migration and securing a stronger, more effective response.


**Forget trying to measure the scale of the problem. Focus instead on sectors and industries**

Efforts to measure exploitation of the world's workers, including migrants, are fraught, expensive, and of doubtful practical value.<sup>83</sup> Far more effective in shifting public opinion and shaping realistic policy are detailed, forensic investigations into specific sectors and industries. The best of these shine a bright light on how exploitation happens, who is suffering, and who is responsible. They offer a chance to craft tailored, evidence-based responses that can be properly monitored and evaluated. Strong, focused interventions will help to develop new ways of thinking and working that can be replicated more widely.

**The refugee regime—think the unthinkable**

Our current system of refugee protection is stuck in another age, failing to serve interests of states and many of the world's most vulnerable and persecuted individuals, and creating opportunities for exploitation through smuggling and trafficking. The problem is not so much with the core principles, but rather, with the protection gaps that remain: Why is someone outside his or her country more deserving of protection than someone who needs to leave but cannot? Why is someone who is being persecuted by his or her government more deserving of protection than someone who is being persecuted within his or her community? In its implementation, the international system for protection of refugees is also highly problematic. Why is it so difficult for states to return failed asylum seekers—or to return refugees who, over time, no longer require protection from persecution? Why does ability to pay so often determine who is protected and who is not?<sup>84</sup> The legitimacy and coherence of the refugee regime has suffered badly through attempts from all sides to make the rules fit new, complex realities for which they were never intended. There is an understandable fear that meddling with existing frameworks will make things worse.<sup>85</sup> But pretending that it is possible to continue along the current path is foolish and dangerous. It is time for big ideas that genuinely engage with the big issues: First, equitably sharing the burden of protecting those who are not being protected by their own governments; and second, dealing with the economic and humanitarian causes of compelled (inevitably irregular) migration. Until then, we will continue to count casualties in the pitched battle between states, irregular migrants including asylum seekers, and the mercenaries

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that, so far, appear to be the only victors. 

## NOTES

<sup>1</sup> See generally, Mike Eckel, “Day of Tears: Will Italy Boat Sinking Change European Migration Policies?,” *Christian Science Monitor*, 4 October 2013, <http://www.csmonitor.com/World/2013/1004/Day-of-tears-Will-Italy-boat-sinking-change-European-migration-policies>. See also, Amnesty International, “Lives Adrift: Refugees and Migrants in Peril in the Central Mediterranean” (report, EUR 05/006/2014, Amnesty International, London: September 2014), 15-16, <http://www.amnesty.ch/de/themen/asyl-migration/europa/dok/2014/verantwortung-fuer-fluechtlinge-in-see-not/bericht-lives-adrift-refugees-and-migrants-in-peril-in-the-central-mediterranean--september-2014-88-seiten>.

<sup>2</sup> Ibid.

<sup>3</sup> Verité, “Labor Brokerage and Trafficking of Nepali Migrant Workers” (report, Verité, Amherst, MA: 2013), 7, [http://www.verite.org/sites/default/files/images/Humanity%20United-Nepal%20Trafficking%20Report-Final\\_1.pdf](http://www.verite.org/sites/default/files/images/Humanity%20United-Nepal%20Trafficking%20Report-Final_1.pdf).

<sup>4</sup> Ibid., 9.

<sup>5</sup> Ibid. See also, Sarah Paoletti et al., “Migrant Workers’ Access to Justice at Home: Nepal” (report, Open Societies Foundations, New York: 2014), <http://www.opensocietyfoundations.org/publications/migrant-workers-access-justice-home-nepal>.

<sup>6</sup> International Organization for Migration (IOM), “Fatal Journeys: Tracking Lives Lost during Migration” (report, IOM, Geneva: 2014), 45, [http://publications.iom.int/bookstore/free/FatalJourneys\\_CountingtheUncounted.pdf](http://publications.iom.int/bookstore/free/FatalJourneys_CountingtheUncounted.pdf).

<sup>7</sup> Ibid., 45-83. See also, “Re: FORCOMMENT- Cartels and Human Smuggling/Trafficking,” The Global Intelligence Files, WikiLeaks (unpublished emails, October 2011), [http://wikileaks.org/gifiles/docs/16/161548\\_re-forcomment-cartels-and-human-smuggling-trafficking.html](http://wikileaks.org/gifiles/docs/16/161548_re-forcomment-cartels-and-human-smuggling-trafficking.html). See also, Mexican Human Rights Commission, “Notebook on the Kidnapping of Migrants: Dimensions, Context and Testimonies,” (2011), quoted in “Migrant Kidnappings by Criminal Organizations ‘Systematic’ in Mexico,” Sibylla Brodzinsky, *InSight Crime*, 11 May 2012, <http://www.insightcrime.org/news-analysis/migrant-kidnappings-by-criminal-organizations-systematic-in-mexico>, (original report in Spanish); “No Safe Passage,” *Economist*, 9 September 2010, <http://www.economist.com/node/16994348>.

<sup>8</sup> Regional Mixed Migration Secretariat, “Abused and Abducted: The Plight of Female Migrants from the Horn of Africa in Yemen” (report, Mixed Migration Research Series Study 7, Regional Mixed Migration Secretariat, Nairobi: 2014), [http://www.regionalmms.org/index.php?id=61&tx\\_ttnews%5Btt\\_news%5D=298&cHash=ecf548a50c8202bf2807fee34cle4ea3#lightbox\[1b298\]/0/](http://www.regionalmms.org/index.php?id=61&tx_ttnews%5Btt_news%5D=298&cHash=ecf548a50c8202bf2807fee34cle4ea3#lightbox[1b298]/0/).

<sup>9</sup> Ibid., See also Human Rights Watch, “Yemen’s Torture Camps: Abuse of Migrants by Human Traffickers in a Climate of Impunity” (report, Human Rights Watch, Washington, DC: May 2014), [http://www.hrw.org/sites/default/files/reports/yemen0514\\_ForUpload.pdf](http://www.hrw.org/sites/default/files/reports/yemen0514_ForUpload.pdf).

<sup>10</sup> Amnesty International, “Lives Adrift: Refugees and Migrants in Peril in the Central Mediterranean” (report, EUR 05/006/2014, Amnesty International, London: September 2014), 15–16, <http://www.amnesty.org/en/library/asset/EUR05/006/2014/en/c5180000-296c-4587-8308-56c7bfb83894/eur050062014en.pdf>.

<sup>11</sup> See for example, Lynne Minion, “Rough Crossing” (report, UN High Commissioner for Refugees Tracks: December 2014), <http://tracks.unhcr.org/2014/12/rough-crossing/>. See also, the Australian Border Deaths Database maintained by the Border Crossing Observatory, <http://artsonline.monash.edu.au/thebordercrossingobservatory/publications/australian-border-deaths-database/>. See also, endnote 5.

<sup>12</sup> See U.S. Department of State, “Trafficking in Persons Report: June 2014” (report, U.S. Department of State, Washington, DC: June 2014), <http://www.state.gov/documents/organization/226844.pdf>.

<sup>13</sup> See for example, The Global Slavery Index (2014), <http://www.globalslaveryindex.org>; see also, Anne Gallagher, “The Global Slavery Index – Seduction and Obfuscation,” *Open Democracy*, <https://www.opendemocracy.net/5050/anne-gallagher/global-slavery-index-seduction-and-obfuscation>.

<sup>14</sup> “Trafficking in Persons Report: June 2014,” 45.

<sup>15</sup> UN, Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the UN Convention against Transnational Organized Crime, 2241 UNTS 507, (15 November 2000), 2, <http://>

[www.unodc.org/documents/middleeastandnorthafrica/smuggling-migrants/SoM\\_Protocol\\_English.pdf](http://www.unodc.org/documents/middleeastandnorthafrica/smuggling-migrants/SoM_Protocol_English.pdf).

<sup>16</sup> Ibid., art. 3(a). See also, Anne T. Gallagher and Fiona David, *The International Law of Migrant Smuggling*, (New York: Cambridge University Press, 2014), 46–47.

<sup>17</sup> This figure is based on estimates provided by the IOM in its 2010 Global Migration Report. However, in the same report, the IOM points out that “data on stocks and flows of irregular migration, at the local, national, regional[,] and global levels, vary widely and are usually imprecise. There is also a lack of comparable data, both over time and between locations. In the absence of an authoritative single source on irregular migrant numbers, analysis inevitably depends on widely fragmented sources, some of which are significantly out of date. Nevertheless, there is a general consensus that the number of irregular migrants has grown in recent years.” IOM, “World Migration Report” (report, IOM, Geneva: 2011), 29, [http://publications.iom.int/bookstore/free/WMR\\_2010\\_ENGLISH.pdf](http://publications.iom.int/bookstore/free/WMR_2010_ENGLISH.pdf).

<sup>18</sup> Tuesday Reitano, Laura Adal, and Mark Shaw, “Smuggled Futures: The dangerous path of the migrant from Africa to Europe” (research report, The Global Initiative Against Transnational Organized Crime, Geneva: May 2014), 2. UN Office of Drugs and Crime (UNODC), “The Role of Organized Crime in the Smuggling of Migrants from West Africa to the European Union” (report, UNODC, Vienna: 2011), 32, [http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Report\\_SOM\\_West\\_Africa\\_EU.pdf](http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Report_SOM_West_Africa_EU.pdf).

<sup>19</sup> European Commission, “Questions and Answers: Smuggling of Migrants in Europe and the EU Response,” MEMO/15/3261 (report, European Commission, 13 January 2015), [http://europa.eu/rapid/press-release\\_MEMO-15-3261\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-3261_en.htm).

<sup>20</sup> See Cat Barker, “The People Smugglers’ Business Model” (Research Paper No. 2, Parliamentary Library, Parliament of Australia, 2012-2013), [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1213/13rp02](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1213/13rp02).

<sup>21</sup> See endnote 5.

<sup>22</sup> Barker, 12.

<sup>23</sup> Australian Crime Commission, “Organised Crime Groups” (report, Commonwealth of Australia: April 2011), <https://www.crimecommission.gov.au/organised-crime/organised-crime-groups>.

<sup>24</sup> “Fatal Journeys: Tracking Lives Lost during Migration,” 18.

<sup>25</sup> Gallagher and David, 25–34.

<sup>26</sup> Ibid., 98–102.

<sup>27</sup> Ibid., 32. Council of Europe, Texts adopted at the European Conference on Uncontrolled Migration (Council of Europe, Budapest: 15–16 February 1993), Fifth Conference of European Ministers responsible for migration affairs, (Athens: 18–19 November 1993), Doc. MMG–5 (93) 5, 19 October 1993, 3 (¶ 1(a)).

<sup>28</sup> UN, Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2241 UNTS 507, (15 November 2000), [http://www.unodc.org/documents/middleeastandnorthafrica/smuggling-migrants/SoM\\_Protocol\\_English.pdf](http://www.unodc.org/documents/middleeastandnorthafrica/smuggling-migrants/SoM_Protocol_English.pdf).

<sup>29</sup> Gallagher and David, 44–66.

<sup>30</sup> UNODC, Travaux Préparatoires of the Negotiations for the Elaboration of the UN Convention against Transnational Organized Crime and the Protocols Thereto (2006), 461, no. 5.

<sup>31</sup> For a detailed examination of the practical implications of these provisions, see Ibid., 49–50.

<sup>32</sup> Emma Rodgers, “Rudd wants people smugglers to ‘rot in hell,’” *ABC News*, 17 April 2009, <http://www.abc.net.au/news/2009-04-17/rudd-wants-people-smugglers-to-rot-in-hell/1653814>.

<sup>33</sup> The Associated Press, “EU Vows Swift Action Against Mediterranean Migrant Smugglers,” *New York Times*, 5 January 2015, [http://www.nytimes.com/aponline/2015/01/05/world/europe/ap-eu-europe-italy-migrants-.html?\\_r=0](http://www.nytimes.com/aponline/2015/01/05/world/europe/ap-eu-europe-italy-migrants-.html?_r=0); “Italy’s second ‘ghost ship’ rescue prompts EU pledge to fight smugglers,” *ABC News*, 4 January 2015, <http://www.abc.net.au/news/2015-01-04/italys-second-ghost-ship-rescue-prompts-eu-pledge/5999122>.

<sup>34</sup> Gallagher and David, 102–110; Manuel Manrique et al., “Mediterranean flows into Europe: Migration and the EU’s foreign policy” (report, Policy Department, Directorate-General for External

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Policies, European Parliament, Brussels: March 2014).

<sup>35</sup> Information on some of these deals was leaked to the Italian press. Further details emerged after Italy was compelled to provide information on them to the European Court of Human Rights. See European Court of Human Rights, *Hirsi Jamaa and Others v. Italy* (Judgment) 27765/09 (23 February 2012), ¶ 19; Thomas Gammeltoft-Hansen and Tanja E. Aalberts, “Sovereignty at Sea: The Law and Politics of Saving Lives in the Mare Liberum” (DIIS Working Paper 2010:18, Danish Institute for International Studies, Copenhagen: 2010), 17.

<sup>36</sup> See Harriet Spinks, Cat Barker, and David Watt, *Australian Government spending on irregular maritime arrivals and counter-people smuggling activity*, (Parliamentary Library, Parliament of Australia, Melbourne: 2 September 2013).

<sup>37</sup> See Carolyn Kagan et al., “Experiences of forced labour among Chinese migrant workers” (report, Joseph Rowntree Foundation, London: November 2011), 5.

<sup>38</sup> Ravi S. Srivastava, “Bonded Labour in India: Its Incidence and Pattern” (Working Paper 43, DECLARATION/WP/43/2005, International Labour Office, Geneva: 2005); Krishna Prasad Upadhyaya, “Poverty, discrimination and slavery: The reality of bonded labour in India, Nepal and Pakistan” (report, Anti-Slavery International, London: 2008); Deniz Kandiyoti, coord., “Invisible to the World? The Dynamics of Forced Child Labour in the Cotton Sector of Uzbekistan” (report, School of Oriental and African Studies, University of London, London: 2009); see also, “Forced labour in Uzbekistan: In the land of cotton,” *Economist*, 16 October 2013, <http://www.economist.com/blogs/banyan/2013/10/forced-labour-uzbekistan>.

<sup>39</sup> U.S. Equal Employment Opportunity Commission Press Release, “Judge Approves \$2.4 Million EEOC Settlement with Four Hawaii Farms for over 500 Thai Farmworkers,” 5 September 2014, <http://www.eeoc.gov/eeoc/newsroom/release/9-5-14.cfm>; Human Rights Watch, “‘Are you happy to cheat us?’ Exploitation of Migrant Construction Workers in Russia” (report, Human Rights Watch, New York: 2009).

<sup>40</sup> See for example, IOM, “Trafficking and Prostitution: The Growing Exploitation of Migrant Women from Central and Eastern Europe” (report, Migration Information Programme, IOM, Brussels: 1995); James O. Finckenaur, “Russian Transnational Organized Crime and Human Trafficking,” in *Global Human Smuggling: Comparative Perspectives*, second edition, ed. David Kyle and Rey Koslowski (Baltimore: Johns Hopkins University Press, 2011), 305–324.

<sup>41</sup> See for example, *Ibid.*, 16–18. See also, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, (Parliament of Australia, Melbourne: June 2004), 8.

<sup>42</sup> See UNGA, “Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo,” A/HRC/23/48/Add.1 (22 February 2013) ¶ 5–8; Human Rights Watch, “‘I Already Bought You’: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates” (report, Human Rights Watch: October 2014).

<sup>43</sup> Federal Law No. 8 of 1980 on the Regulations of Labor Relations, art. 3(c), cited in Human Rights Watch, *Ibid.* Human Rights Watch, 27.

<sup>44</sup> *Ibid.* Human Rights Watch.

<sup>45</sup> “Trafficking in Persons Report: June 2014,” 30, <http://www.state.gov/documents/organization/226844.pdf>.

<sup>46</sup> Walk Free Foundation, “2014 Global Slavery Index,” <http://www.globalslaveryindex.org>.

<sup>47</sup> See Anne Gallagher, “The global slavery index is based on flawed data – why does no one say so?,” *Guardian*, 29 November 2014, <http://www.theguardian.com/global-development/poverty-matters/2014/nov/28/global-slavery-index-walk-free-human-trafficking-anne-gallagher>; Andrew Guth et al., “Proper Methodology and Methods of Collecting and Analyzing Slavery Data: An Examination of the Global Slavery Index,” *Social Inclusion* 2, no. 4 (2014), 14–22.

<sup>48</sup> Mary Ann Irwin, “‘White Slavery’ as Metaphor: Anatomy of a Moral Panic,” *Ex Post Facto: Journal of the History Students at San Francisco University* 5 (1996), 1–22; Stephanie A. Limoncelli, “International Voluntary Associations, Local Social Movements and State Paths to the Abolition of Regulated Prostitution in Europe, 1875–1950,” *International Sociology* 21 (January 2006), 31–59.

<sup>49</sup> Anne T. Gallagher, *The International Law of Human Trafficking*, (New York: Cambridge University Press, 2012), 54–64.

<sup>50</sup> “Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto,” xix-xxvi.

<sup>51</sup> UN, Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, 2237 UNTS 319, (15 November 2000).

<sup>52</sup> As of 1 January 2015, see the UN Treaty Collection, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en); *Ibid.*, arts. 5, 6–11.

<sup>53</sup> For example, Council of Europe, “Council of Europe Convention on Action against Trafficking in Human Beings” (report, ETS 197, 16.V.2005, Council of Europe: 16 May 2005); United Nations Office of the High Commissioner for Human Rights (UNHCR), Special Rapporteur on Trafficking in Persons (mandate established by the Commission on Human Rights, in its decision 2004/110, and extended by the Human Rights Council in 2008 (resolution 8/12) and 2014 (resolution 26/8)), and the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings, GRETA (technical body providing one pillar of the monitoring system foreseen by the Council of Europe Convention on Action against Trafficking in Human Beings. Article 36 concerns membership of GRETA). For a range of views and insights into funding of the anti-trafficking sector, see issue 3 of the *Anti-Trafficking Review*, “Following the Money: Spending on Anti-Trafficking” (2014), <http://www.antitraffickingreview.org/index.php/atrjournal>.

<sup>54</sup> See Anne T. Gallagher, “Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the US Trafficking in Persons Reports,” *Human Rights Review* 12, no. 3 (September 2010), 381–400.

<sup>55</sup> See generally, Janie Chuang, “Exploitation Creep and the Unmaking of Human Trafficking Law,” *American Journal of International Law* (forthcoming).

<sup>56</sup> For example, in the face of strong evidence to the contrary, the Australian government categorically denied, for several years, the existence of any significant problem of trafficking of migrants. The Honorable Phillip Ruddock, MP, Ministerial Press Release, 1 April 2003, quoted in Kerry Carrington and Jane Hearn, “Trafficking and the Sex Industry: from Impunity to Protection” (report, Current Issues Brief No. 28 2002–2003, Parliament of Australia, Melbourne: 13 May 2003), 5.

<sup>57</sup> UNODC, “Global Report on Trafficking Persons: 2014” (Vienna: UNODC, 2014), 12.

<sup>58</sup> “Trafficking in Persons Report: June 2014, 397–403.

<sup>59</sup> Anne T. Gallagher and Rebecca Surtees, “Measuring the Success of Counter-Trafficking Interventions in the Criminal Justice Sector: Who decides—and how?,” *Anti-Trafficking Review* 1 (June 2012), 20, 23–24, [http://www.antitraffickingreview.org/journals/images/documents/issue1/TheReview\\_article1.pdf](http://www.antitraffickingreview.org/journals/images/documents/issue1/TheReview_article1.pdf).

<sup>60</sup> “Trafficking in Persons Report: June 2014, 45.

<sup>61</sup> *Ibid.*

<sup>62</sup> Anne Gallagher and Elaine Pearson, “The High Cost of Freedom: A Legal and Policy Analysis of Shelter Detention for Victims of Trafficking,” *Human Rights Quarterly* 32 (2010), 110.

<sup>63</sup> See UNGA, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo A/HRC/17/35 (11 April 2011): ¶ 29.

<sup>64</sup> See for example Rebecca Surtees, “After Trafficking: Experiences and Challenges in the (Re)integration of Trafficked Persons in the Greater Mekong Sub-region” (report, UNIAP/NEXUS Institute, Bangkok: 2013), <http://www.nexusinstitute.net/publications/>.

<sup>65</sup> Universal Declaration of Human Rights, adopted by General Assembly Resolution 217A (III), UN General Assembly Official Records, third session, 183rd plenary meeting, UN Doc. A/810, at 71 (10 December 1948), art. 14.

<sup>66</sup> Convention relating to the Status of Refugees, 189 UNTS 137 (28 July 1951), as amended by the Protocol relating to the Status of Refugees, 606 UNTS 267 (31 January 1967), art. 33(1). Additional sources of the obligation of non-refoulement in the context of asylum include: Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 UNTS 45 (10 September 1969), art. II(3); Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 105/1 (13 April 2006), Preamble ¶ 20 and art. 13(1).

<sup>67</sup> Gallagher and David, 13.

<sup>68</sup> Anne T. Gallagher, "Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway," *Virginia Journal of International Law* 49, no. 4 (2009), 841.

<sup>69</sup> UNHCR, "UNHCR urges EU and border agency to ensure access to asylum procedures," *UNHCR News Stories*, 10 December 2010, <http://www.unhcr.org/4d0234fc6.html>.

<sup>70</sup> James C. Hathaway, "In defence of human smuggling," *National Post*, 13 September 2010.

<sup>71</sup> Ministry of Defense, "Mare Nostrum Operation," Marina Militare, Ministero Della Difesa, <http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx>.

<sup>72</sup> European Council on Refugees and Exiles, "Mare Nostrum to end – New Frontex operation will not ensure rescue of migrants in international waters," European Council on Refugees and Exiles Weekly Bulletin (10 October 2014).

<sup>73</sup> Ibid.

<sup>74</sup> Jeffrey Conklin, *Dialogue Mapping: Building Shared Understanding of Wicked Problems* (Hoboken, NJ: John Wiley & Sons, 2006).

<sup>75</sup> Gallagher and David, 18.

<sup>76</sup> See Christian Jopke, "Why Liberal States Accept Unwanted Migration", *World Politics* 50, no. 2 (1998), 266.

<sup>77</sup> Anne T. Gallagher, "The trafficking watchlist may be flawed, but it's the best measure we have," *Guardian*, 27 June 2014, <http://www.theguardian.com/global-development/poverty-matters/2014/jun/27/human-trafficking-watchlist-report>.

<sup>78</sup> Ibid.

<sup>79</sup> Demetrios G. Papademetriou, "Curbing the Influence of 'Bad Actors' in International Migration" (report, Council Statement, eight plenary meeting of the Transatlantic Council on Migration, Migration Policy Institute, Washington DC: February 2014), esp. 2.

<sup>80</sup> See International Labour Office, "Report of the Director-General: Eighth Supplementary Report: Report of the committee set up to examine the representation alleging non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the International Labour Organization Constitution by the International Trade Union Confederation and the Building and Woodworkers International," GB.320/INS/14/8 (March 2014), [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_239846.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_239846.pdf); Verité, "Forced Labor in the Production of Electronic Goods in Malaysia: A Comprehensive Study of Scope and Characteristics" (report, Verité, Amherst, MA: September 2014).

<sup>81</sup> UNHCR, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 2220 UNTS 3 (United Nations, 18 December 1990).

<sup>82</sup> Ryszard Cholewinski, *Migrant Workers in International Human Rights Law* (Oxford: Clarendon Press, 1997), 190-192, 201-204; Gallagher, *The International Law of Human Trafficking*, 170-177. As at 1 January 2015, the Convention had forty-seven state parties. Chile, Mexico, and Turkey are the only OECD member country states party to the agreement. See the UN Treaty Collection, UN [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en).

<sup>83</sup> See for example Anne Gallagher, "The Global Slavery Index: Seduction and Obfuscation," <https://www.opendemocracy.net/5050/anne-gallagher/global-slavery-index-seduction-and-obfuscation>.

<sup>84</sup> See Khalid Koser and Marie McCauliffe, "Unintended Consequences: How Migrant Smugglers and Exploiting the International Protection System," <http://www.policyforum.net/unintended-consequences/>.

<sup>85</sup> Joan Fitzpatrick, "Revitalizing the 1951 Refugee Convention," *Harvard Human Rights Journal* 9 (1996), 234.