The Concept of Demand in Relation to Trafficking in Human Beings. A Review of Debates since the late 19th Century

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About the project

Trafficking in human beings covers various forms of coercion and exploitation of women, men and children. Responses to trafficking have traditionally focused on combating the criminal networks involved in it or protecting the human rights of victims. However, European countries are increasingly exploring ways in which to influence the demand for services or products involving the use of trafficked persons or for the trafficked persons themselves. DemandAT aims to understand the role of demand in the trafficking of human beings and to assess the impact and potential of demand-side measures to reduce trafficking, drawing on insights on regulating demand from related areas.

DemandAT takes a comprehensive approach to investigating demand and demand-side policies in the context of trafficking. The research includes a strong theoretical and conceptual component through an examination of the concept of demand in trafficking from a historical and economic perspective. Regulatory approaches are studied in policy areas that address demand in illicit markets, in order to develop a better understanding of the impact that the different regulatory approaches can have on demand. Demand-side arguments in different fields of trafficking as well as demand-side policies of selected countries are examined, in order to provide a better understanding of the available policy options and impacts. Finally, the research also involves in-depth case studies both of the particular fields in which trafficking occurs (domestic work, prostitution, the globalised production of goods) and of particular policy approaches (law enforcement and campaigns). The overall goal is to develop a better understanding of demand and demand-factors in the context of designing measures and policies addressing all forms of trafficking in human beings.

The research is structured in three phases:

- **Phase 1:** Analysis of the theoretical and empirical literature on demand in the context of trafficking and on regulating demand in different disciplines, fields and countries. From January 2014–June 2015.

- **Phase 2:** Three in-depth empirical case studies of different fields of trafficking – domestic work, prostitution, imported goods – and two studies on different policy approaches: law enforcement actors and campaigns. From September 2014–December 2016.

- **Phase 3:** Integrating project insights into a coherent framework with a focus on dissemination. From January 2017–June 2017.

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# Table of Contents

1 **INTRODUCTION** .................................................................................................................. 6

2 **METHODOLOGICAL AND THEORETICAL FOUNDATION** .................................................. 10

   2.1 **CONCEPTUAL HISTORY** ................................................................................................ 11
   2.2 **CONTEXT OF COLLOQUIAL COMMUNICATION** .............................................................. 11
   2.3 **CONTEXT OF LEGAL COMMUNICATION** ........................................................................ 12
   2.4 **CONTEXT OF POLITICAL COMMUNICATION** ................................................................. 13
   2.5 **CONTEXT OF SOCIAL-SCIENTIFIC COMMUNICATION** .................................................... 16
   2.6 **CONCLUSION** ................................................................................................................. 18

3 **THE OCCURRENCE OF TRAFFICKING AS A PUBLIC PROBLEM (1860-1920)** ............... 19

   3.1 **THE UK REPEAL MOVEMENT (1860-1886)** .................................................................. 19
   3.1.1 **Contagious Deceases Acts in the UK** ........................................................................ 19
   3.1.2 **Actors in the repeal movement and their orientations** ................................................ 21
   3.1.3 **The elastic language of ‘white slavery’** ...................................................................... 23
   3.2 **SCANDALISING INTERNATIONAL WHITE SLAVE TRAFFIC** ....................................... 23
   3.3 **AFTER THE REPEAL** ..................................................................................................... 25
   3.3.1 **Rescuing initiatives** .................................................................................................... 25
   3.3.2 **Combatting immorality** ............................................................................................. 26
   3.3.3 **Vigilant activities against traffic** ................................................................................ 28
   3.3.4 **Contemporary criticism** ............................................................................................ 29
   3.4 **INTERNATIONALISATION OF CAMPAIGNS AGAINST WHITE SLAVERY** .................. 33
   3.4.1 **The International Abolitionist Federation** ................................................................. 33
   3.4.2 **International Bureau for the Suppression of Traffic in Women (IB)** ......................... 34
   3.4.3 **White Slavery as international public problem** .......................................................... 35
   3.5 **THE ISSUE OF DEMAND** .............................................................................................. 35

4 **INSTITUTIONALISATION OF DEBATES ON TRAFFICKING IN HUMAN BEINGS AND ON FORCED LABOUR AT INTERNATIONAL LEVEL (1920-2000)** .............................................. 38

   4.1 **INTERNATIONAL LEGAL INSTRUMENTS ON TRAFFICKING** .................................... 39
   4.2 **FORCED LABOUR** ...................................................................................................... 42
   4.2.1 **The ILO Convention Forced Labour 1930** ............................................................... 43
   4.2.2 **The ILO Convention for the Abolition of Forced Labour 1957** ................................. 45
   4.2.3 **ILO connecting with trafficking debates** .................................................................... 46
   4.3 **THE LEAGUE OF NATIONS’ DEBATE ON TRAFFIC IN WOMEN AND CHILDREN (1919-1945)** ........................................................................................................... 47
   4.3.1 **International institutionalisation of anti-trafficking policies** .................................... 47
   4.3.2 **The Advisory Committee on the Traffic in Women and Children** ............................ 48
   4.3.3 **The Reports of the Body of Experts** ......................................................................... 51
   4.3.4 **The abolitionist success** ............................................................................................ 55
   4.4 **DEBATES ON TRAFFICKING IN HUMAN BEINGS WITHIN THE HUMAN RIGHTS FRAMEWORK OF THE UN (1946-2000)** .......................................................................................... 55
   4.4.1 **The 1949 Convention** .................................................................................................. 56
   4.4.2 **Political opportunities at international level** ............................................................. 58
   4.4.3 **Redefining competing feminist positions** .................................................................. 59
   4.4.4 **Trafficking and Prostitution as Modern Slavery** ....................................................... 63
   4.4.5 **Protection against trafficking as a human right** ...................................................... 65
   4.5 **TRAFFICKING AS CRIME PREVENTION ISSUE: TRANSNATIONAL ORGANISED CRIME** .......................................................................................................................... 67

5 **TRAFFICKING IN THE CONTEXT OF INTERNATIONAL CRIME PREVENTION** ............. 69
5.1 AT THE EVE OF THE NEGOTIATIONS ................................................................. 70
5.2 THE CONTENT OF THE UN TRAFFICKING PROTOCOL ...................................... 71
5.3 HOW ‘DEMAND’ GOT INTO THE TRAFFICKING PROTOCOL ............................. 73
5.4 AFTER 2000: COMPETING INTERPRETATIONS OF ‘DEMAND’ IN ANTI-TRAFFICKING DEBATES ........ 75
  5.4.1 Two legal guides – two entirely different interpretations ...................................... 75
  5.4.2 Demand arguments in the international debates on trafficking in human beings for sexual exploitation .................................................................................................................. 77
  5.4.3 Trafficking and demand as a new focus in international debates around forced labour and labour exploitation ........................................................................................................ 78

6 TENTATIVE OUTLOOK: FROM DEMAND TO EXPLOITATION? ........................................ 83
7 ANNEXES ....................................................................................................................... 86
8 REFERENCES .................................................................................................................. 92
Abstract

The 2000 UN Trafficking Protocol has obliged states to discourage demand that fosters exploitation that leads to trafficking. Fifteen years later, there is still no shared understanding of what demand means in the context of debates on trafficking in human beings (THB). The terms “trafficking” and “demand” display a lexical and referential ambiguity. This paper provides a history of the occurrence and usage of the concepts “trafficking” and “demand” in the context of debates on trafficking and explores the different meanings and understandings attached to these terms in past and present debates.

The paper covers debates on trafficking in human beings since the 1860s and shows that terminological confusion was and still is a constant feature of these debates. The term abolition referred initially to the abolition of state regulation and not – as it is understood in the present-day debates - to the abolition of prostitution. The term trafficking is introduced in past and present debates with a confusing diversity of meanings, referring to the kidnapping of girls for the purpose of prostitution, fraudulent procurement of unsuspecting women for prostitution abroad, procurement of consenting women for prostitution, abetting of irregular border crossing or fraudulent abetting of irregular migration with the purpose of exploiting migrants after arrival and other issues. The term demand was introduced in past and present debates and has a diversity of meanings. It can refer to the biological drive of males, to a demand generated by a system of state regulation of prostitution, to a demand of brothel owners and pimps, or to a demand of male clients to purchase commercial sexual services. Thus, when the issue of demand is raised in debates of trafficking, the meaning attached to the term in a communication context is usually not clear; and the same speaker can often use the term demand rather metaphorically with changing meanings.

The paper shows that terminological confusion is effect and cause of ongoing and unsolved controversies about the legal handling of prostitution. The paper shows how the issue of demand originally entered the UN Trafficking Protocol and how subsequent attempts failed to develop an authoritative definition. Although debates are characterised by terminological ambiguity, even the claim that a definition is a necessity is denied. Conceptual confusion hampers mutual understanding, prevents reasonable dispute and undermines the capacity to develop policy approaches which effectively provide protection from trafficking and exploitation. The paper closes with the observation that the controversy surrounding the meaning of demand in the context of anti-trafficking efforts has the effect of raising attention to deal more directly with the issue of exploitation.
1 Introduction

This study provides for the context of the EU research project DemandAT a review of the occurrence and use of demand arguments in past and present debates on trafficking in human beings. As will be shown, the terms of reference central to this exercise – ‘trafficking’, ‘demand’ and ‘abolition’ – appeared and continues appearing in these debates as “elastic terms” with ambiguous and changing meanings, a fact that can be observed not only diachronically in the course of time but also synchronically at a given time.

Today, the debates on trafficking in human beings are firmly anchored in international law with the ‘UN Convention Against Transnational Organised Crime’ (UNTOC)\(^1\) which was opened for signature in Palermo on the 12th of December 2000 (for background information see Albrecht et al. 2002, Gallagher 2010, Roth 2012). UNTOC was established in the context of the UN Crime Prevention and Criminal Justice framework and works as the ‘parental’ document for three supplementing protocols:

- Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organised Crime
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime

It is the UN Trafficking Protocol that provides the main point of reference for present-day debates on trafficking in human beings (Vlassis 2000 and 2002). The Protocol provides not only a legal definition of the offence of trafficking (Wijers 2015) but serves also as point of reference for the raising of demand arguments in debates on trafficking in human beings (Raymond 2002: 494) as it includes in paragraph 5 of Article 9 (Prevention of Trafficking in Persons) for the first time in international anti-trafficking law a reference to ‘demand’:

> “States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”

This demand provision was subsequently resumed in other international policy documents addressing trafficking in human beings, and at European level by the “Council of Europe Convention on Action against Trafficking in Human Beings”\(^2\) as of 2005 and by the EU-Directive 2011/36/EU\(^3\). References to ‘demand’ are also included

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in several policy documents at international, regional and national level (see ICAT 2014, Ham 2011).

Without a doubt, the inclusion of a demand provision in international documents illustrate the relevance of the idea that anti-trafficking efforts should address a demand-side. Since the adoption of the UN Trafficking Protocol the issue of demand gained increasing attention in debates on trafficking in human beings (Marshall 2012, ICAT 2014).

However, in spite of the increasing relevance attached to demand arguments in international, European and national anti-trafficking debates and policies, the reference to demand arguments remains notoriously vague and conceptually confused in such debates. As the United Nations High Commissioner for Human Rights observed:

“While accepting the need to address demand, it is important to acknowledge the limits of a term that is not properly defined, is under-researched and is still subject to debate and confusion” (OHCHR 2010: 97).

A cardinal source of confusion is the reference to the demand provision with a “distorting ellipsis” (Rychlak and Doino 2010): The official stock of anti-trafficking documents introduces and consequently utilises the phrase “demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking”. The formula says: “demand → exploitation → trafficking”. This official phrase avoids any immediate linking of demand and trafficking but introduces “exploitation” as middle-term and leaves room for interpretation. However, some activists – usually addressed as ‘abolitionists’ – consequently ignore the middle link of the phrase, thus curtailing the phrase to “demand → trafficking”. Consequently, the word ‘demand’ is introduced in a different frame of reference than suggested by the official terminology.

The confusion is reinforced by an uneven understanding of meaning attached by different actors to the central terms “trafficking” and “demand”. These central terms relevant for this investigation are notoriously ambiguous and highly contested (Lederer 2012, Abt Associations 2012, Dempsey 2010, Holman 2008, Hunt 2013, Miriam 2005, Ham 2011, Berger 2012, Lim 2007, Snajder 2013, Weitzer 2007 and 2014). The issue of demand remains in the context of debates on trafficking in human beings “an ideologically loaded term for which there is no precise agreed upon definition and understanding” (Lim 2007: 3). Thus, “trafficking” emerges in debates as elastic and ambiguous, often used interchangeably, introduced and related to or equated with prostitution, exploitation or addressed vaguely as a form of modern slavery.

Due to the lack of an authoritative definition, the consideration of a ‘demand-side of trafficking’ and the call for ‘demand-reduction’ measures is a matter of intensive and controversial debate with contributions talking at cross-purposes. As some observers noted, “the body of literature on human trafficking is highly fragmented and there is minimal conversations among authors. Much of the disjuncture can be traced to differences in intellectual projects, beginning with conflicting approaches to the study of human trafficking” (Parreñas et al. 2012: 1017).
Recently, the high-ranked Interagency Coordination Group against Trafficking in Persons (ICAT)\(^4\) openly acknowledged the lack of clarity regarding what constitutes ‘demand’ in the context of anti-trafficking policies. However, the ICAT group discarded the requirement to provide a concise and coherent definition arguing that it seems “not so much a more detailed definition that is required, but broader consensus about the full set of options that can be taken to effectively discourage demand both directly and indirectly, along with a willingness to implement, monitor and evaluate the measures concerned” (ICAT 2014: 9). This position seems to be an attempt to evade a specification that may be attacked by one side or the other in an ideologically loaded political dispute. The present-day debate on trafficking in human beings is “often highly ideological – linked to, and used to reinforce political or moral positions on controversial issues such as the regulation or prohibition of prostitution” (Gallagher 2010: 433).

The conceptual confusion and vagueness is used and reinforced by private associations as well as by international organisations which advocate for their goals with a language of trafficking and modern slavery that is emotive, metaphorical and vague (Dauvergne 2007; Kurasawa 2014; O’Connell Davidson 2010 and 2012, Weber 2015).

Initially, demand-side arguments were introduced in debates on trafficking in human beings in the late 1970s by initiatives labelled today as “Ending Demand” and calling for the criminalisation of male purchasers of commercial sexual services (UNESCO and CATW 1992, Barry 1995, Hughes 2005, Jeffreys 2008, Roth 2012). It is now common to address these campaigns as ‘abolitionist’ initiatives, thus invoking the historical feminist abolitionist movement which was founded in 1870 by Josephine Butler. For example, in 2012 the French Minister for Women’s Rights, Najat Vallaud-Belkacem, who called for the prohibition of prostitution in Europe, evoked the historical figure Josephine Butler: “Since the 19th century and the role of [the Victorian feminist] Josephine Butler, Britain and France have been the core countries in the international mobilisation against prostitution. I really hope that these common roots are still alive” (The Guardian from 22 June 2012). One of the leading activists of the current ‘Ending Demand’ campaign lauded Josephine Butler as a forerunner: “As we build a new global human rights movement to stop trafficking in persons, it is helpful to look back to Josephine Butler, celebrate her accomplishments, and complete her life’s work to end sex slavery around the world” (Lederer 2008). For the purpose of this paper, the invoking of the historical feminist abolitionist movement is taken to designate the starting point of an examination of the history of the concepts “trafficking” and “demand”. Accordingly, it covers a time span of about 150 years of debate.

Josephine Butler had established several private associations which campaigned between 1870 and 1885 as part of an alliance of private organisations in the United Kingdom for the repeal of a series of legal acts regulating prostitution. The involvement

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\(^4\) The membership of ICAT comprises 16 international organisations and UN bodies, while the ICAT Working Group comprises representatives from the International Labour Organization (ILO), the International Organization for Migration (IOM), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children’s Fund (UNICEF) and the United Nations Office on Drugs and Crime (UNODC).
of private associations which criticise the public handling of prostitution is a general feature of past and present debates on trafficking in human beings since the 1870s (Limoncelli 2006 and 2010, Garcia 2010). It was within the context of the UK repeal movement that concerns about an international “white slave trade” for the purpose of prostitution occurred for the first time. Already in these early historical debates on trafficking in human beings - then defined as “traffic in white slaves” – the involved organisations referred more or less explicitly to demand arguments.

Private associations involved in anti-trafficking efforts sharply disagree, since the early years of the debate, on the question of whether prostitution should be outlawed or legal (Limoncelli 2006 and 2010, Stolz 2007). However, anti-trafficking initiatives shared the language of slavery and trafficking in women or girls in order to mobilise public support for their cause and push governments to take action against what they perceived to be white slave traffic (Irwin 1996, Kurasawa 2014).

It was due to the subsequent activities of internationally organised private associations which had originated in the 1880s from the UK repeal movement that anti-trafficking concerns consequently became institutionalised at the international level (Knepper 2009, Limoncelli 2010). Pushed by these private associations, states began to negotiate and adopt multi-lateral agreements (1904, 1910). Subsequently, the issue of trafficking became the subject of international Conventions and declarations adopted in the context of the League of Nations (1921, 1933), the United Nations’ Human Rights framework (1949, 1979, 1989, 1993) and the UN Crime Prevention and Criminal Justice framework with the adoption of the UN Trafficking Protocol (2000).

Since the late 1970s, the debate on trafficking in human beings renewed not only in the policy field of prostitution but additionally in policy fields such as international migration control and international crime prevention. It was the UN Trafficking Protocol that for the first time included force labour as one of the purposes of trafficking, thus linking two Conventions of the International Labour Office on forced labour (1930, 1957) with the debates on trafficking in human beings.

Throughout time, “trafficking” has been continuously viewed by some actors as a profit-driven business responding to a demand – but usually without any clear specification of what that “demand” actually is. The adopted language of trafficking and “modern slavery” suggested implicitly that “demand” refers to an illicit trade in human beings in the colloquial sense of being sold and handed over like a commodity (see Bales 2008; Carmi 2011; Parreñas et al. 2012). However, Beate Andrees, head of the ILO Special Action of Program to Combat Forced Labour (SAP-FL), argued recently that “to call something ‘slavery’ helps to raise attention and to galvanize action. But will it help the world’s poor and distressed to end their misery? The answer is no. Ending slavery or forced labour requires targeted actions to change law, to bring offenders to justice, to protect victims and to empower those at risk. (…) Hence definitions help to narrow down a problem and to target action” (Andrees 2014).

Terminological vagueness and conceptual confusion allows actors involved in anti-trafficking efforts to create the impression that they agree with the strategy of discouraging demand in order to prevent trafficking in human beings, while, in practice,
pursuing a particular agenda to call on the abolition of prostitution and to neglect other forms of trafficking in human beings (Stolz 2007, Roth 2012).

Terminological vagueness and conceptual confusion is not only a challenge for a social science analysis – it also undermine the capacity to design evidence-based policy measures against trafficking in human beings (Jordan 2011a and 2011b; Weitzer 2014). In order to change, it is necessary “to have a shared understanding of what it is that we want to change. Problem solving starts with a simple but crucial first step: defining it. For how we define something will determine whether and how we solve it” (Andrees 2014). Thus, when it comes to knowledge generation through scientific research and the sound designing and evidence-based evaluation of concrete practical actions, a clear and concise definition of central terms and concepts is an indispensable requirement (Brubaker and Cooper 2000; Gupta 2015).

This examination aims to contribute to the joint endeavour of developing a shared understanding of the relevance and potential of demand arguments for sound understanding of processes defined in international law as trafficking in human beings. This examination focuses on the development and debates at the international level and follows a roughly chronological order.

The following chapter informs briefly about the methodological and theoretical foundation of the study. Chapter 3 opens with the consideration of the historical occurrence of debates on trafficking in human beings between 1860 and 1920 in the UK. It describes the institutionalisation of anti-trafficking concerns at the international level and summarises the diverging concepts of demand developed in these debates. The next chapter 4 describes the institutionalisation of debates on trafficking in human beings and forced labour at the international level between 1920 and 2000. Chapter 5 introduces the dealing with the issue of trafficking in the context of international crime prevention efforts and describes the pre-history of the 2000 UN Trafficking protocol and its subsequent effects. Chapter 6 closes with a tentative outlook considering recent trends expanding attention from demand to exploitation.

2 Methodological and theoretical foundation

This chapter introduces the theoretical and methodological considerations which inform this analysis. As indicated above, the systematic account of use and reference to demand in debates on trafficking in human beings has to deal with the terminological vagueness and contested nature of meaning and understanding attached to the terms trafficking and demand. The conceptual confusion is also a continuous feature of historical debates. Against this background, the initially intended “genealogical analysis” (Saukko 2003) had to be abandoned. A systematic genealogically analysis of the reference to demand arguments over a period spanning 150 years is not feasible - at least within the limits of the project.
2.1 Conceptual history

An alternative orientation provided the methodology of “history of concepts” (Kosselleck 2006). This approach argues that concepts can and do change meaning in the course of time and makes this change to the subject of analysis. Kosselleck (2006) emphasises that terms have a specific meaning in relation to historical circumstances and argues that the understanding of historical social situations and debates – the social history - requires a careful reconstruction of the particular meaning of terms as they were understood and used in these historical circumstances – the conceptual history. With changing historical and social contexts the meaning of concepts changes too, often without the consciousness of those who use the terms with the new meaning (Kosselleck 2006: 57f).

However, claims to a historicity of concepts may also be consciously introduced as “invention of tradition” (Hobsbawm and Ranger 1983) by those who strive to justify one-sided advantageous or desired changes. In this “active sense” tradition serves “to evaluate current circumstances, to explain why things are how they are, and in some instances (...) to conceal or obscure innovations” (Shanklin 1981: 75).

Considering – with Kosselleck – that concepts can and do change meaning and understanding in the course of time, this analysis aims to clarify the specific meaning of the demand argument in relation to the historical circumstances and thus to evaluate the claim to historicity raised in the debate with the evocation of the historical figure of Josephine Butler. The analysis will furthermore – beyond Kosselleck – take into account that communication is situated in different communication contexts. The subsequent analysis of the history of the concepts of “traffic” and “demand” can be better understood if we are aware that terms play a different role depending on the context of application. This chapter directs attention to the distinction of contexts of colloquial, legal, political and social-scientific communication.

2.2 Context of colloquial communication

Terms in colloquial language are often vague and adopt several meanings according to the semantic context. Usually, this lexical ambiguity does not hinder communication, as the appropriate meaning is context-dependent (Bridges 2010; Wittgenstein 1958). Whether we speak of a ball in the sense of a dancing party or in the sense of a toy is usually clear without any explanation. Many colloquial terms, as this example shows, have more than one meaning, thus displaying lexical and referential ambiguity (Sennet 2011). This is also true for the three terms of “traffic”, “demand” and “exploitation”.

As dictionaries seek to track the actual use of language and inform on the spectrum of meanings, they can be used as a good indicator of the variety of ways in which terms are commonly understood. Here, the Oxford English Dictionary (OED) is taken as reference (www.oed.com).
We should acknowledge that the first, and thus most common, meaning of the verb *traffic in* refers to trade – to carry on trade, to trade, to buy and sell – and a further meaning refers to *dealings of an illicit or secret character*. Thus, whenever the term trafficking is introduced, the association with trade is always evoked.

Exploitation has two main lexical meanings: the neutral meaning of an action that results in profit or advantage – for example the productive working or profitable management of a business – and the negative meaning of such an action undertaken for selfish and unfair purposes, disregarding the concerns of others (on exploitation, see Elster 1985: 166-233; Moravcsik 1998; Munro 2008; Wertheimer and Zwolinski 2013).

For demand, the OED indicates a large number of meanings. The term can be used as an authoritative or peremptory request or claim, a legal claim, an urgent or pressing claim or requirement, a need actively expressing itself, or the manifestation of a desire on the part of consumers to purchase some commodity or service, combined with the power to purchase, the latter with the correlative supply (for further explication of the term demand in the context of debates on trafficking in human beings see Vogel 2015).

Besides the lexical ambiguity exposed in dictionaries, referential ambiguity also generates a source of misunderstanding. The words trafficking, exploitation and demand each may signify more than one issue. Which particular referent is intended to be signified depends on the pragmatic use of the word. Moreover, a speaker can use a word to make - unconsciously or consciously - a false attribution that remains unrecognised in everyday communication.

Referential ambiguity is the central feature of words classified as “floating signifier” (Levi-Strauss 1950). This concept is used in semiotics to denote signifiers without referents or agreed upon meaning. Because “demand” as such does not point to any actual referent or meaning, the word belongs to the class of floating signifier, it is “a signifier with a vague, highly variable, unspecifiable or non-existent signified”. Demand as a word belonging to the class of “floating signifiers” share the basic feature to “mean different things to different people: they may stand for many or even any signified; they may mean whatever their interpreters want them to mean” (Chandler 2014).

The highlighted colloquial vagueness of the three terms impacts on the application in legal, scientific and political contexts. It should also be noted that a large part of the debate on trafficking takes place in international arenas, using international English. When terms are translated into native languages, they may carry different connotations.

### 2.3 Context of legal communication

In the context of legal communication, terminology relates to social reality in the sense that it must be possible to subsume a specific individual case with specific observable circumstances under the legal term. In the realm of international and European law, human trafficking as introduced in the UN Trafficking Protocol and the EU Anti-Trafficking-Directive is, at the same time, a narrow and a wide legal construction.
The UN Trafficking Protocol provides a very narrow definition, as the three constitutive elements (act, means and purpose) have to occur coincidentally in order to constitute the offence of trafficking in the legal sense (Gallagher 2010: 80). At the same time, the definition is wide because the elements of act, means and purpose each cover a wide array of situations. The first element refers to a wide range of transfer acts such as recruiting, transporting or harbouring; the second element to a wide range of illicit means to influence a person’s decision – such as force, abduction, fraud and the abuse of vulnerability – and the third element to the purpose of exploitation in several fields.

This legal concept of the offence of trafficking has been criticised as a poor legal definition because it includes a term (exploitation) that is not defined as such but merely characterised by an enumeration of legal concepts borrowed from other areas (Gallagher 2010: 34). What exploitation _should_ mean in the context of the UN Trafficking Protocol is only indicated by a minimum list which includes, for example, the exploitation of prostitution of persons or other forms of sexual exploitation, forced labour or services and organ removal, but also trafficking for slavery or slavery-like situations. Enlisting slavery as one of the purposes of trafficking acts, the legal term includes the colloquial meaning of trafficking in the sense of the selling and buying of people (Jordan 2011a).

It is important to recognise that legal proceedings require a binary decision in the end: Can the charge of trafficking be proven or not? Judicial practitioners complain that the concept refers to the intention of a perpetrator. Purpose is a subjective feature which is hard to prove in legal proceedings (Cyrus _et al._ 2010: 53f; Renzikowski 2014, Shamir 2012). For practitioners in the current legal framework, they are required to draw a clear line not only between trafficking and legitimate transactions, but also between trafficking and other criminal offences (like rape, fraud or abduction).

The application of the legal distinctions has consequences in the real world: if a judge convicts someone for human trafficking, the sanctions are more serious. The ascription of a trafficking-victim status includes the entitlement to social assistance. If support agents and police classify victims of crime as likely to be trafficked, it means they have an entitlement to institutional assistance and the permission to stay in the country for a limited time.

With regard to demand it is important to note, that the UN Trafficking Protocol introduced demand discouragement as an obligation to states in an international document. However, demand is not a legal term requiring binary decisions in the states’ legal orders.

### 2.4 Context of political communication

In the political realm, the colloquial vagueness and ambiguity of terms may be utilised to enable compromises by their deliberate introduction and acceptance, as the avoidance of ICAT (2014) to generate a clear definition of the term “demand” shows. However, in political disputes on contested issues, this vagueness and ambiguity
usually serves as an opportunity to raise awareness and influence public opinion (Edelman 2001; Thompson 2014).

In political disputes, terms are often linked to what political scientists call “frames” (Schön and Rein 1994) or “paradigms” (Hall 1993). “Policy-makers customarily work within a framework of ideas and standards that specifies not only the goals of policy and the kind of instruments that can be used to attain them, but also the very nature of the problems they are meant to be addressing” (Hall 1993: 279). Problems and solutions are embedded in a taken-for-granted terminology with which policy-makers communicate information about their work.

Policy positions are resting on “frames”, which means “underlying structures of belief, perception, and appreciation” (Schön and Rein 1994: 23). Within the same policy field, there is often fierce competition between competing frames with their particular nested terminology. In policy controversies, as Schön and Rein (1994) argue, contesting stories are told about a situation, each conveying a different view of reality. Issues are selected for attention and named in such a way as to fit the frame constructed for the situation.

Considered as stories told about a troublesome or problematic situation, frames determine what counts as a fact and what arguments are taken to be relevant and compelling. In policy controversies, contesting stories are told about a problematic situation, each conveying a very different view of reality and representing a special way of seeing. Each story constructs its view of social reality through a complementary process of naming and framing. Things are selected for attention and named in such a way as to fit the frame constructed for the situation. Naming and framing together construct a problem out of the vague and indeterminate reality. They carry out the essential problem-setting functions and select for attention a few salient features and relations from what would otherwise be an overwhelmingly complex reality. Naming and framing give these elements a coherent organisation and describe what is wrong with the present situation in such a way as to set the direction for its future transformation.

Naming and framing proceed through *generative metaphor* – as a process by which a familiar constellation of ideas is carried over (*meta-pherein*, in the Greek) to a new situation, with the result, that both the familiar and the unfamiliar come to be seen in new ways. Stories utilised in policy controversies are inherently normative implying a sense of the good to be sought and the evil to be avoided. Generative metaphors derive its normative force from certain purposes and values, certain normative images, which have long been powerful in the cultural setting a controversy occurs in.

Through the process of naming and framing, the stories make the ‘normative leap’ from data to recommendation, from fact to values, from ‘is’ to ‘ought’. It is typical of diagnostic-prescriptive stories that they execute the normative leap in a way which makes it seem graceful, compelling and even obvious. Stories used in policy controversies are inherently normative, implying a sense of the good to be sought and the evil to be avoided. Naming and framing fulfil the essential problem-setting functions
and select for attention a few salient features and relations from what would otherwise be an overwhelmingly complex reality (Schön and Rein 1994: 23–28).

A lot of the taken-for-granted naming and framing work is performed by institutions which constitute institutional facts (like money, state-borders, laws) by declaration (Searle 2010). Influencing or setting the name or linguistic description commonly applied to a situation endows – as Gusfield (1981 and 1989) argued - “ownership of a problem”. To own a problem means “to be obligated to claim recognition of a problem and to have information and ideas about it given a high degree of attention and credibility, to the exclusions of others. To ‘own’ a social problem is to possess the authority to name that condition a problem and to suggest what might be done about it. It is the power to influence the marshalling of public facilities – laws, enforcement abilities, opinions, goods and services – to help resolve the problem. To disown a problem is to claim that one has no such responsibility” (Gusfield 1989: 433). Naming something a problem and owning the naming of the problem has an impact on how people perceive and respond to a situation (Lee Whorf 1956: 135). Of particular significance in policy disputes is metaphorical language, as Schön and Rein (1994) indicated. Metaphors are commonly understood as literary devices for understanding one thing in terms of another (Lakoff and Johnson 1981). There is a constant and unconscious reliance on metaphors in daily lives. Metaphors shape the questions to be asked, determines the routes for finding solutions and defines what will be accepted as reasonable answers. Usually a metaphor’s validity is not questioned, and when used by another person, there is a tendency to accept a conventionalised metaphor’s legitimacy without a critical thought. The unconscious usage means uncritical usage (Arms 1999: 262).

However, metaphors appearing in policy discourses are more than literary devices; they are also acts of power (Beer and Landtsheer 1999). They function like spotlights, structuring the view of reality. By foregrounding some aspects of reality while backgrounding other aspects, metaphors pull the attention from some things and push it to other things. If a metaphor succeeds in their political work - that is, if they become accepted as the common-sense, natural way of thinking about a problem - then they become governing metaphors: “They may be said to become governing because, once accepted, they guide and constrain future actions. By accepting another’s metaphor as an appropriate definition of a policy problem, one implicitly accepts the grounds that may be used to warrant future actions. Governing metaphors legitimatise policy; they prepare the way for policy action” (McGaw 1991: 54). If the public accepts a metaphor, it can silence people arguing for an alternative perspective (McGaw 1991: 58).

Particularly powerful are metaphors which invoke a “sacred evil” set apart from ordinary evil things and inducing strong affects like the metaphorical reference to the Holocaust (Alexander 2002: 27) or the Trans-Atlantic Slave Trade. In the aftermath of the abolition and international outlawing of slave trade and slavery, the idea that human beings can be purchased and sold like a commodity received the status of a sacred evil (Kurasawa 2014: 7). Consequently, the terms trafficking and (modern) slavery do evoke strong sentiments, which make them a particularly effective instrument in political
communication. The use of an emotionally moving and metaphorical speech make public language more effective as an instrument of political persuasion but less effective as a medium of explanation and deliberation (Thompson 2014, Edelman 2001).

However, the persuasive effect of metaphorical language is no automatism. The semantic and referential ambiguity implies that stories are open to a multiplicity of readings based on different positionings and interests of viewers and readers (McGaw 1991: 63; see also Junge 2010 and 2011). Accordingly, the naming and framing itself can become an issue of political contestation (Thompson 2014). In the topical context considered in this paper, the terms “sex workers” or “female victims of the sex industry” immediately evoke two different sets of problem definitions and policy solutions for those who have been engaged in debates on the sale of sexual services/prostitution.

The issue considered so far is the observation that in the same policy field, debates about terms are often fierce as they are understood as debates about problems and solutions. However, even more complicated is the fact that actors from the various policy fields and debates may not always realise that they refer to different social realities when using the same terms in debates on trafficking in human beings. Due to the referential ambiguity (Sennett 2011) one and the same term may be used to refer to different issues and social realities. For example, debates about the regulation of prostitution, labour markets, organ-transplantation and migration control are largely characterised by different histories, stakeholders and arenas. The terms “trafficking” and “demand” have been used in some of these fields to refer to different social realities. While stakeholders in the political arena may consider the use of vague terms and metaphorical language as sufficiently functional for their purposes, social researchers need to clarify what they seek to observe.

2.5 Context of social-scientific communication

Like legal proceedings, social-scientific research also claims to rest on clear definitions, lending itself to the idea that researchers could simply adopt legal concepts. However, the international legal definition of trafficking in human beings is not such a suitable concept for social-scientific research. As already indicated, THB exists not as a brute fact but as an “institutional fact” (Searle 2010) constituted by international institutions’ declaration to outlaw and punish particular actions. Due to its complex definition, including aspects like “purpose”, trafficking is not immediately observable but can only be identified through the use of indicators. Moreover, as the legal construction refers to a wide array of phenomena, these cannot be observed simultaneously by social scientists. Therefore, it is likely that any studies that make statements about trafficking in general without reference to a specific field are overgeneralising the results or do not conform to scientific standards.

The terms “trafficking”, “exploitation” and “demand” are used in debates on trafficking in human beings often as categories of social and political practice and of social and political analysis. However, for the purpose of scientific communication, the practical
and analytical use has to be distinguished. *Categories of practice* are categories of everyday social experience developed and deployed by ordinary social actors. They are reified and used by “lay” actors in some (not all) everyday settings to make sense of a situation. They are also used by political entrepreneurs to persuade people to understand situations in a certain way. In contrast, *categories of analysis* are experience-distant categories used by social analysts who should “avoid unintentionally reproducing or reinforcing such reification by uncritically adopting categories of practice as categories of analysis” (Brubaker and Cooper 2000: 5).

Thus, social analysis “requires relatively unambiguous analytical categories” (Brubaker and Cooper 2000: 12). Without further specification, the terms “trafficking”, “exploitation” and “demand” are therefore not appropriate analytical categories for social analysis. For all empirical statements, it is necessary to specify what is being concretely addressed in the context under observation.

Thus, when social scientists seek to observe and explain phenomena in social reality, they should adhere to scientific standards which require – according to Popper (1972) – at a minimum the conceptual precision of the central categories under investigation, theoretical stringency, methodological appropriateness, impartiality with respect to unexpected findings, and the falsifiability of findings. The elementary criteria for the quality of research methods are reliability and validity (Lewin 2005: 216). *Reliability* refers to the accuracy, stability and consistency of measurements. *Validity* refers to whether or not the measurements collect the data required to answer the research question. “… attention to how (constructed) facts relate to (constructed) claims and theories is a widely recognised hallmark of good-quality research” (Seale 2004: 411).

It is obvious, therefore, that researchers cannot fulfil the criteria for good empirical research if they try to analyse “trafficking” as defined in legal terms; no one can conduct meticulous empirical observation and analytical interpretation in an endless number of fields. Even if only those fields which are explicitly mentioned in the definition are explored, it is difficult to imagine that an individual has the knowledge and capacity to theoretically grasp the issues in the difficult, contested and diverse fields of prostitution, forced labour, begging and organ removal, and to have the time and resources to make well-documented empirical observations in these fields, which all involve hard-to-reach-populations.

Therefore, good empirical research on THB concentrates on a particular field, using a specific operational definition of trafficking that is both suitable and applicable. Similarly, any proposition claiming to be social-scientific has to provide an explanation of how demand is defined in the context of any particular research project.

However, as evaluation research emphasises, academic investigations do not always meet scientific standards (Chelimsky 2006: 48–49). Researchers may feel tempted to draw wider conclusions from their research, may not realise that they have analysed only a small segment of what could potentially be trafficking in a legal sense or may be embedded in a political paradigm and willing to mould the presentation of their results to the expectations of that paradigm. As a matter of fact, the reliability and validity of much of the current social-scientific research on trafficking in human beings that informs

This consideration means for a project of the history of concepts that the meaning and understanding of the relevant terms cannot be taken for granted but need to be unfolded within a respective historical and communicative context.

2.6 Conclusion

The introduced theoretical frame and methodological approach raises awareness for the vagueness of terms central for the past and present debates on trafficking in human beings. For the purpose of a history of concepts, the occurrence and use of demand arguments in debates on trafficking in human beings requires a continuous reflection of the contextualised meaning and understanding of the terms trafficking, exploitation and demand and a transparent determination to which issues the terms actually refer. The following analysis of the conceptual history of demand arguments in past and present debates on trafficking in human beings explores the emergent effects of interaction between social agency and linguistic features.
3 The occurrence of trafficking as a public problem (1860-1920)

The historical feminist abolitionist movement occurred as part of a broader movement for the repeal of state regulation of prostitution in the United Kingdom (UK) in the second half of the 19th century. This chapter briefly introduces the circumstances of the occurrence and the actions of the repeal movement, the main actors holding different, even competing opinions and their references to demand arguments. The last section explores the use of demand arguments in the historical debates on “white slavery”. Particular attention is paid to the abolitionist conceptualisation of demand because it became subsequently the reference concept for the institutionalisation of measures against trafficking in persons (TIP) in the human rights frameworks of the League of Nations (LoN) and the United Nations (UN).

3.1 The UK repeal movement (1860-1886)

The transformation of society, economy, knowledge and public administration turned the issue of prostitution at the end of the 18th century into a “public problem” (Gusfield 1989). A combination of several factors like urbanisation, industrialisation, internal migration, poverty and the organisation of a standing army fostered in combination with established social conventions (traditional patriarchal gender relations, formal and informal restrictions on marriage) the increase and increasing visibility of vice and commercial sex (Weeks 2012). The upper and middle class worried about the impact on public morality and negative impacts on families and family values (Weeks 2012). High ranked military officials and medical doctors were concerned with the spread of venereal diseases. Guided by the conviction that prostitution is a necessary evil that cannot be suppressed but only contained, around 1800 a system of state regulation of prostitution was introduced first in France and Prussia (Harsin 1985, Hüchtker 1999 and 2006). In the aftermath of the Napoleonic wars the system of state regulation of prostitution became the favourable and modern approach that defined women alone as the source of contagion and only target of regulations. Since 1815 an increasing number of European states introduced a system of state regulation of prostitution that impaired women’s rights (Bullough and Bullough 1987).

3.1.1 Contagious Diseases Acts in the UK

The first open and serious opposition against state regulation of prostitution occurred in the UK when the “Contagious Diseases Acts” (CDAs) were introduced 1864 and amended 1866 and 1869 (McHugh 1980). The proponents of the CDAs were military officials and medical doctors who successfully lobbied for the state regulation of prostitution. Regulationists believed that prostitution is an inevitable aspect of society which could never be eradicated but could at least be managed by the state in order to mitigate attendant evils which were perceived to be less of moral nature, rather of a social and health nature. The social concerns addressed the effects on the rest of the
society. Prostitution was believed in particular to “pollute and corrupt the respectable classes and threaten the very temple of the social order itself, the family” (Phillips 2004: 73). Medical doctors were concerned with the spread of venereal diseases and called together with military officials for the state regulation of prostitution in order to protect soldiers garrisoned in English towns. After the early attempts in the 1850s to examine soldiers had turned out to be unpopular among the soldiers and the medical doctors, compulsory examination of women was preferred (Moore 1993: 2).

The CDAs gave police and doctors far reaching power over suspected women. The first CDA applied to certain ports and garrison towns, where the police were given the power to arrest prostitutes, order them to undergo an internal examination and, if they were diseased, detain them until they were pronounced cured. If a woman refused she could be jailed after a trial in which she had to prove that she was virtuous. The 1866 Act was extended to impose compulsory quarterly examinations of women on the sworn evidence of one policeman. And it introduced compulsory regular examination of suspected women within ten miles of the protected area. The 1869 Act extended to all garrison towns and also permitted five days incarceration before examination without committal or trial and with no release permitted under habeas corpus (Phillips 2004: 76). However, since it was difficult to decide who was a prostitute and who was not, plainclothes spies performed intrusive activities (see Walkowitz/Walkowitz 1973). Also innocent women and girls were arrested and examined. As a consequence, the suspects were driven out of jobs and in some cases committed suicide. The internal examinations were hurried and brutal and “at Davenport it could be observed through the windows by jeering crowds and dockyard workers” (Phillips 2004: 77).

In autumn 1869 medical experts proposed to extend the CDAs to the civilian population across the country (Phillips 2004: 78). This finally provoked public repercussions and induced – for the first time ever – a social movement for the repeal of the system of state regulation of prostitution. In October 1869 a group of opponents launched the “National Association for the Repeal of the Contagious Diseases Acts”. The campaign was joined by the Victorian and Christian liberal feminist Josephine Butler (1828-1906) who became the charismatic leader of the national and international campaign for the abolition of state regulation of prostitution (Summers 2006). In 1870, Butler, with other feminists, set up an independent organisation of their own, the “Ladies National Association for the Repeal of the Contagious Diseases Acts”. In 1875 she founded the “National British and General Federation for the Abolition of the State Regulation of Vice” which was renamed as the “International Abolitionist Federation” in 1899 (Bristow 1977, Laite 2006).

In 1870 the Ladies Association published a first manifesto against the CDAs signed by 124 women, among them Josephine Butler, Florence Nightingale and Harriet Martineau. The manifesto became the signal for a repeal campaign that received a wide range of supports. The Ladies Association became the backbone of the repeal movement. Josephine Butler regularly published on the issue, travelled around to give public speeches in the whole of the UK and in European countries, organised national and international conferences and coordinated political lobbying (Summers 2006).
3.1.2 Actors in the repeal movement and their orientations

The repeal movement gathered a diversity of supporters and activists, organised in feminist liberal women’s associations, socialist working class parties, liberal reformer circles, feminist moralising suffrage groups, conservative Christian congregations or social purity reformers – united in their opposition against the CDAs (McHugh 1980, Bristow 1977, Phillips 2004).

The repeal movement was united in the opposition against a regulationist view believing, as already noted, that prostitution is a “necessary evil” to supply a male demand for sexual services inherent in male biological drives and state regulation is the best way to mitigate the negative social and health evils (Bullough and Bullough 1987, Phillips 2004). But beyond this consensus the repeal movement diverged with respect to the evaluation of the moral order and the legitimacy of state authorities to interfere in private affairs.

One strand of the repeal movement consisted of social purity reformers mainly of conservative Christian provenience who condemned prostitution as immoral. They believed that biological drives do not necessarily lead to a male demand for commercial sex services. Social Purity Reformers from Evangelical Churches had a conservative stance and were basically concerned with the threat of moral decay through the immorality of lower classes and liberal attitudes which threatened the established moral order and the family. In this view, vice was a cause and effect of loss of self-control due to poor education, societal immoral seductions (alcohol, debauchery) and individual bad character. They consequently strove to coerce morality by repressive law, surveillance and policing (Laite 2012, Bristow 1977, see also Becker 2002, Hüchtker 1999 and 2002).

The call for the suppression of male vice was shared by moralist feminists, although for other reasons. They strove for the abolition of prostitution and the realisation of chastity out of the belief that “carnal sexuality, identified with the male instinct, was behaviour associated with savages and animals while spirituality, identified with delicate female sensibilities, was the most elevated expression of the human spirit. (…) Men, with their sexual urges, were therefore universally perceived as the problem; and the virtues of continence and self-restraint embodied by women would supply the solution” (Phillips 2004: 57f). Moralist feminist were not guided by a sense of respect for individuals which are equal but by a sense of mission that the morality of chaste women spiritually vanquished the lower patriarchal morality that allowed men to indulge in carnal lust. In this elitist view the underlying goal was a transformation of society into a higher valued civilisation where prostitution is abolished and carnal lust surmounted. The moralist feminists opposed the liberal abolitionist approach as laissez-faire (Bland 1992: 401).

Abolitionists shared the verdict of prostitution as immoral (McHugh 1980: 21). However, the present-day opinions dramatically misrepresent the aims and attitudes of Josephine Butler (1828-1906) and the historical feminist abolitionist movement.
According to an opinion popular among conservative Christian feminists, in the late 1870s Butler had formulated a “view that insisted that sex work of all kinds was a form of slavery” (Mumm 2006: 56). However, biographical historical research opposes such a verdict. Butler strongly objected measures to coerce redemption from immorality. Her position was “rigorously and consistently liberal. Although she considered sex outside wedlock as sinful, she did not think that the state had a right to enforce moral conformity in private matters. Her campaign was one to protect individuals from the encroachment of state power as well as patriarchal oppression” (Summers 2006: 217). Butler and her fellow campaigners developed and held a particular liberal view that distinguished the “new abolitionists”, as they called themselves (Butler 1876), from other organisations involved in the repeal movement.

Abolitionists’ advocacy of sexual equality and mutual respect was often underpinned by a belief in the value of abstinence, or at least self control. Liberal abolitionism advocated sex education for young people primarily as a means of preventing men from visiting prostitutes, and women from tolerating this behaviour from men they wished to marry; they did not necessarily share the views of reformers and sexologists whose focus was on sex as a legitimate and respectable source of pleasure (Summers 2006: 221).

However, Butler believed that morality is an individual discernment that cannot be enforced and thus consequently opposed the state regulation of prostitution as an unjust “double standard of morality” (Butler 1886, see Thomas 1959). She drew special attention to the unequal treatment of men and women and the degradation which the CDAs inflicted on women: “So far as women are concerned, the Acts remove every guarantee of personal security which the law has established and held sacred, and out their reputation, their freedom and their persons absolutely in the power of police” (Butler 1871, quoted in Jeffreys 1987: 151-169).

A particular focus of the abolitionist groups was the critique of upper-class males’ vices (Bland 1982). Drawing on her experience in giving refuge to women who had left prostitution, Butler openly attacked upper class men: “We have listened to cynical arguments in favour of the protection of male vice from men in the House of Commons, whose illegitimate children and cast-off paramours we have sheltered and nursed in their disease and poverty and destitution, and the victims of whose seductions we have laboured hard to restore to hope and a new life” (quoted in Phillips 2004: 92).

When Butler had been asked in 1883 to sign a petition to close down a theatre that was notorious as the haunt of prostitutes she refused and explained: “My principle has always been to let individuals alone, not to pursue them with any punishment, nor drive them out of any place as long as they behave decently, but to attack organised prostitution, that is when a third party, actuated by the desire of making money, sets up a house in which women are sold to men” (Butler 1883, quoted in Phillips 2004: 207).

Thus, Butler and her fellow campaigners explained and defended a liberal understanding of the abolitionist movement’s claims: States should not interfere but instead keep out of prostitution as long as it was a matter among consenting adults.
performed without third-party interference. In the abolitionists’ view, prostitution was a private vice that state authorities should not interfere with (Flexner 1920: 288, Butler 1983).

3.1.3 The elastic language of ‘white slavery’

In spite of ethical and ideological differences feminist new abolitionists cooperated with social purity reformers and moralising feminists in the repeal movement. What these different campaigners shared was the ambiguous use of the moving language of “white slavery”.

From the outset, the repeal movement applied the metaphor of “white slavery” to gain support for their claims. However, the moving language of “white slavery” had already been used earlier. In the 18th century it referred to captives of Barbary Mediterranean pirates and in the early 19th century to workers exploited by the Capitalist system or to children of white settlers abducted by Indians in the US frontier zone (see Sumner 1853, Demleitner 1994, Grittner 1990; for present day use of language of slavery in debates on trafficking in human beings see Kurasawa 2014, O’Connell Davidson 2012 and 2014).

But the abolitionist movement gave the term “white slavery” another special meaning. Butler used to quote a letter from Victor Hugo which she had received in 1870 as reference for the occurrence of the term slavery in the context of the abolitionist efforts: “England prepares to adopt from France a detestable system, that, namely, of a police dealing with women as outlaws. Protest! Resist! Show your indignation! All noble hearts and all lofty spirits will be on your side. The slavery of black women is abolished in America, but the slavery of white women continues in Europe. And laws are still made by men to tyrannise over women” (Victor Hugo, quoted in Butler 1910: 13).

As a matter of fact, in this original abolitionist understanding the term “white slave” initially referred not to prostitution as such but to women forced by public authorities to register as prostitutes, placed coercively as inmates in licensed brothels and subjected to humiliating medical examinations. Abolitionists thus argued that women engaged in commercial sex are not enslaved by prostitution as such but by a system of state regulation of prostitution.

3.2 Scandalising international white slave traffic

In their efforts to achieve the repeal of state regulation of prostitution, the movement focused on the National Parliament. In order to increase pressure, the activists mobilised with a collection of signatures to support initiatives of a minority of liberal Members of Parliament who introduced several times a draft proposal for the repeal of the CDAs. Furthermore, activists pressured liberal candidates standing in elections for a seat in the National Parliament to declare support for the abolitionist cause. Although the political tactics increased support, it did not suffice to get a majority vote (McHugh 1980, Phillips 2004). After about ten years of arduous and intensive activism it became
harder to keep public attention and pressure high. In the situation of exhaustion the repeal activists discovered the issue of traffic in white slaves and included it in their repertoire of advocacy (McHugh 1980).

In 1879, the social purity reformer and Quaker Alfred Dyer, editor of Butler’s books, published a book on the procurement of British girls to Continental brothels. Dyer described the trade as a white slave traffic of innocent girls.

Dyer’s explosive allegation that English girls were being held in captivity in brothels in Brussels had considerable impact. The term “white slavery” firmly and permanently took on the connotation of the abductor and the hypodermic syringe (Bristow 1977: 86). The issue as such was not new. As Bristow noted, already in the decade before the British Embassy and Community had assisted in the return of about two hundred “girls” who had ended up in the brothels of Brussels. While a few were “innocent” victims, most seem to have been professionals who did not know that they would be kept in more severe circumstances than prevailed in England. The fact that they came forward disproves the assertion that the inmates were held in “actual conditions of slavery” (Bristow 1987: 88). Today, historians challenge the extent and even existence of such a Brussels white slave trade in innocent girls (see Chaumont 2009 and 2011, De Schapdrijver 1986, Bristow 1977: 86).

However, the Brussels scandal did not only provide an opportunity to raise support for the repeal cause but extended the agenda of the abolitionist movement: “The Brussels scandal had activated the highly emotive issues of white slavery and the age of consent” (Bristow 1977: 93). Finally, the repeal movement reached 1883 that the operations on the CDAs were suspended. However, the Acts were still not repealed (Phillips 2004: 202).

Although abolitionists rejected the call for the prohibition and suppression of prostitution as such, they used the moving metaphorical language of “white slavery”, alluring to abducted innocent girls in an ambiguous manner, sometimes “white slavery” meaning the taking of professional prostitutes to foreign places where they were subject to gross exploitation. Campaigners were never interested in making the distinction between voluntary and fraudulent or coerced procurement clear for “public support depended upon fear of fiendish slaver rather than sympathy for professionals marooned abroad” (Bristow 1977: 86).

In order to influence public opinion in favour of the repeal concern, Butler and her allies asked W. T. Stead, a social purity reformer and director of the influential Pall Mall Gazette, to investigate the traffic of girls for prostitution. In July 18855 a series of four articles appeared under the heading “The Maiden Tribute of Modern Babylon” and caused a scandal. About 200 000 people marched through London and rallied in Hyde Park, calling for an end to child prostitution and traffic (Gorham 1978, Bristow 1977: 106-114; Walkowitz 1992, Devereux 2000, Chaumont 2011). The outrage was caused by the special emotive style of writing and the fact that Stead had described the case of the thirteen year old Eliza Armstrong as proof for the allegation that young innocent

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5 Information on Stead and the articles provide http://www.attackingthedevil.co.uk/pmg/tribute/ (accessed 22 October 2015).
British girls can be bought. As a matter of fact, it was Stead himself who had actively instigated Eliza’s mother to hand over the girl to him for £5. When Stead was later sentenced for this deed he became a martyr and hero for social purity reformers (Gorham 1978). In response to the outrage, a law amendment raised the age of consent from twelve to sixteen and outlawed procuring for foreign brothels. The Contagious Diseases Acts were finally repealed in 1886 (Phillips 2004: 205).

3.3 After the Repeal

The successful abolition of state regulation of prostitution in the UK encouraged the different strands of the repeal movement to continue with their activities. Abolitionist organisations intensified activities aiming to abolish state regulation of prostitution in other European countries and the Colonies. Social purity reformers continued in the UK with subsequent campaigns for the restriction of immorality that included surveillance of women engaged in commercial sex, programs for the rescuing and rehabilitation of women engaged in prostitution, and the making of international private organisations’ campaigning against international procurement into prostitution under the heading of “white slavery”.

Of particular importance in the fight against immorality and vice was the National Vigilance Association (NVA). The NVA was founded 1885 by William T. Stead as a self-styled “social purity movement” (Bristow 1977: 118, see Cree 2008). The NVA organised hundreds of institutions ranging from local vigilance committees to rescue societies and chastity leagues which blanketed Britain (Bristow 1977: 6) and also included groups initially founded by Josephine Butler. In difference to the abolitionist movement, the NVA did not work as a broad alliance against upper-class vice and economic forces of third-parties behind prostitution but focused instead on pornography, popular entertainment and expressed the need to clear the streets of visible vice (Phillips 2004: 207, Bristow 1977: 7). Under the leadership of A. Coote, an Evangelican who believed that the buying and selling of sex should be subject to criminal penalties, the NVA became the centre of the social purity movement that strived for a “single standard, but one of coercion” (Bristow 1977: 118).

3.3.1 Rescuing initiatives

Social purity initiatives sustained attempts to repress prostitution and to liberate the streets from prostitutes (Bristow 1977: 154). NVA local branches used to justify their claims for the closing of tolerated brothels by arguing that displaced and arrested prostitutes were given the offer of a penitentiary or asylum. In 1887 the NVA stated that it “is one of the principles of our work that we never attempt to close such houses
without previously offering the occupants an opportunity of leading a better life” (Bristow 1977: 156).  

Following the formula “repression with rescue” organisations established houses for the rehabilitation of women having worked in prostitution (Mahood 1990). In 1885 the Salvation Army opened the first home and up until 1912 over 50 000 women previously engaged in prostitution had passed through the forty homes. Several other organisations operated rehabilitation houses. By 1900 over three hundred homes and refuges were caring for about six thousand women in Britain annually. However, in the same year it was estimated that the houses could have handled another 1 200 women. At the point of their greatest expansion, the rescue homes were probably doing as much for pregnant and troubled girls as for women rescued from prostitution and offered a variety of voluntary social services (Bristow 1977: 156-159). Some houses provided a loving environment, while other institutions treated the girls and women harshly. “At the Church Penitentiary Association’s Highgate Penitentiary, the country’s largest, the inmates were sweated in the laundry, fed mainly with bread and butter, flogged and subjected to ‘black hole’ punishment in the coal cellar. (...) (S)ome asylums kept consumptive girls in the laundry until they were too sick to work and then put them out of the house, an indication of the financial strain the movement was suffering. The laundry vans providing a cut-rate service to large hotels and institutions had to be kept going at all costs” (Bristow 1977: 159, Mahood 1990, Cree 2008, Phillips 2004).

Liberal abolitionists like Josephine Butler opposed the system to enhance morality by coercion. She wrote in 1897 to abolitionist supporters: “It may surprise or shock some who read these lines that I should say (yet I must say it) Beware of ‘purity workers’ as allies in our warfare! Beware of ‘purity societies’ which seek affiliation with our society! . . . A long experience has confirmed the need of this warning. . . . We have learned that it is not unusual for men and women to discourse eloquently in public on the subject of personal, domestic, and social purity, of the home, of conjugal life, of the dignity of womanhood, of the duties of parents, and yet to be ready to accept and endorse any amount of inequality in the laws, any amount of coercive and degrading treatment of certain classes of their fellow creatures, in the fatuous belief that you can oblige human beings to be moral by force, and in so doing that you may in some way promote social purity” (Butler 1897: 7–8; emphasis in the original, quoted from Limoncelli 2006: 41). The abolitionists’ harsh aversion was a response to the activities and claims of social purity reformers that used to stress moral convictions at the detriment of individual liberty.

### 3.3.2 Combatting immorality

The NVA had pushed the adoption of the 1885 Criminal Law Amendment Act that made not only the procurement of a woman under 21 years of age for prostitution an offence

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6 Bristow (1997: 156-9) provides information on the development of a large infrastructure based on the formula of repression with rescue and its economic and social implications.
liable to a prison sentence not less than two years; but also raised the age of sexual consent from 13 to 16 years and also included a provision that any male found committing homosexual acts in private or public could be sent to prison for up to two years (Cree 2008: 765).

Soon after the Criminal Law Amendment the NVA “turned its attention to burning obscene books, attacking music halls, theatres and nude paintings. It condemned the work of Balzac, Zola and Rabelais as obscene and successfully prosecuted their British distributor; it attacked birth control literature and advertisements for ‘female pills’ (abortifacient drugs) on the same grounds. To these moral crusaders, ‘pornographic literature’, thus broadly defined, was a vile expression of the same ‘undifferentiated male lust’ that ultimately led to homosexuality and prostitution” (Walkowitz 1983: 428). The consequences of the Act were cruel and repressive for women engaged in prostitution and for gay men as increasing numbers found themselves either evicted and homeless or imprisoned. One of the many casualties of this legislation was the playwright Oscar Wilde (Cree 2008: 766, Walkowitz 1983 and 1992, Laite 2012: 55-86).

Additionally, the Act outlawed brothel keeping. As a consequence, landlords could be held responsible under the Act if they knowingly let houses for the purpose of prostitution. Self-contained flats did not come under the legal definition of a brothel and landlords could not be held responsible for what went on in them. While it was difficult to prove such knowledge, local authorities and vigilance committees regularly intimidated landlords by sending them formal notice that a house was a brothel. Respectable property owners became wary about even letting flats to suspect women – a label that would apply to most women living without men. Poorer prostitutes may well have been increasingly driven to render their services in the open as well as to solicit there (Bristow 1977: 168f).

The legal restrictions contributed to the spread of massage parlours, which provided a whole range of sexual services. The main ramification, though, was that women engaged in prostitution were pushed into flats and – as a side-effect - into the arms of pimps (also known at the time as ‘bullies’). Partly to cope with the situation, women engaged in prostitution paired off with bullies or pimps who posed as their husbands (Bristow 1977: 168f; Laite 2012: 87-99). Although pimping and bullying was not unknown, due to the legal restrictions many women engaged in prostitution were “being forced to resort to setting up house with pimps, or as they were called, ‘bullies’, to provide a cover for their work. Pimps were only too eager to give their ‘protection’” (Bland 1982: 401). The dependence on pimps lend the commercialised vice a particularly menacing visage.

The social-purity movement set out to solve the problem it allegedly had caused and worked up opinion against those who abetted the selling of sex. Consequently, in 1898 the Vagrancy Law Amendment Act passed that outlawed living of immoral earnings. Moreover, since the NVA had been pressing for punishing of men who solicited for

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7 “In 1905 altogether 944 females were charged in London with having sexual intercourse in the open” (Bristow 1977: 168f).
immoral purposes in public places, the Act included a provision making it possible to flog men who are convicted for a second time of soliciting other men. The provision “was only used against homosexuals and flogging remained fairly common until 1914” (Bristow 1977: 171).

Social purity efforts further led to the adoption of the White Slave Bill in 1912. According to Arthur Lee, parliamentary pilot for the Bill, the “bully was typically the most brutal figure imaginable… the most cunning and slippery of all criminals… the keystone of the whole structure of commercialised vice” (Bristow 1977: 169). But the official response to this claim showed that not all contemporaries agreed with such a one-dimensional explanation: “The police do not believe in the wide prevalence of an intolerable system of oppression. Prostitutes like to have a man with them whose presence enables them to get apartment, to have protection from robbery and violence and to have companionship in their off-time” (Bristow 1977: 168). It was generally agreed that bullies were proliferating because brothels were being closed and landlords threatened (Bristow 1977: 168f, Laite 2012).

But towards the end of the century the situation in London had diversified. More of London’s pimps were noticeably foreign, as were the women they controlled. During the 1900s about one quarter of the arrests in London for living off immoral earnings and for prostitution involved foreigners, mostly French, Germans and Belgians as well as Polish and Russian Jews. In the midst of the controversial mass immigration from Eastern Europe, Londoners did not take kindly to foreign streetwalkers and their pones. Wildly exaggerated stories abounded about the influx of foreign vice (Bristow 1977: 170). The narrative of the prostitute as victim of upper-class men’s seduction was replaced by the prostitute as slave to her bully.

3.3.3 Vigilant activities against traffic

Prompted by the observation that male procurers were involved in the sex trade and convinced that innocent girls were systematically captured by male procurers at ports or railway-stations or accompanied by pimps and subsequently forced into prostitution, the social purity reformers established further services. The National Vigilance Association and the Travellers’ Aid Society carried out thousands of enquiries for young women going into new situations. In addition, organisations began to monitor ports and rail-way stations and to offer assistance to women travelling alone or in company perceived to be suspicious. Vigilance organisations posted warnings and shepherded nervous travellers to their final destinations (Bristow 1977: 172).

The UK ports were important transit stations for international mobility with Jewish migrants as a special group. Between 1885 and 1914 nearly 300,000 persons of Jewish descent escaping the hardships of life in Eastern Europe passed through the ports of London (Bristow 1977: 173). In 1885, in response to the debates on white slavery and the increasing presence of Jewish migrants, the Jewish Association for the Protection of Girls and Women was founded. They established rescue and training homes and put Yiddish-speaking agents to work meetings ships at the London docks.
The services of vigilance associations alerted attention to the presence of some of these alien women engaged in prostitution and to cases of entrapment – thus contributing to the impression that white slave traffic is a Jewish problem. In 1898 one of the officials of the Jewish Association received word that a group of girls had been procured for immoral purposes and was about to sail for Cape Town on the S.S. Tonic. The police raced to the Royal Albert Docks but there was nothing they could do. The law required warrants for the arrest of procurers. The majority of the women were all known to the police as engaged in prostitution and they sailed away with their bullies (Bristow 1977: 173; see also Laite 2012: 101-115).

Such episodes indicate that the international procurement of women for prostitution was a significant phenomenon in the mass migration of the decades before First World War. However, just as in the case of the Brussels revelations (1879) only a very small part of the movement involved “white slaves” in the most emotive sense of the term, i.e. a virgin drugged and carried off to a brothel. Present-day historians argue that British nationals were well protected. The occasional cases of entrapment that had surfaced usually involved young entertainers recruited for European or American cafes chantants, many of Jewish descent (Bristow 1977: 172, see also Schettini 2012). However, vigilant associations normally did not clarify this point. Believing that commercialised vice itself was exploitative, the campaigners against “white slave traffic” took advantage of public confusion about white slavery in order to strike a blow at pimps and bullies everywhere (Bristow 1977: 172). The public understanding of “white slavery” was informed and influenced by the images of “white girls” as a placeholder for the own nationality being abducted by foreign male culprits, frequently presented as ‘Jewish’ (Bristow 1983, Knepper 2009, Jazbinsek 2002) or in the US American context as ‘Black’ Americans (Grittner 1990).

The “Maiden Tribute” outrage and the subsequent vigilance activities had triggered a public belief that there was a large scale “traffic in white slaves”, as the international procurement of women for prostitution was called. The white slavery metaphor invoked the narrative of the innocent white girl abducted by foreign men and forced into prostitution in a foreign country (Irwin 1996, Doezema 2010). Around the turn of the century media coverage on “white slave traffic” multiplied. Additionally, fictional literature and the new media film exploited the topic commercially (Bristow 1977: 190; see also Lindsey 1991 and 1997; Soderlund 2002; Jazbinzek 2004, Sabelus 2012, Grittner 1990: 106-126) and induced a general urgency for action.

3.3.4 Contemporary criticism

The publicity of the white traffic issue also raised the attention of contemporary observers who commented or questioned the accounts. For example, the radical left-wing observer Emma Goldman questioned the moral seriousness and the causal explanations in favour of a combination of radical feminist critique of capitalist societies: “Our reformers have suddenly made a great discovery – the white slave traffic. The papers are full of these ‘unheard-of conditions’, and lawmakers are already planning a
new set of laws to check the horror. It is significant that whenever the public mind is to be diverted from a great social wrong, a crusade is inaugurated against indecency, gambling saloons etc. And what is the result of such crusades? Gambling is increasing, saloons are doing lively business through back entrances and prostitution is at its height, and the system of pimps and cadets is but aggravated. (...) What is really the cause of the trade in women? Not merely white women, but yellow and black women as well. Exploitation, of course, the merciless Moloch of capitalism that fattens on underpaid labor, thus driving thousands of women and girls into prostitution. (...) Nowhere is women treated according to the merit of her work, but rather as a sex. (...) Whether our reformers admit it or not, the economic and social inferiority of women is responsible for prostitution. (...) Naturally our reformers say nothing about this cause. They know it well enough but it doesn’t pay to say anything about it. It is much more profitable to play the Pharisee, to pretend an outraged morality, than to go to the bottom of things” (Goldman 1911: 96). Goldman played skilfully on the contemporary public fear of “white slave traffic” for a sharp critique of capitalist and patriarchal structures because she tacitly applied the equation of “white slavery” with prostitution.

But in the early 20th century the stories of white slave traffic were already met with reasonable doubt. In 1913 the feminist Teresa Billington-Greig set out to conduct her own independent assessment of the ubiquitous stories of “white slavery”. She opened the text with the remark that the British “Criminal Amendment Act of 1912 was carried by stories of the trapping of girls” (Billington-Greig 1913: 428). To one who, like herself - Billington-Greig continued – has learned the value of evidence and the need for clarification of statements made in emotional movements, there were several remarkable features of this epidemic of terrible rumours. “First came the element of number. The stories were so numerous and reported incidents which were said to have happened within so short a period that a strain was put upon the credulity of the most willing believer. In the second place the stories were of an extraordinary nature. Many of them were clearly incredible – unless the whole general public were in the conspiracy. Many suggested that the girls reported as trapped must be either limbless cripples or mental deficient, and others took it for granted that any man could control, govern, and dominate any women wherever they might be. Then what was apparently the same story appeared again and again in various forms. (...) Perhaps the most remarkable feature of the stories was that they were all offered second hand or third hand, except in the cases in which an individual described what he or she regarded as a serious circumstance, which, being once reported, began to circulate as a certainty. There was never a first-hand statement signed, or shown before a magistrate, or deposited with some responsible bodies. When a story was questioned it was repeated with emphasis; this was supposed to be proof enough” (Billington-Greig 1913: 429f).

Billington-Greig undertook an inquiry herself and investigated all cases of trapping or attempted trapping of girls that had been reported in the previous time. She first approached 18 speakers and writers prominent in the counsels of the various agitating societies and asked for their authorities and full details, providing a guarantee of privacy. Seven of those approached did not reply. Two women supplied information; one Member of Parliament referred Billington-Greig to another, and that member
referred her to the police; two persons referred her to the Nationals Vigilance Association; and names and addresses for verification of statements given had been refused by four. A total of five asserted that they knew that trapping existed. The cases given by the two who supplied information included one case of suspicion of trapping and two of alleged attempted trapping by motor car. “According to the first story, two girls were observed in charge of a women dressed like a Rescue Worker on Sheffield Station in October last, one of the Girls appearing dazed, while the other was asleep. The lady responsible for the story spoke to the women of the party and was answered curtly. This roused her suspicion and she sought the stationmaster. Failing to find him, she pointed out the group to a ticket inspector from another platform. When she returned with this official the three were gone. Their luggage was marked both Pontefract and Liverpool. The story suggests to me some weary Irish travellers on their way to Pontefract. But all too vague to prove or disprove anything. The girls were not spoken to, and the lady does not say whether any trains left that or an adjacent platform during her absence. Yet when I question her deductions, she asks me if it has never occurred to me to ‘investigate the truth of murder’” (Billington-Greig 1913: 431f).

Billington-Greig provided a systematic account of how she followed case after case with the same finding that proof is not available. She turned to the Secretary of the National Vigilance Association, Mr. Coote, and asked for a comment why the latest report of the NVA did not mention any case of forcible trapping. Coote answered that the “reason why no reference is made to cases of that kind is that we have not any such to deal with … During the last twelve months painful stories have been in circulation respecting the decoying and drugging of young women. In each such case reported to this office endeavours have been made to get at the correct facts, but I was not successful in tracing any one of these rumours to its source. … It does not follow that the particular cases referred to did not happen … I have little doubt that the stories told were based on actual facts.” (Coote, quoted in Billington-Greig 1913: 438f). Presenting a wide array of fact finding activities by contacting politicians, private associations and police Billington-Greig concludes that all evidence speaks entirely against the alarmist campaigners. “Indeed, they are now left the choice of two unpleasant admissions: either the Act has failed to achieve the purpose for which it was passed, or there was no need to pass it! But they may prefer to argue that the police lacked knowledge of trapping before the Act because of the subtlety of the trappers, but now lack knowledge because of it no longer exists” (Billington-Greig 1913: 444).

In the regulationist country Germany, in 1907 the Hamburg Police councillor Hopf felt it necessary to respond to the abolitionist contention raised at a national conference on the international suppression of traffic in girls that “every year thousands of German girls are brought into brothels abroad where they miserably go to the dogs. Equally, as it was mentioned there, the brothels existing in Germany would contribute to the flourishing of this ignoble trade” (Hopf 1907: 13f, original German, own translation by the author, NC). The police officer argued that “any response to this accusation first requires a clear definition. Traffic in girls is a catch phrase understood arbitrarily. One sees as traffic in girls only the diversion of innocent girls under false pretence into
foreign brothels, while another also includes the theatre director as a trafficker because he allocates a role in order to achieve compliance of actors. It immediately makes sense that practical police work cannot do anything with such an incomprehensible wide term" (Hopf 1907: 14). The indifference of the term traffic in girls explains why some claim that traffic in girls does not exist in Germany while others believe that traffic in girls exists on a large scale. The relevant criterion in the German law for traffic in girls was, according to Hopf, the malicious concealment of the purpose of assistance to emigration. Traffic in girls was only given if a girl is procured for prostitution or instigated to change the place of prostitution against her will. Hopf explicitly stressed that “one should be aware to believe in the media coverage on traffic in girls, and should they be enriched by so many details that a naïve reader believes that they cannot be invented and take the stories as granted and develops an opinion on the volume of traffic in girls. I have, since I head the criminal police in Hamburg from the year 1901 onwards, ordered to examine all references in the larger German newspapers pointing to traffic in girls in Germany or the traffic in German girls. As a result, the examination yielded only in two cases the existence of traffic in girls” (Hopf 1907: 17).

A similar statement was made by the London Commissioner of Police in 1913. Here, a new branch consisting of eight men in total had been established within the Criminal Investigation Department to administer the laws against ‘white slavery’ in 1912. One year later the Superintendent responsible presented his report in which he issued an unequivocal statement about the white slave in London: “At the time of the formation of the Branch the country was being aroused by a number of alarming statements made by religious, social and other workers, who spread the belief that there was a highly organized gang of ‘White Slave Traffickers’ with agents in every part of the civilized world, kidnapping and otherwise carrying off women and girls from their homes to lead them to ruin in foreign lands, and were thereby reaping huge harvests of gold. I have to state that there has been an utter absence of evidence to justify these alarming statements the effects of which was to cause a large shoal of complaints and allegations (many contained in anonymous letters) to be received by Police. The white slave traffic in this country, so far as procuring and transporting women is concerned, has been to be of a very small proportion and quite sporadic” (quoted in Laite 2012: 111).

As Jessica Laite commented, once it became apparent that cases of procuration were rare and even more rarely successfully prosecuted, the Superintendent redirected the energies of the Brand to watch suspected pimps and bring them to justice.

The observation that a traffic in young girls had been widely restricted in Europe was confirmed by Abraham Flexner in his influential study on “Prostitution in Europe” (Flexner 1920). For Flexner, the movement against White Slavery had forcibly interfered in the making of prostitutes and greatly restricted the traffic in young girls in

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8 Abraham Flexner was a prominent figure in American education reform, particularly medical education, and later Founding Director of the Institute for Advanced Study, see http://www.ias.edu/people/flexner/ (accessed 22 October 2015).
Europe although the “trade in already ruined women is still carried on” (Flexner 1920: 93f). Such a statement revealed that the historical anti-trafficking movement applied the term white slave traffic as umbrella term for all forms of procurement for prostitution.

3.4 Internationalisation of campaigns against white slavery

The decades before World War I became a period for international private organisations such as the International Bureau for the Suppression of Traffic in Women and the Jewish Association for the Protection of Girls and Women (Knepper 2011: 1). These organisations pressed governments with alarming reports on uncountable cases of white slave traffic, resulting in action. At the end of the 19th century, two distinct and competing international private associations campaigned on the issue of international white slave trade (Knepper 2011, Nadelmann 1990), the International Abolitionist Federation (IAF), since 1875, and the International Bureau for the Suppression of Traffic in Women (IB), since 1898 (Limoncelli 2006 and 2010).

3.4.1 The International Abolitionist Federation

The International Abolitionist Federation had been founded in 1875 by Josephine Butler initially as the British, Continental, and General Federation for the Abolition of Government Regulation of Prostitution (Summers 2006, Laite 2008, Cree 2008). IAF reformers “did not think that prostitution itself could be suppressed at the individual level” (Limoncelli 2006: 37). However, rooted in a “firm liberalism” IAF reformers argued that women engaged in prostitution “should be treated as persons with individual rights” (Limoncelli 2006: 37).

This view was clearly expressed by Josephine Butler in 1900 when she responded to often raised regulationist objections, that for every scandal proceeding from this social vice which is committed under the system of Governmental Regulation and sanction, a parallel can be found in the streets of London, where no Governmental sanction exists. In her response, Butler openly conceded that abolitionists are constantly taunted with this situation: “But our accusers do not see the immense difference between Governmental and individual responsibility in this vital matter, neither do they see how additionally hard, how hopeless, becomes the position of the slave who, under the Government sanction, has no appeal to the law of the land; an appeal to the Government which is itself an upholder of slavery, is impossible” (Butler 1900 [2004: 4]).

Thus, it was the state regulation of prostitution that was characterised as a system enslaving women engaged in prostitution. Describing the situation of women engaged in systems of state regulated prostitution as enslavement directed attention to the international procurement for prostitution in regulationist countries. “The reason for internationalising the abolitionist movement was the belief that regulation promoted not only prostitution but also intensified traffic in prostitution to areas where it was legal” (Leppänen 2007: 525).
3.4.2 International Bureau for the Suppression of Traffic in Women (IB)

However, anti-vice and moral reform organisations increasingly paid attention to the international and transnational dimension of prostitution (Laite 2012). The secretary of the National Vigilance Association (NVA), William Alexander Coote, established in 1898 the International Bureau for the Suppression of Traffic in Women (IB) as an international private organisation against white slavery. According to Bristow, Coote was aware from the vigilance work at ports and railway-stations that entrapment of British girls at home and abroad had been eliminated as an effect of previous legal amendments (Bristow 1977: 172, see also Schettini 2012). But IB activists argued that it had been the slave trade rather than slavery itself that had come under attack initially. It was expected that an immense number of private individuals, associations and governments in regulationist countries who rejected the abolitionist view could be aligned for the efforts against the international procurement for prostitution (Bristow 1977: 176). Coote toured the Continent to establish national committees against white slavery traffic in order to organise internationally and gain influence at the national level. Consequently, the IB and most of its committees considered the issue of domestic women engaged in domestic prostitution as a national rather than transnational issue (Limoncelli 2006: 39).

After the 1899 Congress, national IB committees that had been established obtained financial support of governments and the patronage of royal families and leading politicians across the Continent. Some were eventually institutionalised and led by state officials (Bristow 1977: 177; Summers 2008, Limoncelli 2006). IB also actively recruited regulationist state officials as members of their national committees. In terms of organisation, IB was much more closely tied to state interests than IAF (Limoncelli 2006: 39) and later criticised IAF more directly for what they called the ‘laissez-faire’ approach to prostitution (Limoncelli 2006: 41). The IB committee sought to increase the state’s ability to control various sexual activities they believed were immoral, chose to sidestep the issue of regulation in favour of working with state officials. They framed the issue of prostitution in national terms, with each national committee concerned about protecting ‘their women’ from foreign men (Limoncelli 2010: 8). Consequently, with respect to the issue of regulation contested by abolitionists, IB typically asserted support for increased state control over prostitution whether through regulation – which was acknowledged as immoral but often defended as necessary – or outright suppression, including the closure of brothels, but also the criminalisation of women engaged in prostitution (Limoncelli 2006: 39).

In keeping with the interests of the state officials with whom it collaborated, IB focused on the ‘girls’ involved in migration, trying to prevent them from travelling abroad for prostitution. In practical terms, IB committees checked on whether employment situations abroad were suitable for girls, communicated with state officials to trace

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9 However, for consideration of principal differences that enabled the abolition of slavery and slave trade but made the abolition of prostitution very unlikely, at least in liberal states, see Nadelmann (1990: 526).
missing girls, provided warnings and in-persons assistance to girls and young women travelling through ports and railway stations to prevent them being tricked into prostitution and worked toward the compulsory repatriation of foreign women engaged in prostitution (Limoncelli 2006: 39, see also Laite 2012; Billington-Greig 1913).

But the main goal of IB was the adoption of an international agreement to suppress the international procurement into prostitution.

### 3.4.3 White Slavery as international public problem

In 1889, the National Vigilance Association convened the First International Congress for the Suppression of the White Slave Traffic at London. By “white slavery” Coote and his allies meant any instance of female prostitution abetted by a third party (Bristow 1977: 112). The conference gathered delegates from forty-five institutions and eleven states holding a regulationist (French, Germany) as well as abolitionist (Dutch, Swiss, Sweden) orientation. The conference succeeded because the issue of regulation was avoided (see Limoncelli 2006 and 2010; Garcia 2010). Subsequent official conferences followed in Paris in 1902 and in Madrid in 2010 and in London in 1913. These activities led to the completion of two agreements on a multilateral basis for the “Suppression of White Slave Traffic” (1904 and 1910). The agreements induced increased activities and reports on traffic and offered abolitionists opportunities to advocate their views. Finally, the 1913 Congress for the Suppression of the White Slave Traffic resolved against state brothels (Bristow 1977: 176). This work was later taken over by the League of Nations who adopted in 1921 the Convention Against the Traffic in Women and Children (Limoncelli 2006: 39, Garcia 2014).

### 3.5 The issue of demand

The debates since the late 19th century on the procurement of women for prostitution across international borders – addressed by the term “white slave trade” – included consideration on “demand” as a root cause.

From a regulationist perspective, the term “demand” referred to a male drive that was perceived as a “necessary evil” that cannot be suppressed and thus should be satisfied and administered by a system of state regulation of prostitution with the licensing of brothels, spatial restriction of the areas where prostitution was licenced, registration duty and compulsory medical examinations of women engaged in prostitution. The basic purpose was to supply the male sexual desire in situations of imbalances in gender in areas like ports, garrison cities or immigration countries. In particular, proponents of state regulation of prostitution, i.e. medical doctors and army representatives, took male desire as taken for granted, a necessary evil that should be offered opportunities for satisfaction in order to contain it and control diseases – a belief that was influential but later turned out to be false (Bullough/Bullough 1987). In the regulationist approach the implementation of state regulation of prostitution induced and accepted a market for commercial sexual services as long as it remained within
the limits imposed by regulation. It turned all women that engaged in prostitution, either temporarily or occasionally, into registered prostitutes that were neatly supervised by police and brothels managers in order to supply the market for commercial sexual services.

From the perspective of moralising feminists, after the repeal of the Contagious Diseases Acts the women’s cause became - as a contemporary writer explained in 1888 - a puritan revolt against “the tyranny of organized intemperance, impurity, mammonism and selfish motives” (The New Women, 29 November 1894, quoted in Phillips 2004: 209). The principal target of purity crusades was the bestial sexuality of men, demonstrated by the phenomenon of prostitution. Prostitution was thought to humiliate all women since “the man who enslaves one woman implicitly tells every other woman that she is entitled only by accident, not by right, to be spared the same degradation”. Men were judged guilty of the moral ruin of women and of buying “the sacrifice of bodily honour and spiritual life from others … with them lies the responsibility for the social degradation of prostitutes” (Bullen 1900, quoted in Phillips 2004: 209). Moralising feminists challenged and discarded the established view that ‘fallen’ women should be blamed for seducing men. “Women had always been regarded as the pivot of sexual virtue. Those who were chaste wives and mothers were regarded as saintly guardians of the domestic shrine; those who had loose morals were viewed as the source of corruption of men. But now, feminists were demanding to have it both ways. Women were still the fount of domestic virtues, but if they ‘fell’ into prostitution, it was because they had been corrupted by men. It was men who were responsible for prostitution, by creating the demand that resulted in the supply” (Phillips 2004: 209f). Moralising feminists challenged the view that men are less able to resist the sexual instinct and that thus they require a license in action which forbids the laying down of the same moral law for both men and women. They propagated that every man should be chaste and argued that female chastity is impossible without male chastity (Phillips 2004: 220). According to the evolutionist key idea of this view, mankind was capable of a higher purpose. Carnality belonged to the animal kingdom; spirituality was what distinguished humans from animals. So if the human race was to progress, it had to move from animal, or sexual, to the spiritual. It was a key claim of the women’s movement that it was the role of women to redeem mankind by turning the sexual double standard on its head (Phillips 2004: 222). The campaigns to expose male responsibility for prostitution was an attack on the double standard which held that although sexual immorality was a source of blame for women, it was excused among men. But in effect, the feminists were merely reversing the double standard. The focus of iniquity shifted to men and by asserting women’s moral superiority they became transformed into the means of male redemption. The views about male viciousness and female victimhood underlie the sense of moral mission (Phillips 2004: 224).

Liberal abolitionist shared the general conviction of the immorality of prostitution as such and also supported the idea that that the male is at the centre (see Phillips 2004: 81-95). But in contrast to moralising feminists, Josephine Butler strove for a single moral standard not imposed by force but accepted by discernment. Following this basic
line, Abraham Flexner (1920) summarised abolitionist ideas and outlined an abolitionist program in his book on “Prostitution in Europe”. Due to the influential study conducted and published on behalf of the American Bureau of Social Hygiene, Flexner was considered to be the world’s leading expert on prostitution and prostitution politics. He was later appointed chair of the League of Nations’ Committee on Traffic in Women and Children but refused the request due to health problems (Snow 1926: 413f). Nonetheless, his outline of an abolitionist program includes considerations of demand aspects that deeply influenced the subsequent debates.

Flexner underlined that abolitionism is not about the abolition of prostitution but about the abolition of state regulation of prostitution. He held the abolitionist view that prostitution is not a crime but only a vice (Flexner 1920: 119) and argued, that the “immediate effect of abolition is to place the mere act of prostitution in the same position as any other private vice. (…) A woman, for example, who prostitutes herself for money is in abolition communities in the eye of the law in precisely the situation of the man whom she has gratified: if the pair give no offence, the State takes no cognizance of the act. The intervention of the law is conditioned not on the act itself, but on certain conditions or results which make it something more than an affair involving two participants” (Flexner 1920: 287 f).

From the abolitionist perspective the male sexual impulse as such was not considered as a causal ‘demand’ for prostitution but rather considered as the effect of a misdirected development of this impulse due to bad and immoral social circumstances. Abolitionists preferred as measures against public vice the education of males and support for women ready to leave the trade. In order to overcome vice, a combination of approaches was recommended, including economic and social reforms and moral education of the youth towards chastity.10

Moreover, Flexner argued that the systematic exclusion of prostitution from the public and limitation to the private sphere would be an effective strategy to enhance the time and effort of prostitutes to find customers which would make engagement in prostitution less profitable.11 The main strategy towards prostitution was not prohibition but a combination of containment and marginalisation of the trade and education of males.

The abolitionist view stressed that ‘demand’ is created artificially by vice markets organised as economic business and protected by the state regulation of prostitution. The systems of state regulation of prostitution were considered to be inevitably related with the interference of third parties profiteering from what was called white slavery (souteneurs, pimps, bullies, procurer, brothel keepers). Abolitionists argued that it was the system of state regulation of prostitution that stimulated “demand” for what they called “white slavery” and “that regulation was the basic cause of the traffic in girls and women” (Bristow 1977: 85, Flexner 1920).

10 A short overview of the education for chastity in the UK provides Edward Bristow (1997: 126-153) with the general conclusion that “the social purity forces had monopolised sex education since its beginning in the 1880s and their negative approach was not to disappear overnight” (p. 153).

11 As a matter of fact, the stress on the claim to contain and marginalise prostitution implied that with tougher enforcement the prostitutes as such necessarily become the target of police pressure, see in particular the work of Laite 2012 and Bristow 1977 on the consequences of the ban of street walking and public soliciting.
However: “Prostitution is not merely a matter between man and woman – the former overtake by a periodic impulse demanding gratification, the latter supporting herself through the passionless sacrifice of the sexual function. Over and above this, it is an industry, deliberately cultivated by third parties for their own profit: and the instinct readily lends itself to artificial exploitation. A very large constituent in what has been called the irresistible demand of natural instinct is nothing but suggestion and stimulation associated with alcohol, late hours, and sensuous amusements, and deliberately worked up for the profit of third parties – pimps, tavern-keepers, bordello-proprietors etc.” (Flexner 1920: 45).

In the abolitionist view as developed by Flexner, the important factor that causes prostitution is the active creation of artificial demand and artificial supply by commercially interested third-parties. “An artificial supply of prostitutes is deliberately created; forced upon the market under appropriate conditions; an artificial demand is worked up to consume it” (Flexner 1920: 46). The procurer, pimp and brothel-keepers were accused of increasing the supply of prostitutes by trafficking not only “already ruined women” but also luring innocent young girls under false pretences or even with coercion into vice, for the sake of their profit. He summarises his opinion with the quotation of Bloch: “Without bordells, no white slave traffic” (Flexner 1920: 185). In this view the systems of state regulated brothels are the key factor causing traffic because a bordello can be tenanted with desired young and attractive women only through the exertions of a procurer. Thus, as Flexner pinpointed with the quote of an Austrian expert: “The bordell is inseparable from traffic in girls” (Flexner 1920: 185)

The abolitionist agenda as explained by Abraham Flexner influenced and guided the subsequent debates and politics at the international level, as will be shown in the next chapter.

4 Institutionalisation of debates on trafficking in human beings and on forced labour at international level (1920-2000)

This chapter describes the institutionalised debates at the international level which preceded the negotiations and adoption of the 2000 UN Trafficking protocol. It reviews how the three issues of forced labour, trafficking in women and children and trafficking as border related migration offences occurred. The first section gives a brief overview of the international legal instruments developed in the context of the League of Nations and the United Nations which are relevant for the debates on the international definition of trafficking in human beings (4.1). The following section deals with the conceptualisation of Forced Labour as developed by the International Labour Office (4.2). The subsequent section introduces the debates on the issue of traffic in women and children with the narrow focus on prostitution in the context of the human rights frameworks of the League of Nations (4.3) and the United Nations (4.4). The next section considers the occurrence and understanding of trafficking as a transnational
organised crime and migration issue in the UN Crime Prevention and Criminal Justice framework (4.5).

4.1 International legal instruments on trafficking

The drafting of the 2000 UN Trafficking Protocol renewed or referred to several international legal documents adopted on a multilateral basis (1904, 1910) and within the context of the International Labour Office (1930, 1957), the framework of the League of Nations (1921, 1933), the United Nations Human Rights framework (1949, 1979, 1989, 1993) and the UN Crime Prevention and Criminal Justice framework (2000). Some treaties and documents indicate trafficking merely with reference to other legal documents or treaties which provided a definition of offences which are today included in the definition of trafficking. Box 1 provides an overview of relevant international legal instruments.

The first Treaty of 1904 agreed upon the cooperation of states and private organisations in order to provide “effective protection against the criminal traffic known as the ‘white slave traffic’” without explaining, however, what the term means. The subsequent 1910 Convention introduced in Article 1 a definition referring to the age of the protected: “Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.” The following Article 2 clarified that the use of illegal means is the main criterion for trafficking offences in the case of adults: “Whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes, shall also be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.” Thus, the 1910 Convention against Trafficking focussed exclusively on international movement or transport of adult women who are procured, enticed or led away by means of coercion; and in the case of a woman or girl under age even with her consent.

This definition was resumed by 1921 League of Nations’ International Convention For the Suppression of the Traffic in Women and Children that merely avoided the term “white slave traffic” in favour of the more general term traffic in women and children.

Box 1:

International legal instruments and documents related to trafficking in human beings

- 1904 International Agreement for the Suppression of White Slave Traffic (Multilateral recognition)
- 1910 International Convention for the Suppression of the White Slave Traffic (Multilateral recognition)
- 1921 International Convention for the Suppression of Traffic in Women and Children (League of Nations)
- 1926 Convention to Suppress the Slave Trade and Slavery (League of Nations)
- 1930 ILO Convention Forced Labour
- 1933 International Convention for the Suppression of the Traffic in Women of Full Age (League of Nations)
- 1957 ILO Convention for the Abolition of Forced Labour
- 1993 Vienna Declaration and Programme of Action
- 1993 UN Declaration on the Elimination of Violence against Women
- 2000 UN Trafficking Protocol

Source: Own compilation

The 1933 International League of Nations’ Convention for the Suppression of the Traffic in Women of Full Age revised the definition. Article 1 states: “Whoever, in order to gratify the passions of another person, has procured, enticed or led away even with her consent, a woman or girl of full age for immoral purposes to be carried out in another country, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries. Attempted offences, and, within the legal limits, acts preparatory to the offences in question, shall also be punishable.” This definition abandoned the idea that coercion is an elementary criterion of trafficking in the case of adult women consenting in the procurement for immoral purposes. The distinction between women and children had been dropped.

The 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others considerably extended the acts defined as the criminal act of traffic. Article 1 states: “The Parties to the present Convention agree to punish any person who, to gratify the passions of another, (1) procures, entices or leads away, for purpose of prostitution, another person, even with the consent of that person; (2) Exploits the prostitution of another person, even with the consent of that person.” Article 2 said: “The Parties to be present Convention further to agree to punish any person who: (1) Keeps or manages, or knowingly finances or takes part in financing of a brothel; (2) knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.” The new definition kept the essence of the previous 1933 Convention and added as acts defined as trafficking

the exploitation of the prostitution of another person even with the consent of that person and moreover added the keeping or financing of brothels and the renting of a place for prostitution. Thus, the definition extended the meaning of the term ‘trafficking’ to any interference of a third party, the abolitionist central concern, while focusing and restricting to acts related with immoral purposes or prostitution only.

Since the late 1970s several international legal documents or conventions included an indication of the term trafficking, although without further exploration of the contextual meaning, among them the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the 1989 Convention on the Rights of Children (CRC), the 1993 Vienna Declaration and Programme of Action and the 1993 UN Declaration on the Elimination of Violence against Women. These documents and Conventions did add to the previous discourse and repeat the reference to the issue of trafficking. However, being re-iterated in new contexts, the issue of trafficking became revitalised and obtained more attention.

Besides the international offence of trafficking in women and children, the International Labour Organisation developed two Conventions against Forced Labour (1930, 1957), a concept later integrated in the 2000 UN Trafficking Protocol.

Finally, the 2000 United Nations Trafficking Protocol defined the offence trafficking in Article 3: “For the purposes of this Protocol: (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 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.”

The 2000 UN Trafficking Protocol introduced a definition that integrated the provisions of the 1949 UN Convention, although only partially while introducing a number of new elements for the first time, in particular with respect to the purposes of trafficking acts (i.e. sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs).

The provisions of the 1949 UN Convention were only partly included. The exploitation of the prostitution of others was included. However, the acts of keeping or financing a brothel or letting or renting a place for prostitution were omitted. Moreover, the

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qualification that coercion is an integral element of the definition of the offence of trafficking, which had been an integral part of the Conventions of 1910 and 1921, was reintroduced. Also the distinction between an adult person and a child returned. Thus, the 2000 UN Trafficking Protocol discarded the narrow focus on immoral purposes and on exploitation of prostitution or prostitution related issues.

The adoption of the 2000 UN Trafficking Protocol introduced for the first time a general definition of trafficking (Gallagher 2010: 12). However, the 2000 UN Trafficking Protocol did not replace and override the previous 1949 UN Convention. The ongoing co-existence of two UN Conventions dealing with trafficking, the one placed in the UN Human Rights framework and the other in the UN Crime Prevention and Criminal Justice framework, is a source of ambiguity: When present-day campaigners raise the issue of trafficking it may be with reference to the 1949 UN Convention focusing on prostitution as such (see Raymond 1998) or with reference to the 2000 UN Trafficking Protocol focusing on the exploitation of coerced prostitution and including trafficking for the purpose of forced labour.

The 2000 UN Trafficking Protocol merges three elements into a complex definition: acts, means and purposes. The first element refers to acts of recruitment and transfer which are not punishable per se but become illicit as trafficking when the two other elements – illicit means (like coercion or fraud) as the second element and the purpose of exploitation as the third – simultaneously occur. However, the Protocol does not define exploitation per se but alludes to its meaning by enumerating some of the purposes of exploitation.

Closer consideration reveals that the definition operates via two conceptually clearly distinguishable sets of acts, the punishable acts of coerced recruitment and transfer constituting the first element and specifying acts, which indicate the purposes of exploitation, constituting the third. Some of the acts introduced to specify the purpose element are established legal concepts and already outlawed (like forced labour, slavery); others (like the ‘exploitation of the prostitution of others’) are not accordingly unanimously codified and defined in international law.

Moreover, the understanding of the relation of the three elements is an issue of controversy. Also the interpretation of enlisted purposes, integral element of the trafficking offence, is contested. In particular the meaning of the terms “sexual exploitation”, “exploitation of the prostitution of others”, but also or “forced labour” or “slavery-like” (Gallagher 2010: 177-191, Jordan 2011a). Until now, International Law does not provide a generally accepted standard definition of exploitation (Andrees and van der Linden 2005; Shamir 2012: 86f, Todres 2013).

Accordingly, law enforcement agencies face serious troubles in the practical application of the provisions implemented in national law (Kangaspunta 2015, Shamir 2012).

4.2 Forced Labour
The 2000 UN Trafficking Protocol included for the first time forced labour as one of the purposes of trafficking in persons, thus “bringing into play international conventions and agreements on forced labour” (Wijers 2015: 67) and making a direct link to the International Labour Organisation (ILO), the oldest body of the United Nations. ILO was established 1919 as a branch of the League of Nations on the initiative of Western governments. The consideration behind the foundation was the fear that the system of international free trade may instigate countries to improve their own trading position by lowering labour standards which in turn drives workers into the arms of communist agitators (Alcock 1971, Standing 2008). From the outset, ILO standard setting – beginning with the prohibition of night work for women and the fixing of maximum working time – was aimed at world-wide validity.

The struggle against forced labour was regarded as one of its priorities since foundation (Maul 2007: 477). The Organisation considered it “a constant mission and mandate to place limits on the multifarious forms of non-economic compulsion to work faced by people all over the world” (Maul 2007: 477). The forced labour concept underwent a transformation in the debates around three ILO declarations: The first debate refers to the C29 Convention Forced Labour from 1930, the second to the C105 Convention Abolition of Forced Labour from 1957. The ILO concept of Forced Labour was finally included in the UN Trafficking Protocol of 2000.

This adoption led to the establishment of the Special Action of Program to Combat Forced Labour (SAP-FL) which performed activities finally inducing the adoption of ‘Protocol 2014 to the C29 Convention Forced Labour from 1930’.

4.2.1 The ILO Convention on Forced Labour 1930

The first debate concerned the problem of forced labour in colonial territories. In the late 1920s the ILO – as head of a wider international alliance – tackled various forms of forced labour which existed in the colonies between the wars. This struggle was basically a continuation and discursive extension of the international struggle against slavery that should have long been abolished since the Final Act of the Vienna Conference in 1815. The early years of the ILO coincided with a time of economic expansion in the colonies in which local labour markets did not provide the level of low wage manpower expected by the colonisers on a voluntary basis, so that “forced and compulsory labour became one of the main characteristics of colonial rule between the wars” (Maul 2007: 479).

With the passing of the League of Nations Slavery Convention (1926) that expressed the wide international consensus to ban slavery – defined as “ownership rights over another person” - the struggle against forced labour received a hook for action. During the negotiations on the Slavery Convention “colonial powers put up strong

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14 This section follows the account provided by Maul although I consider discursive incidents instead of considering the development in historical stages.

15 The 1926 Slavery Convention defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” (Article 1(1)).
resistance to all the initiatives that went beyond a condemnation of the legal status of
slavery and the slave trade and aimed at banning various forms of forced labour. As a
concession to their critics, however, the ILO was given the task of conducting a study
into possible steps to ‘prevent compulsory labour or forced labour from developing into
conditions analogous to slavery’” (Maul 2007: 480).

The subsequent debate had to overcome the “colonial clause” in the Organisations’
constitution of 1919 which had granted the metropolitan powers the right to exclude, in
part or entirely, their overseas territory from the ratification of ILO norms. Colonial
powers opposed regular norms applying to the colonial areas. Imposition of forced
labour was justified as education of “native labour”, and both opponents and advocates
of forced labour accepted that there was a basic difference between “normal” and
“colonial” labour; they shared the view that colonial policies had a duty to “educate” the
native population. The controversy revolved around the question of whether the
abolition of forced labour hindered or helped this duty of education. Although there was
a more or less unanimous agreement on the long-term goal to abolish forced labour,
there were many differences concerning the “educative” methods in use and the time
frame for the abolition of all types of coercive measures. The ILO representative Albert
Thomas believed “that forced labour was only counterproductive to the attempt to
educate natives in European working habits, creating hatred both of the coercers and
of work itself. He saw a race war looming and also criticised forced labour in the
colonies for providing fertile terrain for communist propaganda. He argued that it would
be more fitting for the colonial administrations to make a sustained effort to educate
and convince the natives of the advantages of work” (Maul 2007: 481).

Finally, an agreement was reached with the ILO Forced Labour Convention (1930).
The document defined that “the term forced or compulsory labour shall mean 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” (Article 2,1). The document
obliged signatory parties to “abolish forced labour in all its forms”.

However, the convention also offered loopholes in the form of detailed provisions that
laid down what was not to be deemed forced or compulsory labour. The exclusions in
Convention No. 29 are "(a) any work or service exacted in virtue of compulsory military
service laws for work of a purely military character; (b) any work or service which forms
part of the normal civic obligations of the citizens of a fully self-governing country; (c)
any work or service exacted from any person as a consequence of a conviction in a
court of law, provided that the said work or service is carried out under the supervision
and control of a public authority and that the said person is not hired to or placed at the
disposal of private individuals, companies or associations; (d) any work or service
exacted in cases of emergency, that is to say, in the event of war or of a calamity or
threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or
epizootic diseases, invasion by animal, insect or vegetable pests, and in general any
circumstance that would endanger the existence or the well-being of the whole or part
of the population; (e) minor communal services of a kind which, being performed by
the members of the community in the direct interest of the said community, can
therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services” (Article 2(2)).

Thus, in blatant contradiction to the bold claim to “abolish forced labour in all its forms” the convention effectively permitted the continued existence of certain forms of forced labour systems particularly for the state. The main success of the supporters of the Convention was mainly to have pushed through at least “a complete and immediately effective abolition of forced labour for private purposes” (Maul 2007: 482).

But also in this realm, colonial powers delayed the abolishing of recruitment of forced labour for private enterprises by signing the convention late. Moreover, a colonial power like Portugal refused to sign the convention and did not only continue but to tighten the forced labour system: Consequently, critique and resistance against the forced labour imposed by the authoritarian Salazar regime was suppressed (Allina 2012).

In these historical debates forced labour was not discussed in terms of demand and supply because free labour markets as the basic condition of the interplay of demand and supply did not exist or did not work. Instead of being induced by demand, forced labour was imposed by command of colonial or totalitarian powers.

**4.2.2 The ILO Convention for the Abolition of Forced Labour 1957**

The second ILO debate on forced labour started after 1945. Triggered by the awareness of forced labour atrocities committed by Nazi Germany and Stalinist Soviet Union, the ILO encouraged the update of the forced labour convention in order to promote completely abolishing forced labour, an issue becoming fiercely disputed in the Cold War. The capitalist Western states strived to narrow the definition on forced labour imposed for political reasons, aimed at Nazi Germany and the Cold War enemy Soviet Union. The Eastern Communist States raised the issue of forced labour imposed for economic reasons, pointing to the still working systems of Forced Labour in the Colonies of Western states. Convention C 105 Abolition of Forced Labour in 1957 contained both perspectives.

The convention obliges each “Member of the International Labour Organisation which ratifies this Convention to suppress and not to make use of any form of forced or compulsory labour.” The convention explicates the definition of forced or compulsory labour (a) As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) As a method of mobilising and using labour for purposes of economic development; (c) As a means of labour discipline; (d) As a punishment for having participated in strikes; (e) As a means of racial, social, national or religious discrimination.

A clause forbidding forced labour as a result of debt bondage or systems of peonage that had been already accepted by the Annual Conference was eventually deleted from
the final text adopted the following year. The Employers had argued that the Conference was considering forced labour imposed by the competent authorities whereas the clause referred to matters arising out of employer-employee relations. The clause also aroused the opposition of several governments on the grounds that the subject was extraneous, and indeed was covered by other instruments such as the UN Supplementary Convention on the Abolition of Slavery (1956) (Alcock 1971: 278).

Complaints (raised by Ghana) that Portugal violated the requirements of ILO Convention 105 in its colonial African territories and against Liberia (raised by Portugal) concerning the violation of ILO Convention 29 led to subsequent ILO investigation missions. The missions confirmed discrepancies between requirements of the Conventions and the national legislation and practices. The missions emphasised the key role of a labour inspection service and drew attention to the importance of a grievance procedure (Alcock 1970: 280-283). Indeed, forced labour imposed by states is still relevant: ILO (2012: 13) estimates that about 10% of forced labour worldwide is imposed by states—a situation mentioned but not consequently pursued in the current ILO supervision mechanism.

Since forced labour is—by definition—distinct from free labour, both ILO Conventions have no relevance for the consideration of demand arguments because they deal with forms of non-economic compulsion to work imposed by states (Vogel 2015: 13).

4.2.3 ILO connecting with trafficking debates

During the era of a hegemonic neo-liberal attitude during the 1970s–1990s, ILO had little influence. In order to regain influence ILO adopted 1998 the “Declaration on Fundamental Principles and Rights at Work” and began to concentrate on few principles considered as basic. Under the Declaration, every Member State is obliged to accept as condition of its ILO membership to safeguard and promote four sets of basic principles and labour rights, among them the abolition of all forms of forced and compulsory labour (Plant 2002: 63).

The new launch included a focus on forced labour and called for initiatives to extend the understanding of Forced Labour: “The ILO’s two forced labour Conventions were adopted in a global context in which the State was seen as being the party primarily involved in the exaction of forced labour, although they did not exclude from their coverage situations where non-state actors could be involved” (ILO 2001: 12). Thus, the concept of Forced Labour that was previously reserved to address state actors only was extended to include non-state actors. Backed by this reappraisal of the forced labour concept, ILO consequently participated in the preparatory sessions on the drafting of the UN-Trafficking Protocol and argued throughout in accordance with the United Nations and other international organisations that the very definition of trafficking should include a reference “to its coercive elements, including forced labour,

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16 The move from ‘rights’ to ‘principles’ is contested in current academic debate, see Standing (2008).
demand did not yet occur as a question.

4.3 The League of Nations' debate on traffic in women and children (1919-1945)

Although the 2000 UN Trafficking Protocol was developed in the context of the UN Crime Prevention and Criminal Justice framework, the negotiations on the definition of trafficking is decisively influenced and stamped by previous International Conventions developed in the human rights framework of the League of Nations (1921-1945) and the United Nations (UN) addressing traffic in women and children. This section deals with the debates on trafficking in human beings that propelled and accompanied the adoptions of international anti-trafficking instruments in the international context of the League of Nations and the UN Human Rights treaty law framework. The examination tries to identify – on the basis of secondary sources - core debates and contested issues that may deliver indications about the conceptualisation of demand in these early international debates on trafficking in human beings.

4.3.1 International institutionalisation of anti-trafficking policies

Already during World War I the Western states negotiated the foundation of an international body for cooperation that was later established as the League of Nations (see Walters 1952, Alcock 1971). Taking into account that the multilateral international agreements against white slavery were the forerunner of state cooperation, traffic in women and children was adopted as one of the issues to be dealt with at the League of Nations (Limoncelli 2010: 71-94, Garcia 2012, Leppänen 2008, Pliley 2010, Knepper 2011: 87-113, Metzger 2007, Miller 1994).

However, the first draft of the Covenant of the League of Nations presented in February 1919 did not include any mention of a responsibility for the trafficking issue. “But due to the assiduous work of women’s associations” (Leppänen 2007: 527) the question was inserted as Article 23c of the Covenant: “Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League (…) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs.”

Trafficking and prostitution were treated as humanitarian concerns and incorporated in the League of Nations Section for Humanitarian and Social Questions, along with child welfare, the repatriation of prisoners of war and refugee issues” (Limoncelli 2010: 72, see Snow 1926). A first survey conducted by the League of Nations revealed that many countries had not complied with the 1910 Convention. In June 1921 the League of Nations hosted an international conference attended by representatives of thirty-four states who agreed upon four important decisions: First, the racialised term “white slave

traffic” was replaced by “traffic in women and children”. Second, government and voluntary associations were requested to send annual reports on trafficking, and on the legal and social measures taken to suppress it. Third, a new convention was proposed. And fourth, the conference suggested the establishment of a special Advisory Committee on the Traffic in Women and Children to investigate and to advise the League’s council and Assembly on conditions and measures against the international traffic in women and children (Garcia 2012: 103, Leppänen 2007; Limoncelli 2010: 74f).

At this first conference, the Dutch delegate, an abolitionist, linked traffic and regulated prostitution. He proposed to extend the definition of trafficking to include punishment of those who procure women who are of legal age, even with their consent. The convention thus would have made all procurement, even for regulated brothels, illegal. The proposal was strenuously objected to by the French delegate, who asserted the necessity of regulation. The Dutch proposal was voted down because it did not have a three quarter majority, although it did have wide support – seventeen of twenty-nine countries (Limoncelli 2010: 78).

In September 1921, the League of Nations supplemented the earlier provisions from 1904 and 1910 with the adoption of the International Convention for the Suppression of the Traffic in Women and Children. This instrument extended the protection age to women of twenty-one and to minors of either sex and stated that international traffic for immoral purposes is not punishable in the case of adult women consenting to the procurement.

4.3.2 The Advisory Committee on the Traffic in Women and Children

The Advisory Committee on the Traffic in Women and Children (henceforth referred to as the Committee) was established in 1923 and institutionally placed as a sub-division of the League of Nations fifth committee which dealt with social issues (Leppänen 2007: 527, Snow 1926). The Committee operated from 1923 until 1939 when World War II brought cooperation to an end.

The Committee consisted of state delegates (appointed by the governments of the regulationist countries France, Italy, Japan, Poland, Romania, and Uruguay, the abolitionist countries Great Britain and Denmark, and Poland as a country abolishing regulated brothels but not registration of individual women in prostitution). Additionally, five non-governmental ‘assessors’ representing the main international private organisations which dealt with the suppression of traffic were appointed as members (Garcia 2012: 103, Limoncelli 2010: 75). Many of the private associations “supported or had members involved with the International Abolitionist Federation” (Limoncelli 2010: 75). Like government delegates, non-official assessors were entitled to sponsor

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18 The private organisations were the International Bureau for the Suppression of Traffic in Women and Children, the International Catholic Association for the Protection of Girls, the Federation of National Unions for the Protection of Girls, the International Women’s Organisations, and the Jewish Association for the Protection of Girls and Women (Garcia 2012: 103, Footnote 25).
resolutions, propose reforms, add subjects to the annual agenda, and initiate debates, but they had no voting rights. Women and other persons engaged in prostitution were not represented, although their views were partly introduced by two Reports commissioned by the Committee and published 1927 and 1932.

The Committee offered both the International Abolitionist Federation and the International Bureau a platform for their agendas. The movement to combat the traffic was “a continual struggle among international voluntary associations of women and state officials to design what constituted the sexual exploitation of women, what goals should be set, and what policies could be agreed on internationally” (Limoncelli 2010: 68).

However, the international private associations were not united but followed competing agendas. IAF focused on the international ostracism and abolition of state regulation of prostitution in order to protect women’s rights and overcome an unfair double standard of morality. The IB aimed at the enforcement of morality even with repressive means against women and focused on the international traffic while avoiding challenging state regulation of prostitution (Limoncelli 2010).

In the first years the Committee focused on the compilation of information on traffic, supervision of ongoing efforts, monitoring of agencies engaged in finding employment for women abroad, and urging responsible national authorities and voluntary associations to survey the women and girls moving independently of such agencies. Engagements in theatres, music halls, and other places of entertainment were perceived as particular threats that could lead women to prostitution. The committee paid great attention to female migration and the employment of foreign women in licensed brothels, which were, according to the abolitionist thinking, considered to have a strong link with traffic.

In spite of the existing definition provided by the 1921 Trafficking Convention the definition of the offence and of the trafficked person were issues of debate and change in the Committee. Traffic was the “umbrella term” for a variety of concerns pertaining to gender, sexuality, race, ethnicity and nationality. Committee members shared the general consensus that the criminalisation of “traffic in women and children” has to be understood as a contribution to the efforts to suppress the immoral behaviour of prostitution. This becomes clear by how ‘traffic’ was understood in the Committee debates (Garcia 2012).

Coercion was not considered to be a necessary element of the definition of traffic in the view of the Committee members. William Snow, the chairman of the Committee explained that the traffic in women and children is “the sending of women and girls particularly, but also of children, from one nation primarily for the sexual pleasure of individuals in another nation” (Snow 1926: 411f). The first Report, commissioned by the Committee and published in 1927, defined “international traffic” – in deviation from the official definition - as “primarily the direct or indirect procuration and transportation for gain to a foreign country of women and girls for the sexual gratification of one or more other persons” (Body of Experts 1927: Part I, Ch. IX, quoted in Wilson 1928: 28). And in the published book version of the Report materials the author introduced as
issues researched “the problems of prostitution itself and of the transport for the purposes of prostitution” (Wilson 1928: IX). The second Body of Experts report even at times tended to equate traffic with prostitution in general (Leppänen 2007: 528).

In 1923, the Polish delegate launched a proposal for a resolution that called for the prohibition of foreign prostitutes in brothels pending the abolition of regulation (see Limoncelli 2010: 78-82, Pliley 2010, Laite 2012). The proposal was supported by many governments and the IB together with Catholic and Jewish international private associations. A member of the British International Bureau committee asked: “We have a united ideal that we want clean family life, that we want sex conduct to be straight, and that we want to recognise the principles of Christian teaching… What are we in the abolitionist countries going to do if there is nothing to prevent our women being taken and made slaves of in regulationist countries?” (Neville-Rolfe, quoted in Limoncelli 2010: 81). On the other side, the proposal was strongly opposed by IAF arguing that it “implicitly recognises the brothel slavery of women, foreign, or others” (quoted in Limoncelli 2010: 80). An abolitionist Committee member protested that “the proposal which was so contrary to feminine dignity, had so many practical objections that it was worthless” (quoted in Limoncelli 2010: 80). The proposal was considered “impossible to implement because the nationality of women in prostitution was often not clear, and unfair because women should not be expelled from countries simply for being prostitutes, especially when prostitution itself was not considered a crime” (Limoncelli 2010: 79f). Feminists also opposed the resolution “because it left authority in the hand of morals police, which, they argued, would lead to further bribery and corruption, and to greater vulnerability of immigrant women to exploitation” (Limoncelli 2010: 80).

The Committee supported the resolution unanimously, although the regulationist countries of France and Spain abstained. The prohibition proposal indicated – according to Limoncelli (2010: 79) – that “the League of Nations state representatives were more interested in controlling the movement – and sexual activity - of women than in protecting them from exploitation in prostitution. A shift in focus to prostitutes themselves rather than to traffickers was already in process despite feminist attempts to fight this trend.”

Having expressed the preference for the ban of entry of foreign women into state-regulated brothels, the League of Nations state officials next addressed what to do with foreign prostitutes when they were found in their territories (Limoncelli 2010: 82-89). The proposal of a repatriation discussed first in 1925 indicated a shift from the control of traffic to the control of women. The IB supported compulsory repatriation and defended the punishment of women who incurred the cost of repatriation a second time, arguing that the traffic in women was largely a voluntary enterprise that needed more rather than fewer restrictions. In 1930 IB argued that “traffic in women of European races is at present mostly a commercial trade in prostitutes … there are comparatively few victims of force… the work for the suppression of the traffic in women has in general been directed toward freeing such women from restrictions, towards preventing them from being forced to live in licensed houses, and toward punishing the
third parties who profit from the trade…. but the success of the work as carried out at present… would potentially result in providing a strong additional inducement to the free movement of prostitutes…” (IB 1930, quoted in Limoncelli 2010: 87).

Alison Neilans from the British Committee of the International Abolitionist Federation in 1931 strongly opposed the compulsory repatriation: “We are opposed to the whole principle of these proposals because they are solely concerned with ‘prostitutes’ as such, and therefore constitute ‘measures of exception’ applied to certain women on account of their morals. These enactments against ‘prostitutes’ confuse the public conscience in regard to responsibility for prostitution and the traffic in women. The people responsible for prostitution and traffic in women are the men who are willing to pay money for the hire of women, the procurers and brothel-keepers who sell women, and the Regulationist Governments who provide facilities in licensed houses for the sale of women and who also, by licensing and registering ‘prostitutes’ label women as legitimate articles of concerns” (Neilans, quoted in Limoncelli 2010: 88).

This open dissent had already appeared at the meeting in 1923, when members of the Committee were sharply divided on “preventive measures that could have ended up depriving women of their freedom” (Garcia 2012: 105). While Annie Baker - the International Anti-Trafficking Bureau’s representative - had insisted on the need for a strict migration legislation for young women, Samuel Cohen - Jewish Association for the Protection of Girls and Women - and Paulina Luisi - Uruguayan delegate - had called for the promotion of gender-neutral policies that would not interfere with the personal freedom of adult women (Garcia 2012: 105, footnote 28). Paulina Luisi, who served on the board of the League of Nations traffic in women commission, explicitly warned in an article in 1924 that the legislation to protect young women travelling alone tended to “limit the freedom of movement of all women” (quoted in Rupp 1997: 152-153).

4.3.3 The Reports of the Body of Experts

The US American League of Nations representative, the abolitionist Grace Abbot, submitted in 1923 a proposal that the League of Nation should instigate an investigation in the traffic in women and children for the purpose of prostitution (Leppänen 2007: 527). In her view, the League of Nations “needed to respond to the desire of the world public to know the truth about the traffic and the legal tools to combat it” (Garcia 2012: 106). Abbott called for the international cooperation in updating the facts of an inquiry on the “Importation and Harbouring of Women for Immoral Purposes”, which had been commissioned by the United States (Knepper 2012).

The League agreed that a general study would be of value and suggested that a group of experts be appointed to carry out a thorough investigation in cooperation with the governments of the countries concerned (Leppänen 2007: 527). The US proposal was approved and a Special Body of Experts appointed that consisted of members of the League’s commission and the director of the American Social Hygiene Association, the organisation that provided the financial and human resources for the field enquiries.

As already mentioned, the term "traffic" was defined – in deviation from the definition provided by the 1921 Convention - in the Report as “the direct or indirect procuration and transportation for gain, to a foreign country, of women and girls for the sexual gratification of one or more other persons” (LoN 1927: 9, quoted in Leppänen 2007: 527). This definition ignored that coercion was a constitutive element of the official definition.

The first report included obvious rejoinders to previous assumptions on ‘white slavery’ in the preceding decade. The authors warned against the unfortunate lack of distinction between rumours, sensational journalism and the facts of trafficking: “We do not wish to give the impression that all or most of these [women engaged in prostitution] were unsuspecting and defenceless women who had been decoyed to a foreign country in ignorance of the real purpose of the journey. The methods which were attributed at one time to the agents of the so called White Slave Traffic, stories of which still linger in the popular imagination in a highly-coloured form, have changed” (LoN 1927: 18, quoted in Leppänen 2007: 528).

Based on interviews with a wide range of diverse people, among them officials, women engaged in prostitution, pimps and brothel-keepers, the first report suggested - according to Abbott (LoN 1927, Annex II, p. 50, quoted in Leppännen 2007: 528) – the identification of three categories of trafficked women: (1) adult women who willingly let themselves be recruited and trafficked; (2) young girls, and (3) adult women who were procured by use of force or fraud for the purpose of prostitution.

The Expert Body had been commissioned to explore among other questions “whether there was a demand for foreign women in any country and what, and if any, were the factors that contributed to such a demand” (Leppänen 2007: 527). With respect to ‘demand’, the report did not focus on trafficking but on prostitution. As the Expert Body argued, a demand for prostitution arose when there was surplus of men. This could be natural, according to the report, but artificial movements of large groups of people most often created it. For example, between the years 1911-1924, over 1.2 million men immigrated to one specific South American country, while only fully 0.5 million women did (LoN 1927: 12, quoted in Leppänen 2007: 529). There could be several different reasons for the occasional or seasonal movement of large populations of men. US sailors and soldiers provided a temporary market in the harbours and nearby areas they visited, and the souteneurs were well aware of fluctuations in the market, thereby
being able to meet the demand on any occasions – “prostitutes of all nations follow the troops to make as much money as they can” the report stated (LoN 1927: 12, quoted in Leppänen 2007: 529). Another reason for the influx of men in a region could be the employment of seasonal labour in industrial settings where men were separated from their wives, or there might be a more temporary influx of men due to an event like a gymnastic fete in Geneva or tourism (Leppänen 2007: 529).

The second report published in 1932 dealt with traffic for prostitution in “the East” covering an area from China to Arabic speaking countries. The report found that “prostitutes travelled to foreign countries exclusively in search of clients among their own countrymen. As a rule, they did not accept clients of other races. Prostitutes thus followed flows of temporary or permanent migration, labour, military troops and even pilgrimage” (Leppänen 2007: 510). The report refuted the imagination of white innocent girls enslaved by foreign men.

The reports indicated implicitly that the control of traffic for prostitution was from the outset connected to the control of movement of people. The suspicion of prostitution and the vigilance against trafficking was closely related with other attempts to regulate migration (see also Limoncelli 2010). This relation was exposed in the case of Egypt where the Expert Group detected a high number of barred minors in the years 1920-1924. According to the League’s Report, this was not due to a high demand of under aged girls, but most of these young women were Greek refugees. However, Egyptian statistics did not distinguish women trafficked for the purpose of prostitution and women refugees. “This showed how closely related the suspicion of prostitution and vigilance against trafficking was to other attempts to regulate migration. A woman travelling on her own was suspicious, whatever the motives for her movement might have been” (Leppänen 2007: 529, see also Schettini 2012, Laite 2012).

The abolitionist focus on male procurers seems to draw a distorted picture that too often exposed Jewish males as culprits (see Knepper 2012, Nadelmann 1990, Bristow 1983). Moreover, the active interest in the documentation of activities of procurers, souteneurs, pimps and bullies and brothel-keepers disregarded and downplayed – as recent research illustrates - the agency of women migrating for sex work (Schettini 2012).

The reports presented a number of reasons why women were fraudulently or consentingly trafficked for prostitution. Economic reasons were the most reasonable explanation for those who knowingly let themselves be transported to other countries. “They were often prostitutes in their own countries before trafficked” (Leppänen 2007: 530).

As Limoncelli (2010: 67) summarised, the “conclusions were straightforward: immigrant women in prostitution came from countries with great poverty combined with low marriage age, where war or other disasters disrupted families, where wages were so low that women supplemented them with prostitution, where prostitution paid comparatively well, and where demand for foreign women prostitution was stimulated. The report connected such demand to systems of ‘licensed houses’, thereby linking trafficking and regulated prostitution.” A strong theme of the first report was “the
unwavering condemnation of state-regulated prostitution as the cause of the international traffic in women and children” (Pliley 2010: 91, see also Limoncelli 2010, Knepper 2012). The 1927 report “mercilessly implicated state regulation of prostitution as the primary cause of trafficking throughout the world” (Pliley 2010: 98).

Responding to the contested issue of admission of foreign women to licensed houses, the report pointed to a statistic provided by the Brazilian government that 80 percent of women kept in the brothels of the country were foreign. Buenos Aires and Montevideo had similar figures (LoN 1927: 10-11, quoted in Knepper 2012: 795). The report conceded that some of these women were not transported from abroad by traffickers. A large proportion of the newly registered foreign women had come from abroad to engage in prostitution. The report insisted, based on “statements of the underworld”, that the women did make the voyage by themselves but that there had to be men involved in procuring, forging documents, arranging for passage and so on. “All this evidence suggests, therefore, that traffic in women is extensive, although no exact estimate of its extent can be given” (LoN 1927: 12, quoted in Knepper 2012: 796). The mere presence of foreign women engaged in prostitution was equated with traffic and taken as a proof that traffic existed on a large scale.

However, the reports met serious criticism for methodological and conceptual flaws. The Uruguayan Committee member Paulina Luisi did not approve the 1927 report. The New York Times reported the chief complaints, made against William F. Snow, the American chairman of the examination, that “the expert investigators were handpicked by himself and have given a rough whitewashing to the Anglo-Saxon nations while the Latin nations come in for bitter criticism.” Critics from Spanish-speaking countries charged that an incomplete study was made in their nations because the investigators, who could speak only English, simply repeated biased statements (Knepper 2012: 795; for historical research see Guy 1988 and 2009, Schettini 2012). Questions about how investigators had arrived at certain “facts” had become a point of contention within the Committee of Experts. As it turned out, some information had been acquired from second-hand hearsay. For example, the alleged complicity of a French consul with traffickers had been obtained not from French souteneurs but from Romanians, Greeks and Jews in Alexandria and Cairo. Furthermore, the investigator “had learned of the ‘the incident’ by asking: ‘Suppose I had a girl in France and I wanted to get her to Egypt, how could it be done’” (LoN 1927: 36, quoted in Knepper 2012: 789).

The mapping of organisations involved in the traffic in women was highly problematic because based on the observation of visible prostitution and talks at local spots, statements on the invisible cross-border trade in women were derived. The investigators tried to bridge this distance with the language of traffic (Knepper 2012: 793). But the empirical basis was flawed, as the debate in the US revealed. The report had hinted to an mysterious theatrical booking agent (referred to as 18-R) who was reported as having “sent more than 200 girls to Panama” for immoral purposes and having been able to furnish cabaret managers there with “any kind of girls they would want” (LoN 1927: 165, quoted in Knepper 2012: 794). The responsible New York attorney demanded to know details from investigators and suspected that the findings
concerning Panama relied on the unsubstantiated statement of a lone investigator and were, as it stood, without foundation in fact. Challenged this way, the investigator "conceded that he did not personally observe any aspect of the Panama Canal traffic" (Knepper 2012: 794).

The responsible research body retreated to a distinction between legal investigation – as getting legal evidence for presentation to a trial court - and social investigation – as getting the facts of a social-scientific inquiry. Relying on this argument, the Committee chair Snow claimed the critique had been unfair and did not disprove the general conclusions because the report had not been intended to take a legal form. "In other words, the social investigation of the international traffic in women did not rely on information about local conditions that would meet the standard of legal proof in any jurisdiction. It was a curious argument because the observational technique on which the (...) researchers relied for their social science had been developed for a legal inquiry into individual cases" (Knepper 2012: 795).

Feminist abolitionists clearly identified the threat that anti-traffic politics might be used to limit the freedom of mobility of all adult women. In 1930 Alison Neilans, a member of the British Abolitionist Federation, noted that “the Anti-Traffic in Women movement is less and less inclined to touch the Regulation system and more and more disposed to protect women as though they were children, with the net result that if they had their way it would be difficult for women under 21 to move about Europe at all” (quoted in Pliley 2010: 102).

But in spite of such serious criticism, the reports were usually introduced and taken as proof for the abolitionist view that state regulation of prostitution causes international traffic for prostitution.

4.3.4 The abolitionist success

In 1933 the League of Nations amended the Traffic Convention making the procurement of an adult woman for prostitution even with her consent a criminal offence. The amended 1933 Convention still accepted the issue of state regulation of prostitution as a domestic domain.

But abolitionists continued to lobby for the international ostracism of state regulation of prostitution and finally got the support of the IB that had adopted the abolitionist argumentation by the mid-1930s, referring to the 1927 League of Nations expert report. In 1937 IAF and IB jointly supported a draft amendment of the traffic convention that demanded the penalisation not only of international but of internal procurement for prostitution (Limoncelli 2010: 91). Although the proposal was not further processed due to World War II, it later became the draft for the 1949 UN Trafficking Convention (see UNESCO/CATW 1992).

4.4 Debates on trafficking in human beings within the human rights framework of the UN (1946-2000)
This section considers the treatment of the trafficking issue in the UN institutional framework and reviews the occurrence and reference to demand arguments in these debates.

4.4.1 The 1949 Convention

In 1946 the United Nations Economic and Social Council approved recommendations concerning the continuation of the activities of the League of Nations in the social field, including those involving the question of traffic in women and children. The council instructed the Secretary-General to resume the study of the issue and to prepare a new and comprehensive convention for the suppression of the traffic in women and children and the prevention of prostitution which would unify the four existing legal instruments and embody the substance of the draft convention prepared by the League in 1937 (ECOSOC 1937, quoted in Reanda 1991: 209). The adopted 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others accorded with recommendations made earlier by the experts of League of Nations. “The Convention follows the findings of the League of Nations inquiries of 1929\(^{19}\) and 1932 into the traffic in women and children, both of which reported that the licensed house was the main influence on this traffic” (Wilkinson 1960: 178).

However, the 1949 Convention did not only tackle the state regulation of prostitution but declared in its preamble, for the first time in an international legal instrument, that traffic in persons and prostitution is “incompatible with the dignity and worth of the human persons and endanger the welfare of the individual, the family and the community” (Reanda 1991: 209). This characterisation of prostitution indicated that the opinion of those that actually processed the 1949 Convention had changed from a firm abolitionist opinion, which considered prostitution as an immoral but private matter between consenting adults, to a perception of prostitution as a violation of dignity to which a person cannot consent to.

In spite of this evaluation, the UN remained in accord with the abolitionist creed. The 1949 Convention called for the general abolition of state regulation of prostitution; it asked for criminalisation of the involvement of any third-party to organise or profit from prostitution, regardless whether it involved trafficking or not and it did not distinguish between internal and international traffic. However, it did not criminalise the engagement in prostitution by consenting adults (Reanda 1991: 209). The Convention included an obligation to take preventive measures: “Signatory Parties agree to take or encourage measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of offences referred to in the (…) Convention” (art. 16).

However, the Convention failed to reach its goals to oblige signatory states to abolish state regulation of prostitution and to penalise third-party intervention. One reason was the only vague and ineffective system of international supervision. The Convention

\(^{19}\) The reference directs to the 1927 report.
requested state parties to communicate annually to the Secretary-General of the United Nations any laws, regulations and other measures adopted to give effect to the Convention. However, a formal mechanism for receiving these reports and other information was only established in the mid-1970s, when the follow-up of the Convention was brought into the human rights program. But the effectiveness remained low due to procedural and other problems. Due to a low number of signatory states “even if an effective reporting system could be established, it would apply to only a minority of countries, and not necessarily those with the most problems in this area” (Reanda 1991: 210).

But the main reason for the failure was the low level of international support. Only a few states regulating prostitution signed the Convention and abolished the system of licensed houses, among them France in 1946 and Italy in 1958 (König 2007). Many governments, including the Dutch and German governments, did not ratify the 1949 Convention because the abolitionist stance would have required them to alter their domestic legal systems. Due to the low number of countries and its “extremely weak” enforcement mechanism, a present-day commentator discusses the possibility “that the 1949 Convention will, in time, become outdated. In terms of international treaty, this situation is generally referred to as desuetude. A treaty falls into desuetude when its non-application over a period of time indicates an intention by the parties to let it lapse” (Gallagher 2010: 62).

The weak impact was first documented in the United Nations’ “Study on Traffic in Persons and Prostitution” (UN 1959). “The report examines the claims of two approaches, abolitionist and prohibitionist, and strongly supports the abolitionist in spite of the corollary of clandestine prostitution” (Wilkinson 1960: 180). As Wilkinson noted, the report stated that in spite of conditions differing from country to country, exploitation appears to have decreased: The prostitute is depicted as a freer person and, less regulated and in general less subject to coercion and not regarded any more as major source of venereal diseases. The report acknowledged that nowhere has regulation or compulsory treatment of prostitution limited these diseases. This observation and the argument that brothels are notoriously associated with international traffic were introduced as main arguments in favour of the abolitionist policy that “aims to abolish regulated prostitution but not to prohibit other forms of it.” (Wilkinson 1960: 180). However, whereas once in some countries 70 per cent of registered prostitutes were foreign, the report informs that no case of international traffic had been discovered.

In its recommendations for dealing with clandestine prostitution, the report consistently took the line that prostitutes should not be treated as a unique group. While soliciting should be regarded as a self-evident public nuisance it should come under general provisions relating to public order. The prostitute should not be singled out for treatment in any campaign against venereal diseases. Rehabilitation actions should be taken

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20 As of February 2015 the Convention had only 82 signatories
within the framework of policy and provisions for the general population. Economic hardship, unemployment and the social status of women were regarded as the most important social factors (Wilkinson 1960: 180).

The official international document referred to a League of Nations report of 1943 as saying that “the greatest hope of permanent reduction in prostitution lies in reducing demand. However, “the prostitute’s customers are, by the nature of things, unknown”” (Wilkinson 1960: 178). The report argued that clients, like prostitutes, show deficient integration in the structure of their personality and sexual behaviour. The suggested ways in dealing with clients included – echoing the recommendations introduced by Flexner (1920) - sex education, removal of indirect social stimuli to prostitution, a policy encouraging marriage, increased opportunities for leisure and sports. Thus, re-education had tended to replace the old term rehabilitation (Wilkinson 1960: 181).

Foreign women, their mobility, and their sexual relations across ethnic and national boundaries were no longer a major concern, but domestic women in prostitution became the focus. New psychological discourses began to emphasise the deviance of women in prostitution and the need to rehabilitate and re-educate them. The assumed causes of prostitution had changed from explanations involving the sexual double standard, poverty, women’s low status within countries and the institutionalization of paid sexual labour by the state to women’s own failing (Limoncelli 2010: 90). The 1959 United Nations report explained: “Current research studies into prostitution (…) indicate also that prostitutes have generally slight mental and psychical abnormalities (instability, abnormal lack of emotion, excitability, pronounced nervousness) and that a great number of them suffer from a psycho-sexual immaturity, very often due to arrested development caused by early childhood frustrations. The number of prostitutes who are mentally, psychologically and emotionally normal appears to be very limited” (United Nations 1959: 20, quoted in Limoncelli 2010: 90).

Based on the 1959 study, that year the U.N. Economic and Social Council adopted a resolution requesting governments “to take all appropriate measures for the elimination of the causes leading to the traffic in persons and of the exploitation of the prostitution of others through constant improvement of social and economic living conditions of their peoples” (quoted in Demleitner 1994: 162f). However, UN activities for the supervision and implementation of the 1949 Convention remained sporadic and ineffectual until the early 1990s (Reanda 1991: 224).

Although the 1949 Convention had little legal impact due to the low number of signatories, it provided private organisations dealing with trafficking and prostitution an opportunity to lobby at national and international level for their claims (see International Abolitionist Federation 1984). But in contrast to the League of Nations, the United Nations did not provide a special working group devoted to the monitoring and development of the 1949 Trafficking Convention. This circumstance weakened the influence of international voluntary organisation at the UN level.

4.4.2 Political opportunities at international level
Since the late 1960s, the United Nations strengthened the Human Rights Program with regard to the issue of women’s rights, children’s rights and combatting of slavery. This development offered international private organisations a renewed opportunity to lobby within the UN System (Halley et al. 2006: 356).

The UN established the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and treaty-based bodies as well as sub-committees and (temporary) working groups. Some of the bodies of the Human Rights System offered opportunities for NGOs to deliver information, submit proposals or participate in meetings. A number of feminist networks which lobbied for their particular topics utilised these opportunities (Stienstra 1994, Rupp 1997, Berkovitch 1999, van Leeuwen 2010). For groups concerned about trafficking and prostitution, the UN Working Group on Slavery, established in 1974, became the most important arena for the promotion of their concerns (Zoglin 1986, Demleitner 1994, Halley et al. 2006).

The development of political opportunity structures for international private associations had occurred in times of changing social and moral landscapes. Due to a more liberal and permissive atmosphere, since the 1960s the sex business increased and commercialised forms of sex like pornography, prostitution and sex tourism became more visible (Barry 1995:122-164, Grittner 1990, Weeks 2012: 321-356). This development consequently provoked a feminist debate on the framings of what was called the “sexual revolution” (Weeks 2012: 357-390, Outshoorn 2005). The debates pursued the historical feminist debates on a double moral standard, prostitution, trafficking and sexual slavery and generated distinct and fiercely competing feminist views about the understanding and relevance of trafficking and the question of demand. Subsequently, the competing views became represented and launched at the international level by two competing non-governmental organisational networks: On the one hand, the radical feminist Coalition Against Trafficking in Women (CATW) formed together with other NGOs the International Human Rights Network (IHRN). On the other hand, Network of Sex Work Projects (NSWP) and the Global Alliance Against Trafficking in Women (GAATW) formed the Human Rights Caucus (HRC). These two networks attended the negotiations on the drafting of the UN Trafficking Protocol in Vienna and worked hard to influence the ongoing decision making process (Gallagher 2001, Sullivan 2003, Ditmore and Wijers 2003, Wijers 2015, Doezema 2010, Hahn 2010).

4.4.3 Redefining competing feminist positions

During the 1970s, the anti-pornography debate in the US led to an array of competing feminist positions and views regarding sexuality, among them a strand called “radical feminism” (Bromberg 1998, Krolokke 2006, Roth 201). Radical feminists developed a critical stance towards a liberal thinking that was identified as a root cause of “female sexual slavery” (Barry 1979). Inspired by the Marxist concept of alienation, radical feminists re-interpreted the commercialisation of sex in the late 1970s as the most blatant manifestation of a male oppression. Consequently, in the 1970s, US based
radical feminists organised and launched campaigns against pornography and prostitution (Shrage 2014).

In the view of the leading radical feminist thinker, Kathleen Barry, male violence against women would be tolerated and justified by a “valueless individualism” that rejects to make value judgements on others’ behaviour, ideas or actions because of liberal motivations that react to traditional morality. What was motivated by respect for individual difference in reaction to earlier generation’s moralistic judgements on and intolerance of anything or anyone different from the norm is now, as Barry claimed, for many valueless: “People are free to do whatever they want, in whatever way they want, whether in a religious cult, a traditional family unit, or a sadomasochistic ritual” (Barry 1979: 263).

An enormous number “of men who are pimps, procurers, members of syndicate and freelance slavery gangs, operators of brothels and massage parlours, connected with sexual exploitation entertainment, pornography purveyors, wife beaters, child molesters, incest perpetrators, Johns (tricks) and rapist” would participate in female sexual slavery (Barry 1979: 259). Women would become victims of sexual slavery because an arrested sexual development of the male population would be understood to be normal. The ethic of value-free acceptance of everyone’s action and beliefs would allow individuals to escape into themselves, relieved of responsibility for the civilisation in which they live (Barry 1979: 263).

The state was considered to be inherently valueless, a feature “institutionalized in governmental and academic practices and in laws” (Barry 1979: 263f). Subsequently, Barry called for a value change to overcome the oppression of women in favour of individual liberty. “Individual liberty is the other side of female sexual slavery, it is the goal of feminism” (Barry 1979: 278).

In the context of new sexual values, laws were perceived as useful only to the extent that they prohibit practices of sexual slavery or sexual violence (Barry 1979: 278). However, Barry conceded that ideally it should not be the function of law to enforce morality of values by making them legal standards under which people must live. New values will revolutionise society only when they are accepted and cherished by the people and not imposed on them (Barry 1979: 278).

With respect to prostitution, Barry explicitly followed the classical abolitionist line of toleration: She argued that as long as women who are prostitutes are socially labelled as outcasts, they will be expendable as throwaway women, and legally defined as criminals. She proposed the decriminalisation of prostitution as the only mean of taking women out of the official status of either criminal or prostitute. The proposed decriminalisation should be without reservation, including street hookers as well as those in brothels (Barry 1979: 277), and be accompanied by increased enforcement of laws against pimping, procuring and involuntary servitude. “When women are neither criminals nor official prostitutes, they theoretically have the rights of any other citizen to bring charges of assault, rape or kidnapping against pimps and customers” (Barry 1979: 277). This combination of measures would “directly challenge the principles of patriarchy as they are enshrined in law” (Barry 1979: 278).
However, soon after the publication of “Female Sexual Slavery”, Barry developed a distinct view. She began to explicitly distance herself from Josephine Butler who had served to her as a model. She abandoned the classical abolitionist view with its focus of individual women’s rights. As Barry later explained, she began to take “prostitution as the model, the most extreme and most crystallized form of all sexual exploitation” (Barry 1995: 11). She consequently distanced from the idea of toleration and de-criminalisation, discarded the abolitionist distinction between “free” and “forced” prostitution (Barry 1995: 17) and considered prostitution to be sexual violence that as such a woman cannot freely consent.

Barry now argued that the idea of “consent” belongs to a “US concept of rights limited and distorted by the individualism that promotes market exchange.” Under an individualism that promotes market economies, rights are reduced from being enhancements of the full human condition to serving the instrumental end of market economies and therefore promoting the competitive edge of individualism. Reducing human rights to individual consent instrumentalises the meaning of rights as they serve the market economy (Barry 1995: 89). She continued that “consent” is not the indicator of freedom, nor is absence of consent the primary indicator of exploitation. “The liberal construction of consent narrows the feminist analysis of oppression to individual wrongs and drowns feminism in the ethics of individualism. It confined sex to a matter of consent and will and does not consider how sex is used, how it is experienced, and how it is constructed into power. Individually and institutionally, the lived experience of dehumanized sex harms women and sustains the gender class condition. It is oppression. Consent to oppression or an apparent ‘will’ to be objectified is a condition of oppression. It is never a state of freedom” (Barry 1995: 89). Consequently, Barry concludes that “there is no right to prostitute” (Barry 1995: 396). This view no longer tolerates prostitution as a private matter between consenting adults as long as no third-party interferes. It is no longer considered to be a private matter but a human rights violation that “make all women vulnerable, exposed to danger, open to attack” (Barry 1995: 317).

The theoretical framework of patriarchal male domination directed attention to the behaviour of men. “The fact is that whether women claim prostitution as a right or condemn it as an exploitation of them is irrelevant to the promotion and continuation of prostitution. Prostitution and traffic in women are not perpetuated based on whether or not women want to do prostitution or are forced in to prostitution. Women are in prostitution because men buy them for sex (…). Prostitution is a male consumer market. The intense public focus on women’s will, her choice or her ‘right to prostitute’ deflects attention from the primary fact that prostitution exists first because of male customer demand. Sex industries are in place – from trafficking to brothels – to provide female bodies to satisfy that market demand. What matters in terms of the prostitution market and male demand is that there are female bodies provided for sex exchange. How or why they get there is irrelevant for the market” (Barry 1995: 39).

The focus on male oppression and ‘sexual slavery’ of women engaged in sex business and the equation of prostitution with violence invoked the issue of trafficking.
Consequently, the considerations led to the proposal to mobilise law not only in order to punish the interference of third parties in the prostitution of others but also in order to punish a male customer who purchases commercial sexual services. As Barry explains, she initiated as director of the Coalition Against Trafficking in Women (CATW, a nongovernmental organisation in consultative status with the Economic and Social Council [ECOSOC] of the United Nations) a proposal for a new “UN Convention Against Sexual Exploitation”. The proposal called “upon states to penalise the customers, recognising them as perpetrators to be criminalised while rejecting any form of penalisation of the prostitute. Therefore State Parties would be required to agree to reject any policy or law that legitimises prostitution of any person, male or female, adult or child, so-called first or third world; that distinguishes between free and forced prostitution; or that in any way legalises or regulates prostitution as a profession or occupation” (Barry 1995: 306).

This proposal developed in the context of CATW debates and subsequently launched at the national and international level added a new position to the politics of sexuality: The claim for the criminalisation of male purchasers of commercial sexual services abandoned the abolitionist view on prostitution as a private matter between consenting adults. Radical feminism thus discarded the abolitionist view that the state should not interfere in the private matter of prostitution as long as it is between consenting adults without the interference of third-parties. Radical feminists identified male ‘demand’ as a root cause for the ‘sexual slavery of women’ and called for the criminalisation of the male purchaser of commercial sex (Barry 1984, 1995; 2012, Jeffreys 2008; Bromberg 1998, Roth 2012: 12, MacKinnon 2011). Since the late 1980s CATW21 and its member organisations launched this proposal as the “Ending Demand” approach (Berger 2012). As clearly expressed, CATW is convinced that a rampant male sexual desire is the root cause of trafficking. The declared strategy aims to “discourage the demand for commercial sex without penalizing the victims.”22 CATW considered the criminalisation of male purchasers of commercial sex services in Sweden in 1999 as a major breakthrough of their position. However, although CATW claimed to internationally promote the “partial criminalization” of male purchasers of commercial sex acts, it is not known to advocate with the same rigour for the partial decriminalisation of women engaged in prostitution in countries where prostitution is prohibited and both parties engaged as consenting adults in prostitution are penalised.


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In the early 1990s, feminist organisations with a more liberal opinion reacted and also organised in international networks. In 1990, the Network of Sex Worker Projects (NSWP) was established. For the first time in history, women working in prostitution did politically organise and express their claims and grievances in the public debates on prostitution (Mathieu 2003). NSWP was established as an informal alliance in 1990 by a group of sex worker rights’ activists working within sex work projects around the world. NSWP aims primarily at making sex work safe for the sex workers. The organisation complains that standard paradigms through which sex work is currently viewed – AIDS, trafficking and violence against women – fail to fully address the human rights of sex workers. NSWP constantly criticises a tendency that sex work is conflated with trafficking. Accepting prostitution as sex work, NSWP argues that it is crucial that sex workers represent themselves and fully participate in dialogues and decision making about issues that affect them. Thus, NSWP identifies a quite different root cause for violence and exploitation in sex work: the refusal of recognition of commercial sex services as work and the social and legal exclusion of sex workers. NSWP calls not only for a de-criminalisation of prostitution but for its recognition as a profession (for proposals of the pro-sex feminists see Weitzer 2011, Barnett et al. 2010: 57-73, Agustin 2008, Roth 2012). The NSWP attempted to make their voices heard in the UN Human Rights System debates on prostitution and trafficking and cooperated on that behalf with another feminist network, the GAATW (Doezema 2010, Hahn 2010). The Global Alliance Against Trafficking in Women (GAATW) was established 1994 at a conference in Chiang Mia, Thailand, where participants were concerned about the contemporary discourse and activism around trafficking in women. GAATW became the most relevant opponent to suggestions for a complete or partial criminalising of commercial sex services in international debates. According to the self-presentation, the Alliance was born of a collective decision to understand the elements of trafficking from a human rights perspective, in order to improve the lives of trafficked women. From the outset, GAATW did not restrict activities to sexual exploitation but focused on measures to improve the situation of women and children – and today men – whose human rights have been violated by the criminal practice of trafficking in persons. GAATW advocates for a more comprehensive legal protection of particularly migrant workers against exploitation and the assistance of persons who have been trafficked. In contrast to CATW, GAATW activists consider the criminalisation of prostitution not an effective policy to protect women; on the contrary, they argue that it increases the vulnerability of migrants and workers which is a root cause of trafficking (GAATW 2007).

4.4.4 Trafficking and Prostitution as Modern Slavery

The UN political opportunity structure for organisations concerned with prostitution and trafficking had been established in 1974, when the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights...
formed the Working Group on Slavery. The working group was devoted to the eradication of slavery, a human rights concern that was at that time at the “bottom of the UN human rights hierarchy” (Zoglin 1986: 328). During the first six years of existence, member states paid no attention to the Working Group. Only up until 1981 did state representatives attend the sessions. The mandate of the working group included trafficking, considered as a slavery-like practice. Unlike other UN Working Groups, the Group on Slavery was uniquely open to NGO input and became a forum for action on women’s rights issues at a time when most other UN bodies were indifferent to the ideas. The mandate of the Working group was open-ended and created opportunities for “creative interpretation” (Zoglin 1986: 317). NGOs with consultative status used the opportunities for oral statements and submission of large amounts of written materials. Thus, NGOs exerted in the UN Working Group “stronger influence than [in] almost any other comparable human rights body” (Zoglin 1986: 321). Among the involved NGOs that consistently attended the sessions were the International Abolitionist Federation and initiatives later operating as part of the CATW network (Zoglin 1986: 315).

The Working Group on Slavery classified trafficking in women and children as a form of slavery, a label that was also adopted by the UN Commission on the Status of Women. Labelling forced prostitution “slavery” might have been considered as an improvement because by subsuming the practice under a well-established label, it became generally viewed as a serious human rights violation. Also, in 1982, the UN Economic and Social Council requested that a Special Rapporteur on the suppression of the traffic in persons and the exploitation of the prostitution of others be appointed (Demleitner 1994: 176f).

Jean Fernand-Laurent, the Special Rapporteur, presented in a 1985 report that synthesised the data, available from UN organisations and agencies as well as other international bodies, non-governmental groups, and official government publications, on the issue of trafficking and prostitution. The report defined “traffic in persons” as “the exploitation of the prostitution of women and children” and viewed it as a human rights violation.

Although the Special Rapporteur deemed the combat against procurement the short-term goal, he envisioned the overall reduction of prostitution as the ultimate aim. He suggested that the latter could be achieved if economic and social inequalities between countries and within each country were lessened and women were given access to a variety of properly paid jobs. In addition, the Special Rapporteur drew on the recommendations of the 1959 Study and declared four elements to be necessary to fight prostitution successfully: “(1) before prostitution, preventive measures; (2) at the time of prostitution, elimination of isolating discrimination; (3) suppression of procuring; and (4) after prostitution, assistance in rehabilitation.” To accomplish these goals, he advocated an information campaign that would sensitise public opinion, the elimination

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25 UN Department of International Economic and Social Affairs, AcmTrmEs FOR THE ADVANCEMENT OF WOMEN: EQUALn, DEVELOPMENT AND PEACE at 17, UN. Doc. ST/ESA/174 (1985)
of discrimination against women in general and prostitutes in particular, and, finally, the imposition of deterrent penalties on procurers, such as minimum prison terms of five years, as well as sanctions to punish all forms of procurement, including classified advertisements. In addition, he suggested an increased international exchange of information on procurement networks, which should also include the resources of Interpol and the UN Centre for Human Rights (quoted in Demleitner 1994: 176 ff).

Another venue that in the 1980s opened opportunities for NGOs concerned about prostitution was the UNESCO, as the 1986 Convention of the Rights of Children had included a reference to trafficking. Anti-prostitution organisations introduced the idea for a “Convention Against Sexual Exploitation” first at an UNESCO expert meeting in 1986 and developed the proposal further with UNESCO staff support (Barry 2012).

The proposal was intended to resume and extend the 1949 convention by not only penalising third-parties facilitating the prostitution of others but by criminalising men who purchase commercial sexual services. The proposal defined “sexual exploitation” as “a practice by which person(s) achieve sexual gratification, or financial gain, or advancement, through the abuse of a person’s sexuality by abrogating that person’s right to dignity, equality, autonomy, and physical and mental well-being” (Barry 1996:326). An enumeration of forms of sexual exploitation explicitly included prostitution and pornography.

In 1991, CATW presented the draft proposal for a “Convention Against Sexual Exploitation” (Barry 1995: 323-344) to the UN Working Group on Slavery. However, the proposal failed to get the acceptance and recommendation of the UN Working Group for further pursuit (Barry 2012).

4.4.5 Protection against trafficking as a human right

The United Nations’ declarations of the “international women’s year” (1975) and of the “decade for women” (1976-1985) initiated a series of activities in order to institutionalise “women’s rights as human rights”. The preparatory efforts for the development of a special Convention on Women’s Rights offered opportunities to raise the issue of trafficking and prostitution. NGOs organised additional conferences to influence the official negotiations. In 1979 the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted, including a provision referring to trafficking. Anti-prostitution organisations used follow-up events to advocate their interpretation that the procurement into prostitution even with the consent of an adult person should be perceived as trafficking, and noticed their first success in 1980, when the Copenhagen conference ordered the UN General-Secretary to report to the next session of the UN General Assembly on traffic in women. “Gradually, the issue began to be incorporated in conferences on women’s issues and preparatory sessions” (Halley et al. 2006: 253). In 1981, a UN conference in Nice released the statement that “all prostitution is forced prostitution” (Special Rapporteur


Subsequently, the issue of trafficking in human beings was included in other international legal instruments, among the 1989 Convention on the Rights of Children (CRC), the 1993 Vienna Declaration and Programme of Action and the 1993 UN Declaration on the Elimination of Violence against Women.27

The 1993 UN Declaration defined violence against women as “any act of gender-based violence that results in, or is likely to result in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life”. According to article 2 (b) violence includes, among other manifestations, “trafficking in women and forced prostitution” (van Leeuwen 2010: 91). However, in difference to the understanding of anti-prostitution groups, the provision underlined that trafficking in women was distinguished from forced prostitution. Moreover, by introducing the term “forced prostitution” it was clear that prostitution of consenting adults as such was not considered violence against women.

The issue of trafficking was resumed in the 1995 Beijing Platform for Action in an undecided form which anticipated the undecided definition of the 2000 UN Trafficking protocol. According to the Platform, “violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedom.” Then, the document called for the combatting and elimination of gendered-based violence such as battering and other domestic violence, sexual abuse, sexual slavery and exploitation, and international trafficking in women and children, forced prostitution and sexual harassment, as well as violence against women, resulting from cultural prejudice, racism and racial discrimination, xenophobia, pornography, ethnic cleansing, armed conflict, foreign occupation, religious and anti-religious extremism and terrorism which is incompatible with the dignity and the worth of the human person. The enumeration of forms of gender-based violence included the contested and competing terms “forced prostitution” and “sexual slavery” and “exploitation” and thus affirmed and encouraged groups who used to equate prostitution with “sexual slavery” (see Jeffreys 2008: 329).

But the Beijing Platform showed that the central terms were not properly defined. In 1997, GAATW proposed a definition of trafficking that served as a springboard for assessing alternative policies and strategies. The proposal separated the act of recruitment from the end purposes of exploitation, defining the former as “trafficking” and the latter as “forced labour and slavery-like practices”. Trafficking was defined as “all acts that involved the recruitment and/or transportation of a person within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion”. With regard to the end-purposes the proposal defined forced labour and slavery-like practices as the “extraction of work or services from any person or the appropriation of the legal identity and/or physical person of any persons by means of

violence or threat of violence, abuse of authority or dominant position, debt-bondage, deception or other forms of coercion” (GAATW 1997, quoted in Chuang 1998: 97). The GAATW proposal was determined to contribute to the ongoing dispute in the context of the UN Human Rights framework on the understanding of trafficking and prostitution and the appropriate way to protect the dignity of human beings as women, migrants or sex workers. However, the decisive arena for the development and adoption of a new international agreement against trafficking had already shifted to the UN Crime Prevention and Criminal Justice framework.

4.5 Trafficking as crime prevention issue: Transnational Organised Crime

The resonance in international politics to anti-trafficking claims was influenced by an increasing feeling of a security threat caused by facilitators of irregular migration which were also referred to as traffickers as of the late 1970s (Weiner 1995, Ghosh 1998, IOM 2005). The concerns regarding the facilitation of irregular migration and trafficking in human beings were integrated in the concept of transnational organised crime that came up in the late 1970s in international politics, focusing initially on illicit international trade in arms and drugs. During the 1980s and 1990s, US authorities intensified the prosecution of organised crimes with the introduction of new racketeering laws, witness protection programs and electronic surveillance. However, at the transnational level persecutors noticed that many nations were not equipped to deal with international criminality and propelled an international approach. Strongly supported by the USA the issue was taken up by the UN Commission of Crime Prevention and Criminal Justice and by the UN Economic and Social Council. By 1994, at the World Ministerial Conference on Organised Transnational Crime in Naples, several countries proposed the creation of a UN convention to deal with the issue (Gastrow 2002).

At the same time, immigration restrictions became more widespread throughout the world. The percentage of governments that had a policy to reduce immigration increased from 6 percent in 1976 to 33 percent in 1995 (United Nations 1998). Enforcement of immigration law intensified as well (Pécoud and Guchteneire 2006, UNDP 2009). The facilitation of illegal border crossings became more organised and were considered to be a major field of transnational organised crime. In the context of international crime prevention, smuggling of human beings and trafficking in human beings were originally used as virtually synonymous. Any business that profited from transporting people illegally across international borders was addressed as ‘trafficking’ (Aronowitz 2001). The reappearance of the term trafficking in the context of international crime prevention debate alluded to the fact that criminal networks often cared little about the well-being of their human cargo after the price for the journey was paid (Ghosh 1998, Taran 1994, Weiner 1995).

Within the UN Crime Prevention and Criminal Justice framework the debate on trafficking focused on the threats of irregular migration and its facilitation on public security (Aradau 2004 and 2008, Uhl 2014). The term “trafficking” with this particular meaning was used since the late 1980s by national and international crime prevention
agencies and International Organisations to address the facilitation of irregular migration. For example, in 1994 an international IOM seminar considered a migratory movement as trafficking when the following five conditions were met: when money or another form of payment changes hand; when a facilitator (trafficker) is involved; when an international border is crossed; when the entry is illegal and the movement is voluntary. This definition was more akin, as IOM representatives later commented, to the current international definition of smuggling (IOM 2005: 12; with reference to IOM 1994: 2).

The conflation of irregular migration, human smuggling and trafficking favoured a crime prevention perspective. In a paper presented to the aforementioned international seminar convened by the International Organisation for Migration in 1994, the term “trafficking” addressed “moving people across borders illegally to provide cheap labour for factories or restaurants ‘legally’ operated by the same interests, and often to participate in other illegal activities as well.” The paper stressed, notwithstanding the extreme difficulties to document the full nature and extent of organised crime involvement, the “urgency of dedicating major law enforcement attention, nationally and internationally, to challenge organised crime, particularly its rapidly increasing involvement in illegal trafficking” (Taran 1994: 4). Also criminal enforcement agencies like Interpol or Europol used the term trafficking in persons in order to address the facilitation of irregular movement across international borders regardless of the motivation of the facilitators and the circumstances of the movement.

The crime prevention understanding impacted the debates at the international level. The UN General Assembly used the term trafficking in 1994 to refer to “the illicit and clandestine movement of persons across national and international borders … with the end-goal of forcing women and girls into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers, crime syndicates as well as other illegal activities related to trafficking such as domestic servitude, forced or early marriage, or marriages of convenience, irregular immigration and employment and illegal adoption” (IOM 1994: 2, cited in IOM 2004: 12). In this view, trafficking was restricted to the exploitation of women and girls, although exploitation included – in contrast to the 1949 Convention – not only sexual but also labour and other forms of exploitation.

At a European conference on trafficking, co-organised by the European Commission and the International Organisation on Migration in 1996, an “overwhelming number of documents prepared by governments and international organisations were titled ‘trafficking in migrants’ or ‘trafficking in aliens’ and predominantly addressed illegal migration, aiming to ‘to prevent the entry of possible victims’” (Wijers 2015: 65).

In a UN Publication of 1998, traffickers were characterised as facilitators of illegal migration by illegal means, with “the migrant who is party to the transactions making a voluntary choice” (United Nations 1998: 219).

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The explicit assignment of trafficking in close relation to irregular migration indicated that the term “trafficking” was no longer exclusively applied in the UN Human Rights framework in compliance with the 1949 UN Convention to address trafficking in women and children for the purpose of sexual exploitation but also in the UN Crime prevention framework to address the facilitation of irregular migration.

Although this conflation of irregular migration, human smuggling and trafficking in human beings is still present in media reports (TRACE 2014), the official legal understanding has changed. In 1995 the UN Secretary-General raised the question, whether “trafficking is the same as illegal migration” and stressed that migration across frontiers without documentation does not have to be coercive or exploitative and considered the purpose for which the border is crossed as a possible distinctive feature: Under this distinction, trafficking of women and girls would be defined as “the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situation” and the fact that it is done “for the profit of recruiters, traffickers and crime syndicates….”

The emphasis of the UN Secretary-General that coercion is considered as an constitutive element of trafficking, the reference to “economically oppressive and exploitative situations” in addition to “sexually oppressive exploitation” as purpose of trafficking, and the demarcation of the trafficking offence against “illegal migration” challenged the tendency of state governments and some international organisations and bodies engaged in the UN Crime Prevention and Criminal Justice system to capture the term “trafficking” stripped off the aspects of victim protection that had been put on the agenda of the UN Human Rights framework.

In the debates with a crime prevention focus, “trafficking” and “smuggling” were commonly considered to be closely related, partly overlapping or sometimes even fused. On the website of the United Nations Office on Drugs and Crime (UNODC), the responsible UN body for the coordination of international efforts to combat transnational crime, trafficking in human beings and migrant smuggling is indicated among the fourteen major headings, along with such crimes as drug trafficking and money laundering. Some studies in crime prevention research examined smuggling and trafficking together and it is sometimes not transparent which offence is addressed (Aronowitz 2001 and 2009; Vermeulen et al. 2010, Shelley 2009).

5 Trafficking in the context of international crime prevention

The first section offers a summarising overview of the distinct and competing positions that attach particular and competing meaning to trafficking and demand at the eve of the negotiations on the UN Trafficking Protocol (5.1). The following section introduced the content and controversies on the definition of the UN Trafficking Protocol (5.2). The

next section explains how the demand provision entered the Protocol (5.3). Finally, the competing interpretations of the demand provision in present-day debates on trafficking in human beings in different policy fields are introduced (5.4).

5.1 At the eve of the negotiations

Undoubtedly, the intense interest in the issue of “trafficking” re-occurred at international level when it was re-defined as an organised crime and public security threat (Aradau 2004 and 2008; Friesendorf 2009, Uhl 2014, Outshourn 2004).

Indeed, the 2000 UN Trafficking Protocol was developed as supplement to the UN Convention Against Transnational Organised Crime (Vlassis 2002). The United Nations Office on Drugs and Crime (UNODC) is the responsible body for the monitoring of the Convention and its Protocols and served as host for the negotiations taking place in Vienna in 1998-2000.

Until the adoption of the UN Trafficking Protocol in December 2000 “the term ‘trafficking’ was not defined in international law, despite its incorporation in a number of international legal agreements” (Gallagher 20010: 12). While the international dimension was part of the debates about prostitution and trafficking since its historical beginnings, the focus had always been on state’s attitude to prostitution rather than to international recruitment. Throughout the 1990s a number of governments were debating and passing trafficking legislations and various bodies and agencies, including European bodies like the Council of Europe, the European Commission, the European Parliament of the Council of the European Union actively dealt with the issue of trafficking and attempted to develop an authoritative definition of the offence (Gallagher 2010: 15-25). The driving forces were not humanitarian concerns but security (Gallagher 2010: 71; Ausserer 2008, Dauvergne 2007, Outshourn 2014).

By 1994, at the World Ministerial Conference on Organised Transnational Crime in Naples, several countries proposed the creation of a UN convention to deal with the issue (Gastrow 2002). In late 1997, the UN General Assembly established an intergovernmental group of experts to prepare a preliminary draft. In 1998 the General Assembly adopted a special resolution that provided the basis for high-level negotiations in order to create a comprehensive international convention against transnational organised crime.

The negotiations of the “Ad Hoc Committee on the Elaboration of a Convention against Transnational Organised Crime” were hosted by UNODC in Vienna. Between 19th and 29th February 1999 and 2nd and 7th October 2000 the Committee drafted the UN Convention and three supplementing protocols in eleven sessions.30 The negotiations on the Trafficking Protocol were attended by representatives of other UN Bodies, International Organisations and NGOs registered at the UN with a consultative status.

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In the negotiations trafficking was initially addressed as a cross-border crime involving the smuggling of persons and the trade in drugs and arms.

5.2 The content of the UN Trafficking Protocol

The Convention and its supplementing protocols were officially adopted in December 2000 in Palermo. State parties ratifying the Convention accepted the obligations to introduce provisions in national law that criminalises corruption (art. 8), participation in an organised criminal group (art. 5), laundering of proceeds of crime (art. 6) and to introduce measures to combat money-laundering (art. 7). In three additional protocols ratifying State parties accept special obligations in the areas of trafficking in firearms, smuggling in persons and trafficking in persons.

The negotiations had been concluded in October 2000 with the final draft that was adopted two months later. The definition of the offence “trafficking” introduced with the 2000 UN Trafficking Protocol rests on three basic elements.

- The first element relates to an action: “recruitment, transportation, transfer, harbouring or receipt of a person”.
- The second element relates to the means used to secure that action: “threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”.
- The third element is related to “exploitation” as the purposes of the action for which the means were used: “Exploitation shall include, at 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” (Gallagher 2010: 29).

In the comprehensive comment on the “International Law of Human Trafficking” Anne Gallagher stresses that all “three of the listed elements must be present for a situation of ‘trafficking in persons’ to be recognized and for the Trafficking Protocol and Organized Crime Convention to become operational within a given fact-situation. The only exception relates to trafficking in children, in relation to whom the ‘means’ requirement is waived” (Gallagher 2010: 29). The obligations imposed on State parties that have ratified extend only to “trafficking” as defined in the Protocol and not to “related conduct”. In other words, it “is the combination of constituent elements making up the crime of trafficking that are to be criminalized, not the elements themselves” (Gallagher 2010: 80). Thus, the trafficking offence holds the epistemological status of an ‘institutional fact’ that does not merely represent social reality but provide a tool that makes social reality (see MacCormick 1974 and Searle (2005 and 2010).

Compared to the previous application in the transnational crime context, the offence “trafficking” was no longer confined to international transactions. In relation to the
transport of people over borders, it was clarified that the purpose of exploitation at the end of the journey made the difference. Compared to the 1949 UN Convention, the 2000 Trafficking Protocol abandoned the narrow restriction on exploitation only in the sex market and included as exploitation “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” (article 3). The phrase “at a minimum” indicated that other international bodies or national legislators are free to add further forms of exploitation in subsequent international or regional conventions and national legislation. Moreover, the target group for protection was not confined to women and children any more. With the acceptance of the three constitutive elements and the consideration of more exploitation purposes than only sex-related exploitation, the definition followed the GAATW proposal mentioned above.

A further dissociation from forerunning conventions in the sex politics context was the recognition of an adults’ right to choose, including the right to choose to work in the sex business. The Protocol does not deny that persons may consent to their procurement into prostitution – also across borders – provided that no coercive or fraudulent means were applied. According to the travaux préperatoires - a diplomatic tool to authoritatively clarify the meaning of terms used in documents – the drafting State parties agreed that “the Trafficking Protocol addresses the issue of prostitution only in the context of trafficking” (Gallagher 2010: 29; Jordan 2011 a).

The drafting group consented that the 2000 UN Trafficking Protocol definition should not be extended to prostitution or pornography per se (Gallagher 2010: 39, Wijers 2015). The travaux préperatoires confirms that the two terms “exploitation of the prostitution of others” and “other forms of exploitation” were deliberately undefined in order to ensure that the protocol was “without prejudice to how States parties address prostitution in their respective domestic laws” (at page 437, quoted in Gallagher 2010: 38). It would be incorrect, as Gallagher concludes, to view the final result – the inclusion of the notions “exploitation of the prostitution of others” and “sexual exploitation” – as indicative of a majority sentiment against prostitution (Gallagher 2010: 29 ).
Trafficking Protocol “makes a clear distinction between trafficking and prostitution” (Wijers 2015: 67).

Finally, with the 2000 UN Trafficking Protocol the issue was no longer pursued in the context of the UN Human Rights framework but in the context of the UN Crime Prevention and Criminal Justice framework. According to Anne Gallagher, personally attending the negotiations, “most, if not all states involved in the Vienna Process supported action against a phenomenon that was widely felt to represent a threat of stability and public order” (Gallagher 2009: 836). “While human rights concerns may have provided some impetus (or cover) for collective action, it was clearly the sovereign/security issues surrounding trafficking and migrant smuggling, as well as the perceived link with organized criminal groups operating across national borders, that provided the true driving force behind such efforts [to evoke international law as a weapon against transnational organized crime, NC]” (Gallagher 2010: 71).

But, as Gallagher continues, the international human rights systems had amply demonstrated that over many years, on its own, it had been incapable of taking any serious steps toward eliminating trafficking and other forms of private exploitation. In contrast, the framework established in the UN Crime Prevention and Criminal Justice framework articulates “with much greater clarity than was ever previously possible, the obligations of States in relation to both ending impunity for traffickers and providing support, protection, and justice for those who have been exploited” (Gallagher 2009: 846, see also Aradau 2008, Dauvergne 2008, Sanders and Campbell 2014).

5.3 How ‘Demand’ got into the Trafficking Protocol

Several draft proposals for the trafficking protocol submitted to the Ad Hoc Committee initially omitted any reference to “demand” as well as any consideration of demand or demand factors.

According to Jo Doezema, then a NSWP representative who attended the negotiations on the side of Human Rights Caucus, the US delegation introduced for the sixth session (December 1999) a recommendation on preventing prostitution and the need to address the “demand for prostitutes” (Doezema 2010: 129f). However, the US delegation did not further pursue the proposal out of fear that including prostitution as a form of sexual exploitation – the CATW position - would potentially block consensus, as states that regulated or tolerated “voluntary” prostitution would not be able to sign. “This was confirmed when the Netherlands and Germany indicated that they would never agree to a document that defined prostitution as sexual exploitation” (Doezema 2010: 162). The proposal was dropped.

34 With respect to the City the drafting of the Trafficking Protocol took place 1999-2000 the term Vienna Process is used.
35 But as Gallagher explained elsewhere, the dealing with trafficking in crime prevention also strengthened and improved the efforts to provide protection and assistance for victims of trafficking (see Gallagher 2001).
36 This document is not accessible through the UNODC website, the document signature is probably A/AC.254/L.54.
Even the last draft proposal submitted by the Ad Hoc Committee to the eleventh and last session (2-27 October 2000) – only about three months before the fixed date of the adoption of the Convention and Protocols – still did not include any reference to the issue of demand (see annex 1).

But in response to this draft proposal, the delegate of the United States submitted to the Ad Hoc Committee a document with an alternative suggestion, proposing to add three more paragraphs in article 10 dealing with “prevention of trafficking in person”. One of the three paragraphs introduced the term “demand”. This proposal was accepted in the last negotiation session with only a minor change (see annex 2). Thus, the initiative for the inclusion of the demand provision in the UN Trafficking Protocol traced back to the debates on the public handling of prostitution in the USA. Also the subsequent debates on the interpretation of the demand provision was decisively influenced by this national debate (see annex 3).

The travaux préparatoires provides no information about what the drafting parties intended with the demand provision (Gallagher 2010). Due to missing references to any authoritative official clarification in the travaux préparatoires, the term “demand” is open for a wide range of diverging and mutually exclusive interpretations. In addition to this, the UNODC (2005) Legal Guide does not contribute substantively to the questions which drafters had in mind when the term demand was included.

The most comprehensive elaboration on the understanding of demand as intended by the drafting parties was provided by Ann Gallagher who offers ten pages about the issue in her book “The International Law of Human Trafficking” (Gallagher 2010). Gallagher focuses on the question of which kinds of obligations the provision creates for states to address demand and concludes that there is, however, no clear answer because the term “demand” is introduced in a broad context of prevention and remains notoriously vague and ambivalent. Relying on research, Gallagher points to the necessity of distinguishing between “demand factors” and “demand”. She further indicates that demand in the context of trafficking refers to quite different issues, namely an employer demand for cheap and exploitable labour (1) and consumer demand for the goods or services produced or provided by trafficked persons (2). But moreover, demand may also be generated by exploiters (3) or other persons involved in the trafficking process as recruiters, brokers or transporters (4). Finally, Gallagher included in her list corrupt public officials who receive direct benefit from trafficking (5) and “legitimate businesses” (for example in the entertainment, tourism and travel industries) that indirectly profit from the exploitation associated with trafficking (6) (Gallagher 2010: 432 f). Gallagher’s long list indicates first and foremost the vagueness, elasticity and interpretability of the term (see also annex 4).

Looking at the occurrence and use of the term demand in the historical debates on trafficking in human beings, the introduction of the term in the protocol can be clearly

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attributed to positions that sees prostitution as sexual violence and human rights violation *per se* and seeks to criminalise male purchasers of commercial sexual services (Roth 2012: 11). However, the reference to demand is of a metaphorical nature and so vague and ambiguous that the demand provision in the protocol can be used as a point of reference for several other interests.

5.4 After 2000: Competing interpretations of ‘demand’ in anti-trafficking debates

Unsurprisingly, the vague but negative notion of demand as something that should be reduced was subject to not only competing but antagonistic interpretations. Soon after the adoption of the UN Trafficking Protocol two legal guides issued by competing private associations lobbied for distinct interpretations.

5.4.1 Two legal guides – two entirely different interpretations

The “Annotated Guide to the Complete UN trafficking protocol” published by Ann Jordan (2002), considered “demand” in the context of labour migration. “Almost all persons who are trafficked start out as migrants seeking work. They are pulled into the migration stream by the demand for labour in other countries. This demand exists because citizens and residents of many countries refuse to take low wage jobs. Jobs exist but no one wants them except migrants. (...) At the same time, immigration laws in countries of destination are almost uniformly restrictive and prevent migrant workers from entering legally to work legally. Consequently, migrants are forced to find someone to help them migrate without documents. Often, that person is a trafficker who places the migrant into a situation of forced labour, slavery or servitude abroad. (...) In order to reduce the ability of traffickers to prey on migrant workers, governments should “adopt or strengthen legislative or other measures...to discourage the demand” for undocumented, vulnerable, exploitable migrant workers. They should adopt laws and measures to permit migrants to enter and work legally and to have access the same labour rights provided to other workers. (...) The demand for labour exists and will be met one way or another. The question remaining to be answered is whether the demand will be met by workers with rights or by trafficked persons” (Jordan 2002: 30)

In sharp contrast to this understanding, CATW insisted that the demand provision calls on governments to criminalise male demanders of commercial sex. The CATW immediately celebrated the introduction of a reference to “demand” and to “exploitation of the prostitution of others” and “sexual exploitation” as their “victory in Vienna” (Raymond and Marcovich 2000). The organisation today still declares on the website: “The definition of trafficking, in the new UN Transnational Crime Convention’s Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and
Children was launched and advocated by the Coalition. CATW organised the International Human Rights Network (IHRN), a coalition of more than 140 NGOs, to successfully advocate for a definition of trafficking that protects all victims, not just those who can prove that they were forced. Many of the measures to prevent trafficking, protect victims, and punish perpetrators were also initiated by CATW.  

CATW activists soon declared that the new UN Trafficking Protocol, and the achievement of a strong and principled definition of trafficking, has enormous significance for the 21st century of women’s human rights. It was particularly highlighted “that the definition would reverse the trend in recent years to separate prostitution from trafficking; stem the tide of the pro-sex industry lobby which has worked to delete any mention of prostitution from new trafficking legislation and locate the UN Transnational Crime Convention within existing international human rights law.” Moreover, stating that “there would be no supply of victims without the demand” the Protocol was identified as the “first international instrument that explicitly mentions the ‘demand’ factor in Article 10,” calling upon countries to take or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation that lead to trafficking in persons” (Raymond and Marcovich 2000).

This early response showed why anti-prostitution organisations gave up earlier opposition to the UN Trafficking Protocol because it included labour exploitation and distinguished between non-coerced and forced prostitution. The inclusion of key words – particularly prostitution and demand – were taken as a chance to present an interpretation of the UN Trafficking Protocol as a document that favours the criminalisation of male purchasers of commercial sexual services.

A leading member of CATW soon produced a “Guide to the New UN Trafficking Protocol” (Raymond 2001) that delivers insight into the radical feminist interpretation of demand. Raymond highlights the demand paragraph (9.5) and discusses it in a section entitled “Combat the trend to legalize/ regulate prostitution as work”. Raymond identifies an urgent need for governments – here referring to the Swedish legislation introduced in 1999 and penalising male buyers of commercial sex - to put male buyers of women and children prostitutes on the policy and legislative agenda, taking seriously that the problem of global sex trafficking will not be dented “unless those who create the demand for prostitution are addressed” (Raymond 2001: 9).

These two early proposals to specify the meaning of demand, both presented as a “guide to the trafficking protocol”, refer to the same Trafficking Protocol provision but present sharply distinct opinions on the object of reference. Jordan interprets the obligations of states to adopt measures addressing demand with reference to a migrant status and labour exploitation that probably also includes sex workers and favours measures providing more legal security and access to legal protection for persons in a vulnerable situation. In contrast, Raymond refers exclusively to prostitution - which is explicitly understood as including non-coerced, consensually agreed upon forms of

40 The comment refers probably not to the final approved draft but to an earlier version when the prevention aspects were still introduced in Art. 10.
commercial sexual services - and strongly recommends the decriminalisation of women in prostitution and the criminalisation of all males demanding commercial sex as client or procurer.

5.4.2 Demand arguments in the international debates on trafficking in human beings for sexual exploitation

In the following years the UN Trafficking Protocol was massively lobbied and brought to new fora. The UN Trafficking Protocol’s demand provision is repeated in several non-binding international documents, among them in the resolution “Eliminating demand for trafficked women and girls for all forms of exploitation” adopted in 2005 by the UN Commission on the Status of Women. At the European level, the demand provision was included in the “Council of Europe Convention on Action against Trafficking in Human Beings” from 2005 and in the EU Directive 2011/36/EU. In 2012, the European Commission adopted the ‘EU Strategy towards the Eradication of Trafficking in Human Beings (2012–2016)’. The EU Anti-Trafficking coordinator monitors this strategy, including issues concerning “demand”. The research project for which this report is prepared is part of the EU strategy to obtain a clearer view on the issue of “demand”.

The radical feminist interpretation of “demand” finally reached the European Parliament. In February 2014, Member of the European Parliament, Mary Honeyball, delivered a report on the “sexual exploitation and prostitution and its impact on gender equality” for the Parliament’s Committee on Women’s Rights and Gender Equality. The report stated, *inter alia*, that “…prostitution and trafficking in women and under-age females are linked because the demand for women in prostitution, whether trafficked or not, is the same [and that] trafficking acts as a mean to bring a supply of women and under-age females to the prostitution markets” (Honeyball 2014: 7).

Thus it is alleged that it is a *demand* for commercial sex that causes human trafficking. The report indicates that demand reduction should be an integral part of member-states’ policies and that it can be achieved “through legislation that shifts the criminal burden onto those who purchase sexual services rather than onto those who sell it” (Honeyball 2014: 31). Clients of prostitutes should be criminalised, as they are in Sweden. On 26 February 2014, the European Parliament adopted, in a single reading, Motion 2013/2103(INI), which contained 56 points (particularly Points 12, 22 and 31–34) based on this report, thus encouraging the criminalisation of clients in the European Union.

Such official recommendations and declarations show that the anti-prostitution position coming along with the “Ending Demand” approach has successfully captured the level of committees and preparatory bodies at international and national level. Increasingly, the original phrasing of the UN Trafficking Protocol, referring to “demand that fosters

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41 UN Commission on the Status of Women: 2005, Resolution 49/2 of 11 March 2005. The resolution argues that “eliminating the demand for trafficked women and girls for all forms of exploitation, including for sexual exploitation, is a key element to combating trafficking.”
exploitation that leads to trafficking” is curtailed to the phrase “demand for trafficking”, thus making a distorted ellipsis (Rychlak and Doino 2010) which is adopted by other bodies. For example, in 2013, the Working Group on Trafficking in Persons introduced in the agenda for the fifth session of the “Conference of the Parties to the United Nations Convention against Transnational Crime” the phrase “reducing demand for trafficking in persons” – which repeats the distorting ellipsis.  

While the agenda of “ending demand” concerns was developed and decisively advocated at the international level, its implementation remains the subject of national politics, and thus beyond the scope of this examination.

5.4.3 Trafficking and demand as a new focus in international debates around forced labour and labour exploitation

With the introduction of “forced labour or services, slavery or practices similar to slavery, servitude” as exploitative purposes enumerated in the Palermo protocol, the definition embraces areas traditionally dealt with by the International Labour Office (ILO). Thus, the implantation of the term “Forced Labour” into the UN-Trafficking Protocol opened new opportunities for ILO for action and networking. Consequently, since late 1990s ILO became an important new actor in the field of anti-trafficking policies and performed in this context its established functions as a body for standard setting, technical assistance and knowledge generation (Alcock 1971, Hughes and Haworth 2010).

Accordingly, the official ILO position presented in 2001 stated that with coercion at the heart of forced labour, the principle of eliminating it applies irrespective of whether the perpetrators are acting officially, as agents of the State, or unofficially as private individuals. This extended interpretation tied in with contemporary strong concerns on trafficking for labour exploitation that have emerged in the context of international crime prevention. ILO argued that agents of coercive labour practices were acting with impunity from the State and its law enforcement institutions: “Yet whether as a direct actor or by acquiescing to behaviour of individuals subject to its jurisdiction, the State remains responsible if forced labour is not prevented or punished“ (ILO 2001: 13f).

42 CTOC/COP/WG.4/2013/ from 23 August 2013. The document states somehow vague and general that “the ‘demand side’ of trafficking in persons generally refers to the nature and extent of the exploitation of the trafficked persons after their arrival at the point of destination, as well as to the social, cultural, political, economic, legal and developmental factors that foster the demand for cheap goods and certain services and facilitate the trafficking process”. Paras 5-13

43 The phrase ‘at minimum’ allows national governments to introduce more situations designated as exploitation in national law. In Germany, for example, exploitation embraces also any employment situation of a foreign worker considerably worse compared to German workers.

44 A critique of linking trafficking and forced labour provide Bakirci (2009).

45 The extension of the forced labour concept to private employment is until now not comprehensively considered. There is some critique that the application of the ILO concept of Forced Labour applied by International Organisations and Non-governmental Organisations is not appropriate in the context of semi-feudal systems of patronage and debt-bondage in industries producing for a capitalist market, see for example Lerche (2008 and, 2012), Rogaly (2008), Fey (2010), MacNaughton/Fey (2011).
In the ILO-context, anti-trafficking policies were subsumed under efforts to combat forced labour, pushed by the ILO Special Programme of Action to Combat Forced Labour (SAP-FL) established in February 2002 (Plant 2002). The SAP-FL initiated research in order to clarify the relation of forced labour and trafficking, provided technical assistance for ILO member parties – i.e. national governments, employer associations and trade unions - to formulate and implement national legislation on trafficking and forced labour, and prepared the updating of ILO standards concerning Forced Labour that took place in 2014. Within these activities SAP-FL dealt also intensively with the demand argumentation.

Following the 1998 declaration on “Fundamental Principles and Rights at Work” ILO prepared global reports on the respective principles as promotional tools. The first global report titled “Stopping Forced Labour” appeared in 2001. The report provided an overview on the institutional knowledge of existing forms of forced labour, among them in private economies and prison-linked forced labour imposed by authorities (a still relevant issue that nearly got lost in the meantime).

The report referred extensively to the newly established policy field of anti-trafficking. In accordance with the debate on combatting international crime, the report placed trafficking in a migratory context: “How does trafficking in persons operate? At its simplest it involves movement of persons for the purpose of performing labour, most probably to engage in illicit activities or employment to be carried out under working conditions that are below the statutory standards. It involves an agent, recruiter or transporter who will most likely derive profit from this intervention” (ILO 2001: 48).

With respect to causes of trafficking, the report emphasised the situation in countries of origin (among them poverty, indebtedness, illiteracy, gender-based discrimination, lack of employment) and also insufficient legal protection. As a response to trafficking the report proposed legislation that criminalises traffickers and the introduction of victim protection schemes. All in all, this report did not consider the argument of demand as a factor for forced labour and trafficking.

In the following year of 2002, ILO established the Special Programme of Action to Combat Forced Labour (SAP-FL). The head of the unit, Roger Plant, discussed in his early outline of the context and focus of the programme trafficking for forced labour in the context of (irregular) migration. He stated: “If the channels for legal migration are further closed, at the same time as labour demand grows and some employers seek to obtain cheap labour by any available means, then the prospects are grim. It is imperative to manage labour migration in such a way that contracting systems are more closely regulated and supervised, and coercive recruitment and employment methods are definitively eradicated” (Plant 2002: 64). In this context, he also pointed to the issue of demand: “If demand for certain kinds of labour in diverse sectors of the economy is not matched by available labour supply, either nationally or regionally in Europe or through orderly migration, then there is a real risk that the bottlenecks may create the preconditions for a further rise in trafficking within Europe itself” (Plant 2002: 59). The

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main argument Plant raised here was that unsatisfied demand frustrated by a scarcity of appropriate workers would encourage proliferation of work force outside of the law and thus produces vulnerable workers. The SAP-FL activities in the following years linked with the debate on anti-trafficking and initiated research and academic exchange on the issues of trafficking for labour exploitation and the demand argument.

ILO commented in the second global report “A Global Alliance against Forced Labour” (ILO 2005) explicitly on the debate concerning the status of prostitution as work or exploitation: “While the Trafficking Protocol draws certain distinctions between trafficking for sexual exploitation on the one hand, and trafficking for forced labour or services (and also slavery, slavery-like practices and servitude) on the other, this should not be taken to imply that coercive sexual exploitation does not constitute forced labour. Indeed, the ILO supervisory bodies have regularly dealt with forced prostitution and sexual exploitation under Convention No. 29” (ILO 2005: 7). In other words, forced sexual exploitation is considered to be a form of forced labour.

ILO argued that it had become clearer that competitive pressures can have an adverse impact on conditions of employment and, at their extreme, can lead to forced labour. With global pressures on suppliers to reduce costs by every available means, retailers and intermediaries can take advantage of the intense competition between suppliers in order to squeeze profits out of them. Many suppliers are paid a product price which barely allows them to break even. If they wish to make a profit, they have to reduce labour costs further (ILO 2005: 63).

The report points to an orthodox economic view that calls for a progressive dismantling of labour regulations in order to ensure smoother and more flexible functioning of labour markets. Ironically – ILO proceeds - it is precisely this deregulation that leads to one of the worst forms of labour market failure: “In strictly economic terms forced labour is a labour market failure because it violates key conditions for labour markets to function efficiently, namely the freedom of workers to exercise choice and to receive sufficient remuneration for freely chosen employment. The right to freedom is essential for efficient labour markets in the same way that property rights are essential for efficient product markets” (ILO 2005: 63).

Against earlier confidence, the ILO report expressed serious scepticism against any simplified use of demand side arguments: “Rigorous work on the demand aspects of human trafficking, including the economic sectors and the profits involved, is still badly lacking” (2005: 52).

The report opposed every simple and flat understanding of “demand” as a catch-all explanation of forced labour or trafficking but highlights that the working of “demand” need to be considered in its various context. Moreover, the report avoided the shortened phrase of “demand for forced labour” but spoke of “demand for cheap labour” or “demand for certain kinds of labour”. Not the market factor “demand” was introduced as a causal factor for trafficking but the failure of markets and market-establishing institutions.

In the following years ILO pursued in the context of SAP-FL few initiatives in order to explore and clarify the link between demand, labour exploitation and trafficking, among
a report on the “Demand Side of Human Trafficking in Asia: Empirical Findings” (ILO 2006), a study published as working paper (Danailova-Trainor and Belser 2006) and the organisation of an academic panel discussion at the Vienna Forum 2008 (ILO 2008). The Special Action Programmes’ global report “Costs of Coercion” (ILO 2009) was devoted to the information on the practical activities of ILO in the field of forced labour and did not raise the issue of demand.

However, the issue of demand had not been abandoned. The following report on “Economics of Forced Labour” claimed to look “at both the supply and demand sides of forced labour” (ILO 2014: 1). But in contrast to the bold claim to offer a knowledge based consideration also of “the demand sides of forced labour” the report offered merely a vague consideration based on conceptual ideas without a clear-cut and empirically substantiated recommendation of concrete measures (see also Vogel 2015).

Altogether, the ILO research activities mentioned above remained tentative and inconsistent and could not develop a clear concept of “demand” as a factor related to or causing trafficking for forced labour. But anyway, the relevance ascribed to the demand issue in anti-trafficking debates may have motivated the SAP-FL unit to propose the inclusion of demand considerations for the updating of the Forced Labour Convention that took place in 2013-2014.

In the preparation process of the updating, members were required to consider the demand argument in a questionnaire. According to this template, prevention measures proposed in anti-trafficking instruments can broadly be divided into two categories: “The first aims to reduce the risk of vulnerable individuals or groups becoming victims, while the second targets a reduction in the so-called ‘demand’ for certain products and services that are liable to foster the exploitation of people, whether for sexual or other purposes” (ILO 2013: 23). The Members were briefed that with reference to demand reduction measures, the UN Trafficking Protocol includes “mandatory language that State parties ‘shall adopt or strengthen legislative or other measures … to discourage the demand that fosters all forms of exploitation of persons … that leads to trafficking’”. These measures may include “educational, social or cultural measures”, including through bilateral and multilateral cooperation (Article 9(5)). More specific suggestions subsequently proposed to State parties included to need to consider measures to regulate, register and license private recruitment agencies; raise the awareness of employers to ensure their supply chains are free of trafficking in persons; enforce labour standards and regulations through labour inspections and other relevant means; protect the rights of migrant workers; and discourage the use of the services of victims of trafficking (ILO 2013: 24).

Furthermore, the briefing argued that a “third area of causality concerns the traders, retailers, users and consumers of the products or services that may have been produced, delivered or otherwise tainted by forced labour practices. While the nature of ‘demand’ for such goods or services is complex and subject to debate, lack of information means that people are usually not able to make informed choices about what they buy, use or consume. Consumer-based prevention responses aim to
increase transparency, information and public awareness about the conditions under which particular goods and services are produced. The potential to alter consumer purchasing behaviour creates a market-based incentive for companies throughout supply chains to operate in full respect of national and international labour (and other) standards” (ILO 2013: 26).

In spite of the explicit and detailed introduction into the debate on “demand” as a possible causal factor linked with trafficking, the “2014 protocol to the C29 Convention” completely abstained from the use of the term demand.47 Instead, Article 2 (f) states in general and vague terms: “The measures to be taken for the prevention of forced or compulsory labour shall include (...) addressing the root causes and factors that heighten the risks of forced or compulsory labour.”

Although the term “demand” was avoided, the reference to “root causes” may still leave room for those voices who like to refer to demand as a kind of root cause. In this sense, the recent amendments of ILO norms were presented as a contribution to the efforts to reduce demand in the context of anti-trafficking efforts (Muskat-Gorska 2014). However, this interpretation relies on a broad and unspecific use of the term demand that is equalled with “root causes” and thus loses any analytical strength.

Against this background, it seems to be reasonable that at least representatives of ILO parties were in the majority not convinced to adopt the “demand argument” proposed for Recommendation 203 complementing the 2014 Protocol to the Forced Labour Convention 29. The draft for this non-binding document had proposed to introduce in article 3 (Prevention) as point (j) an explicit reference to demand: “Members should take preventive measures that include (...) efforts to reduce the trade in and demand for goods and services that have been produced or delivered using forced or compulsory labour” (ILO 2014: 14).

This proposal was not accepted just as nearly fifty years earlier a similar proposal, introduced at the 39th Annual Conference 1956 by the United States Government delegate as an amendment to the then discussed Convention 105 Abolition of Forced Labour, had been rejected. According to this proposal, all members of the ILO should secure either the immediate and complete abolition of forced labour, or the prohibition in international trade of goods produced by forced labour, or both. The proposal was not maintained, because it would have seriously weakened the draft Convention by offering an alternative which would enable a State to ratify the Convention without abolishing forced labour in its own territory. Second, the matter might have conflicted with existing obligations of contracting parties to GATT. Third, it would be impossible to implement: the same goods could be made by both free and forced labour, and it would therefore be necessary to prove in every case where the origin of goods was suspect, either that particular good out of a whole class of goods were the product of forced labour or that a particular class of goods was exclusively made by forced labour. Countries could be faced with the possibilities either of unjustifiably prohibiting the importation of free labour goods or on the documentary evidence that similar goods

were the product of forced labour, or of allowing the importation of forced labour goods on the evidence of unreliable documentation (Alcock 1971: 278f).

6 Tentative outlook: From demand to exploitation?

The investigation presented in this paper shows that the reference to demand arguments in debates on trafficking in human beings was already established about 150 years ago and remained a constant feature of debates. With respect to the attention paid to the demand argument in present-day debates on trafficking in human beings, it is not exaggerated to say that “demand” advanced to a “governing metaphor” (McGaw 1991) for a special strand of anti-trafficking debate and action.

In spite of the increasing relevance currently attached to demand arguments in international, European and national anti-trafficking policies, the term is not properly defined in a legal sense. As already mentioned, two available official guides – the Travaux Préparatoires (UN 2006) and the Legal Guide (UNODC 2005) - have nothing or little to say on the drafter’s original understanding or intention. As a general line, the debate of demand arguments in anti-trafficking efforts still fails to provide a clear-cut and convincing definition. The term is still introduced and referred to with an often deliberately vague and elastic meaning, referring as a floating signifier to a wide range of different phenomena. The analysis of the conceptual history of the terms trafficking and demand in debates on trafficking in human beings revealed that moral and political entrepreneurs played and play on the given lexical and referential ambiguity of the terms.

The history of concepts performed in this examination revealed that the term abolition referred initially to the abolition of state regulation of prostitution and not – as it is understood in the present-day debates, to the abolition of prostitution. The term trafficking is introduced in past and present debates with a confusing diversity of meanings, referring among other issues to the kidnapping of girls and putting them into prostitution, fraudulent procurement of unsuspecting women for prostitution abroad, procurement of consenting women for prostitution, abetting of irregular border crossing or fraudulent abetting of irregular migration with the purpose to exploit migrants after arrival. The term demand is introduced in past and present debates in order to refer among other issues to biological drive of males, to a demand generated by a system of state regulation of prostitution, to a demand of brothel owners and pimps, to a demand of male clients to purchase commercial sexual services. Thus, when the issue of demand is raised in debates in trafficking, the meaning attached to the term is usually not clear; and one and the same speaker often use the term demand rather metaphorical with changing meanings in a communication context (see Vogel 2015).

However, most of the parties and actors involved in the debates on trafficking in human beings do not seem to worry about the lack of conceptual clarity and inconsistent application in communication. For example, the high-ranked Inter-Agency Coordination

Group Against Trafficking in Persons (ICAT) published a report on “ Preventing Trafficking in Persons by Addressing Demand” (ICAT 2014) without even attempting to provide a definition of demand. The authors merely argued that the notion demand should be understood in economic terms. Although the authors observe a “paucity of evidence in date about demand and measures implemented to reduce demand” (ICAT 2014: 7) they proceed to argue that while “there has been a lack of clarity about what constitutes ‘demand’, it seems that it is not so much a more detailed definition that is required but, but broader consensus about the full set of options that can be taken to effectively discourage demand both directly and indirectly, along with a willingness to implement, monitor and evaluate the measures concerned” (ICAT 2014: 9).

Such an open avoidance to provide a definition of what is meant by “demand” is – politely spoken – unconvincing for analytical purposes (Brubaker and Cooper 2000). How can someone evaluate the effects of measures to reduce demand without a clear definition of demand?

Consequently, as the recent ILO norm-setting procedure indicated, attempts to introduce a reference to “demand” without providing a clear-cut definition may meet serious and well-founded reservations. The proposal to include a reference to demand in the 2014 Forced Labour Protocol was not approved by the majority of the International Labour Conference. Thus, proponents of the demand argument in debates on trafficking in human beings are probably confronted today with an increased expectation to provide a convincing conceptualisation of the demand argument.

However, at least one effect of the intensive consideration of demand arguments in debates on trafficking in human beings is an increased attention to the issue of exploitation, the hitherto neglected middle link of the UN Trafficking Protocol’s demand provision. The Fundamental Rights Agency recently presented a report on “severe exploitation” (FRA 2015) which may herald and support the tentative extension of attention from demand to exploitation in debates on trafficking in human beings. From a human rights perspective – as Marjan Wijers argued - the “primary concern is to stop exploitation of people under forced labour or slavery-like conditions, no matter how people arrive in such conditions and whether it concerns a victim of trafficking, a smuggled persons, an illegal migrant or a lawful resident. (…) The logical way forward – at least from a human rights point of view – would be to focus on policy interventions on the forced and slavery-like outcomes of trafficking, rather than on the mean of trafficking” (Wijers 2015: 71).

While focusing exclusively on trafficking excludes less severe cases of exploitation, the broader consideration of exploitation enables the inclusion by definition all cases of trafficking (Shamir 2012). According to Lucrecia Rubio Grundell “the defining element of THB is not the irregular crossing of borders, but transportation for the purpose of exploitation. As such, anti-trafficking policies in the EU emphasise exploitation as the defining element of THB, without distinguishing between types of exploitation, and

49 ...demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.
focusing equally on curtailing instances of the latter from a rights-based approach” (Grundell 2015: 9).

Taking exploitation as a starting point complies with the basic justification of anti-trafficking policies and efforts to protect persons from exploitation. However, the UN Trafficking Protocol does not directly protect from exploitation since it “does not equate ‘exploitation’ (…) with trafficking but is concerned only with prohibiting forms of dealing which facilitate or lead to exploitation. There is (…) no obligation flowing from the Trafficking Protocol to do anything about the condition of being exploited, much less to provide a remedy to exploited persons” (Hathaway 2008-2009: 10).

Thus, an extension of attention from demand to exploitation as an alternative “governing metaphor” evokes new uncertainties about the relation and distinction of exploitation and trafficking. Beate Andrees, the head of ILO SAP-FL, stresses: “The existence of different legal definitions, which share a great degree of commonality, however, has sometimes created confusion, and there is a risk that any form of exploitation is now called “slavery” or “trafficking”. Such “exploitation creep” (…) labels certain practices as more extreme than is legally accurate” (Andrees 2015). The statement indicates that the term “exploitation” is vague and ambiguous and may be also used as elastically as the term “demand”.

The examination of the conceptual history of the term “demand” presented in this paper pointed to the conceptual confusion which characterises the reference to demand arguments in past and present debates on trafficking in human beings. Conceptual confusion hampers mutual understanding, prevents reasonable dispute and undermines the capacity to develop policy approaches which effectively provide protection from trafficking and exploitation. The proper definition of conceptual terms remains a prerequisite for the development of effective policies against acts outlawed as trafficking or exploitation (see Cyrus and Vogel 2015 – WP 1, Vogel 2015 WP 3).
Article 10 Prevention of trafficking in persons

1. States Parties shall [endeavour to] establish comprehensive policies, programmes and other measures:
   (a) To prevent and combat trafficking in persons; and (b) To protect trafficked persons, especially women and children, from revictimisation.

2. States Parties shall endeavour to undertake [as appropriate,] measures such as research, information and mass media campaigns and social and economic initiatives to prevent [and combat] trafficking in persons.

3. Policies, programmes and other measures taken in accordance with this article should include cooperation with non-governmental organisations, other relevant organisations or other elements of civil society.

The footnotes presented some additional information:

70 At the sixth session of the Ad Hoc Committee, consensus was reached on adopting the text drafted by an informal working group convened at the request of the Chairperson as the basis for further discussion of this article (A/AC.254/L.113). Discussions of this text continued until the adjournment of the session and proposals up to that point are reflected in the footnotes that follow.

71 At the sixth session of the Ad Hoc Committee, several delegations suggested deleting the square brackets. One delegation suggested adding the words “to the extent possible” or “within available means”.

72 At the sixth session of the Ad Hoc Committee, one delegation suggested deleting the words “as appropriate”.

73 At the sixth session of the Ad Hoc Committee, several delegations suggested that the words “and combat” should be added in order to be consistent with subparagraph (a) of paragraph 1.

74 At the sixth session of the Ad Hoc Committee, Switzerland suggested that this paragraph should also refer to protecting trafficked persons from revictimisation in order to be consistent with subparagraphs (a) and (b) of paragraph 1. Switzerland also suggested expanding the title accordingly.

Annex 2

A/AC.254/5/Add.33
25 September 2000

Proposals and contributions received from Governments.


Article 10: Prevention of trafficking in persons
Add at the end as new paragraphs:
“4. States Parties, whether they are countries of origin, transit or destination, shall take measures to address the root factors that encourage trafficking in persons, such as poverty, underdevelopment and lack of equal opportunity.
“5. States Parties, whether they are countries of origin, transit or destination, shall take measures, such as educational, social or cultural measures, to discourage the demand that nurtures the exploitation of persons.
“6. States Parties shall take such measures as may be necessary to prevent and prohibit anyone from knowingly transporting a person across an international border for the purpose of the exploitation of the prostitution of others.”

Source: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V00/573/03/PDF/V0057303.pdf?OpenElement

(accessed 22 October 2015).
Annex 3

The US Policy after 2000

After the Bush administration took office in 2001, the anti-prostitution coalition gained a very concrete impact on the Bush Administration and official U.S. anti-trafficking policy, forming, in the estimation of one of its adherents, “the most powerful coalition for human rights in America today ... all under the radar screen of the press” (Berman 2006: 272). The policy approach designed by the Clinton administration around the three P’s (Prosecution, Protection and Prevention) was formally continued but significantly altered. The anti-prostitution aims were implanted into the prevention category (Destefano 2007: 128). The edition of the first Trafficking in Persons Report in 2002 gave the occasion to establish the anti-prostitution orientation. The Report was attacked in the Washington Post by the representative of a large Evangelical anti-trafficking organisation as an “insult to women and children” because of its failure to condemn countries like the Netherlands and Germany that legalised prostitution. The Head of Human Trafficking Office who had been appointed during the Clinton administration was replaced by a former anti-porn crusader who agreed that “sex trafficking should not be lumped with labour trafficking and that American abolitionist efforts should focus on ending prostitution” (Skinner 2008: 59).

Under George Bush, US government agencies not only consulted, but included anti-prostitution organisations. The close cooperation yielded government funding for rescue work and for research. Activists began to circulate between the anti-prostitution movement and government authorities (Weitzer 2007: 459). The new administration introduced a new approach that was “virtually identical to what was being advocated by the anti-prostitution movement. In a remarkably short time span, the latter’s views were accepted, incorporated into official policy, and implemented in agency practices” (Weitzer 2007: 461). In particular, the argument that the criminalisation of the demand of males for the purchasing of commercial sex curbs trafficking was adopted.

With the 2005 Reauthorization of the Trafficking Victims Protection Act (2005 Reauthorization), in addition to the minimum standards for the elimination of trafficking “measures to reduce the demand for commercial sex acts and for participation in international sex tourism by nationals of the country” ⁵⁰ were introduced in US legislation. The 2005 Reauthorization established a “program to reduce trafficking in persons and demand for commercial sex in the United States funded with a $50 million grant for local law enforcement and social services agencies to develop and execute programs targeted at reducing male demand and to investigate and prosecute buyers of commercial sex acts (Berger 2012: 554).

The US State Department Report on Trafficking in Persons gave some insight on the efforts of the USA: “The U.S. government undertook multiple efforts to reduce the demand for commercial sex and forced labour. (...) State and local jurisdictions also

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engaged in a number of efforts to reduce demand for commercial sex. Some jurisdictions tested various combinations of arrests, shaming, and education of apprehended purchasers of prostitution. NGOs devoted to ending demand for commercial sex developed school curricula, conducted outreach campaigns, and worked with law enforcement. Reports continued to reflect significant numbers of arrests for commercial sexual activity. Data continued to reflect the arrests of more women than men for such activity; state and local law enforcement arrested 38,593 women versus 16,968 men for prostitution offenses and commercialised vice in 2009, the year for which the most recent data is available.\textsuperscript{51} The “ending demand” approach as implemented in the USA targets not only men purchasing commercial sex but also – in spite of the promise to decriminalise women – women engaged in prostitution.

The brief outline indicates that the demand argument in debates on trafficking originated and developed in the framework of US anti-trafficking politics and was originally created and promoted by an alliance of radical feminist groups and conservative Christian faith groups. In these approaches, demand is framed either by anti-prostitution activists as a power relation of male domination and exploitation of women in a general sense or by liberal anti-trafficking activists as a coercive relation with the purpose of exploitation.

Summary of Ann Gallagher's comment on the demand provision

Ann Gallagher shows that regardless of the definitional limitations, the demand provision is usually and routinely resumed in subsequent anti-trafficking documents, among them the European Trafficking Convention. Both the Trafficking Protocol and the European Trafficking Convention directly address the issue of demand in a manner that goes some way towards what the drafters understood as “demand”: Article 9(5) of the Trafficking Protocol requires State parties to “adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.” State parties are required by the Trafficking Protocol to take at least some measures toward reducing demand that leads to trafficking. Accordingly, States are not required to implement all the measures mentioned in the Trafficking Protocol. The Protocol does not specify in detail the exact actions required, leaving State Parties some flexibility to apply the measures that they think are most likely to be effective (UNODC: 2005: 297).

For Gallagher, it is evident that the obligation to address demand rests primarily with the country within which the exploitation takes place, because it is within these countries that both consumer and employer demand is principally generated. However, assuming there is a link between demand and supply also implies certain obligations on countries of origin, in particular in relation to addressing factors increasing vulnerability. Demand reduction, as required under the UN Trafficking Protocol and the UN Trafficking Principles and Guidelines is not restricted to demand for exploitative sexual services but encompass consideration of demand aspects for the full range of exploitative practices identified in the international definition of trafficking (Gallagher 2010: 438).

Demand-oriented policies may include measures against discrimination, or the adoption and enforcement of legislation to protect workers or migrants from exploitation. A particular consideration is devoted to the question of criminalisation, a controversial one largely because “of its association with the deeply decisive prostitution debate” (Gallagher 2010: 440). It is difficult to claim authority over any opinion on this point because the “Trafficking Protocol does not refer specifically to criminalisation of demand, and the travaux préparatoires do not identify any discussion on this issue during the draft” (Gallagher 2010: 40). However, the Legislative Guide to the implementation of the Protocol notes that demand reduction “could be achieved in part through legislative or other measures targeting those who knowingly use or take advantage of the services of a victim of exploitation” (UNODC 2005: 297). The absence of any obligation in the Protocol to criminalise demand is acknowledged by the UNODC Model Law on Trafficking that nevertheless proposes a provision to that effect. Thus, the criminalisation of knowingly using the services provided by a trafficking victim is currently not an established international legal obligation. However, the European Trafficking Convention does address the issue of criminalisation of demand in an
Article entitled: “Criminalization of the use of the services of a victim”. This article requires States parties to consider “adopting such legislative or other measures as may be necessary to establish criminal offences under its internal law the use of services of a victim of trafficking with the knowledge that the person is a victim of trafficking in human beings” (Quoted in Gallagher 2010: 440f).

Gallagher points to the Explanatory Report to the European Trafficking Convention, which confirms that the “criminalization of the use of the services of a victim” was prompted by a desire to discourage demand for exploitable people that drives trafficking by, inter alia, punishing those who play a role in exploiting the victim by knowingly buying their services. The Explanatory report argues that, although “intent” is a nonmaterial ingredient of the offence that is difficult to prove, a perpetrator’s intention could indeed be inferred from objective factual circumstances. Gallagher seems to favour such criminalisation also at the international level because it addresses a critical link in the trafficking chain and is a key aspect of a comprehensive strategy to address demand for the goods and services produced through the exploitation of trafficked persons. However, Gallagher highlights that the legal and policy parameters of this strategy are yet to be established (Gallagher 2010: 441f).

However, as Gallagher underlines, demand in the context of trafficking is still poorly understood and often leads to inappropriate responses that may violate established rights (Gallagher 2010: 440). “Measures taken in the name of preventing or otherwise addressing trafficking and related exploitation “often have a highly adverse impact on individual rights and freedoms that are protected under international law.” As Gallagher states, evidence-based examples include practices such as detention of trafficked persons for status-related offences including illegal entry, illegal stay, and illegal work; denial of exit or entry visas or permits; entry bans; compulsory medical examinations; raids, rescues and ‘crackdowns’ that do not include full consideration of and protection for the rights of individuals involved; forced repatriation of victims in danger or reprisals or re-trafficking; conditional provision of support and assistance; denial of a right to remedy; and violations of the rights of persons suspected or convicted or involvement in trafficking related offences, including unfair trials and inappropriate sentencing. These practices, which are according to Gallagher are still commonplace in many countries, underscore the strong relationship between trafficking and human rights, as well as the fundamental importance of the international guardians of the relevant instruments, including the human rights treaty bodies, using the full range of tools at their disposal to hold States accountable for their actions and omissions (Gallagher 2010: 453).

Ignoring such indications of fatal side effects and unintended consequences impoverish the understanding of and the policy on the issue. It is necessary to collect evidence in a thorough and unbiased manner in order to improve the designing of effective laws and programs that effectively prevent people from becoming victims of coerced labour or sexual exploitation.
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