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Labour Migration and Human Trafficking: An Introduction

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All over the world human trafficking has become a hot issue. As a result, billions of dollars are being spent on counter-trafficking initiatives. But are they necessary and do they work? We still know little about the scale and incidence of human trafficking and have little evidence that counter-trafficking programs are effective (Chuang 2006a: 157). In fact, what critical research shows is that these projects are being used to justify state intervention in the lives of migrants and citizens with the aim of ‘protecting’ the state from illegal migration, terrorism and organized crime (Turnbull 1999; Chapkis 2003; GAATW 2007; Grewcock 2007; Nieuwenhuys and Pecoud 2007). There is even evidence to suggest that rather than reducing the incidence of trafficking, counter-trafficking initiatives and laws can in fact lead to its increase (Grewcock 2003; Fergus 2005; Kempadoo *et al.* 2005; Marshall and Thatun 2005).

Anti-trafficking initiatives grew exponentially since the United Nations passed the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter the UN Trafficking Protocol) in 2000.¹ This book contributes to the growing critique of the anti-trafficking agenda by exploring the ways in which the UN Trafficking Protocol has been taken up by policy-makers, non-governmental organizations, and international agencies in Southeast Asia. This region is recognized internationally as a ‘hotspot’ for human trafficking, but there have been few attempts to critically evaluate the vast numbers of anti-trafficking programs and projects or counter-trafficking laws and regulations in operation in the region. Instead, much of the literature has focused on documenting the role that international agencies and NGOs have played in counter-trafficking programs; the development of anti-trafficking laws and policies; or empirical studies of human trafficking cases and/or trends.² In order to address this gap, the authors in this collection focus their attention at the local level and pay careful, systematic attention to the ways that anti-trafficking initiatives have been taken up and translated by different stakeholders at different scales. As these cases show, anti-trafficking initiatives include rescue and repatriation programs for ‘victims’; education programs about the dangerous habits of smugglers and traffickers; development programs aimed at improving economic livelihoods in ‘hotspots’; and international and bilateral policing efforts aimed at securing borders and arresting people smugglers and traffickers. Associated with the rise of a strong

discourse of transnational crime prevention, these initiatives have been accompanied by numerous anti-trafficking laws and protocols passed at local, national and regional levels.

The analyses in this volume reveal the contestations that have occurred over the meaning of ‘human trafficking’ and the challenges that policy-makers, regulators and activists face in their attempts to implement the recommendations outlined in the Trafficking Protocol. Examining the ways in which law-makers respond to a range of internal and external pressures, the chapters draw our attention to the ways in which international counter-trafficking policy agendas are translated and enacted locally, and to the (unintended) consequences that the involvement of international aid agencies and donors has had on the lives of migrant workers. In doing so, this volume aims to fill a significant lacuna in our understanding of the processes through which the anti-trafficking framework has been translated, implemented and resisted in mainland and island Southeast Asia.³

The global anti-trafficking effort

Since the signing of the Trafficking Protocol in 2000, there has been intense interest in combating what many commentators have described as this ‘most heinous of crimes’. This interest has given rise to a global anti-trafficking effort involving a diversity of organizations, networks and agencies which vary in size, scale, influence and ideology – a network that includes national police and immigration authorities, transnational crime prevention organizations, religious groups, feminist groups, migrant worker organizations, trade unions, human rights organizations and development aid agencies. The enormous scale of the anti-trafficking effort, as evidenced by the sheer numbers and variety of new organizations, projects and protocols that have emerged in the decade after the signing of the Trafficking Protocol is unprecedented. As Fiona David (2009) notes, in 1998, there were only a handful of counter-trafficking projects in Southeast Asia, and Cambodia and Thailand were the only countries with laws that mentioned the word ‘trafficking’. Just ten years later, nine of the ten ASEAN countries had anti-trafficking laws and there were hundreds of anti-trafficking programs and organizations, requiring a concerted effort at national and regional coordination.

This exponential growth in regional counter-trafficking initiatives reflects the emergence of an explicit link between border control and development agendas present in the regional and bilateral programs of many aid donors, including the United States, members of the European Union and Australia. Most influential, however, has been the United States, which has taken a particularly proactive foreign policy stance in relation to monitoring and combating human trafficking since the mid-1990s. The US launched its ‘three Ps approach’ – ‘punish traffickers, protect victims, and prevent trafficking from occurring’ – which subsequently became a central component of its initial proposal to the UN for the establishment of a trafficking protocol.⁴ The US’ interest in drafting the protocol arose in the context of its desire to establish a strong international crime control strategy. Although the Vienna Process – as the Ad-Hoc Committee meetings responsible for drafting the protocol were known – was characterized by sharp debate by a range of state and non-state actors, the final instrument reflects many of the primary concerns contained in the initial US draft. In particular, it is

primarily a law enforcement instrument tied to the specific field transnational crime and constructed primarily to respond to crimes, enforce laws, control borders and stimulate cooperation among governments.

The US drafted its own comprehensive anti-trafficking legislation – the Trafficking Victims Protection Act of 2000 (TPVA) – just weeks before the UN Trafficking Protocol was adopted. The TPVA seeks to influence the behaviour of other states through unilateral sanctions, elevating the US to the role of ‘global sheriff’ (Chuang 2006b). President Clinton’s administration was keen to address the problem of human trafficking, and through a series of bilateral relationships and anti-trafficking initiatives spearheaded the drafting of both the UN Protocol and its own domestic anti-trafficking legislation. The latter, however, was directed by a Republican-controlled Congress, which held a different view of the role that the US should play in global anti-trafficking efforts (Chuang 2006b: 449). The result was that while the Clinton Administration was committed to developing an international framework, Congress sought to induce international compliance to its own ‘US minimum standards’ by threat of unilateral sanctions (Chuang 2006b: 449).⁵

From 2001 the Office to Monitor and Combat Trafficking in Persons located within the US State Department began publishing an annual ‘Trafficking in Persons (TIP) Report’. TIP Reports divide countries into three tiers according to their efforts to comply with US minimum standards for the elimination of trafficking. Tier 1 consists of those countries that fully comply with the minimum standards outlined in the TVPA; Tier 2 consists of those that do not fully comply but are making efforts to ensure compliance; and Tier 3 of those that do not comply and are not making significant efforts to bring themselves into compliance (US Department of State 2000). In addition, countries are placed in a ‘Tier 2 Watch List’ if the number of trafficked persons is significant or increasing and governments fail to increase their efforts to combat trafficking. Amendments to the TVPA in December 2008 automatically saw any country on the Tier 2 Watch List for two consecutive years downgraded to Tier 3, a status that involves the threat of termination of non-humanitarian aid, non trade-related assistance and US opposition to assistance from international financial institutions (Ould 2004: 61).⁶

Critics argue that the TIP Reports have focused on trafficking for sexual exploitation rather than all forms of forced labour; that they gloss over state complicity in trafficking; and that they are vague about law enforcement details, including numbers of victims, convictions and sentencing rates (Caraway 2006: 298). Chuang (2006b: 439) even goes so far as to claim that by ‘injecting US norms into the international arena, the sanctions regime risks undermining the fragile international cooperation framework created by the Palermo Protocol’. There is no doubt that the TIP Reports are having an impact on policy-making and practice in countries relegated to Tier 3 or to the Tier 2 Watch List, not all of which have been positive.⁷ In some cases, the threat of sanction has been used to achieve changes to immigration law that suit the United States’ security agenda rather than improving the lives of victims of trafficking (Nederstigt and Almedia 2007: 105). There is also evidence that some national governments may have stopped anti-trafficking efforts or policies designed to address various forms of exploitation at a national level ‘simply because they do not conform to the criteria proposed

by US diplomats on the basis of the TVPA's requirements' (GAATW 2007: 20). In other cases, government policy has been re-active rather than pro-active. For example, when Malaysian authorities introduced an Anti-Trafficking Bill many local civil society actors interpreted it as a direct response to the international shame of relegation to Tier 3 status in 2007 (Lyons and Ford 2010a).

The US State Department's directives on trafficking and prostitution have also had a negative impact on NGOs working with sex workers on a range of sexual health matters. It is widely acknowledged that some elements of the international anti-trafficking movement played a key lobbying role in the rise of an 'anti-prostitution ideology' within the US Administration under President George W. Bush. In 2003, the US Secretary of State circulated a directive to United States Agency for International Development (USAID) field officers stipulating that organizations which supported the legalization of prostitution or advocated prostitution as an employment choice would not be eligible for anti-trafficking funds (Ditmore 2005: 118).⁸ NGOs working in the trafficking field were required to declare their opposition to prostitution in order to be eligible for, or maintain, USAID funding. There is increasing evidence that these funding restrictions have stigmatized and alienated sex workers and sex worker organizations; discouraged the building of coalitions between advocates (Kinney 2006); undermined the use of rights-protection programs (GAATW 2007: 237); and led to the criminalization of commercial sex workers (Kinney 2006, Sandy this volume).⁹

The association of trafficking with sexual exploitation also dominates the counter-trafficking agendas of other major international donors, with the result that the overwhelming majority of funds are allocated to combating what has problematically been referred to as 'sex trafficking'.¹⁰ While most anti-trafficking programs draw on the broad definition of trafficking contained in the UN Protocol, the majority nonetheless focus on protecting and rescuing women and girls from the commercial sex industry. This focus is apparent in much of the literature on human trafficking, which makes reference to the exploitative conditions faced by documented and irregular labour migrants working in other industries, but usually only in passing (Schloenhardt 2001b; McSherry and Cullen 2007; but see Ahmad 2005). One of the consequences of this global preoccupation with saving women and girls from prostitution is that the links – and differences – between human trafficking, smuggling and the exploitation of migrants and refugees are obscured. In India, for example, counter-trafficking measures have served as a front for campaigns to deport Bangla-speaking people and Muslims (Ahmad 2005). In addition, researchers claim that the 'focus on smugglers/traffickers has made ... clandestine journeys *more* expensive and *more* dangerous' for the vast majority of migrants (Sharma 2005: 92, emphasis in original). Worried about the impact that anti-trafficking initiatives were having on migrant women and concerned about the lack attention given to program evaluation, in 2007 the Global Alliance against Trafficking in Women called for a comprehensive review of all anti-trafficking projects and policies (GAATW 2007: 23). As the studies in this collection reveal, GAATW's call has remained largely unheeded by governments and international agencies responsible for implementing counter-trafficking laws and programs.

Trafficking, people smuggling and the management of migration

The UN Trafficking Protocol, which is one of three optional protocols contained in the UN Convention Against Transnational Organized Crime (Hereafter Transnational Crime Convention), came into effect in December 2003. It defines 'trafficking in persons' as

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.

(United Nations 2000: 32)

As this definition suggests, the Protocol identifies three separate elements: (i) an *action* (e.g. recruitment); (ii) a *means* (e.g. coercion or deception); and (iii) a *purpose* (exploitation). In defining 'victims of trafficking', consent is considered to be irrelevant once it is established that deception, force or other prohibited means have been used.

In addition to the Trafficking Protocol, the Transnational Crime Convention contains a Migrant Smuggling Protocol which refers to 'the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident' (United Nations 2000: 41). Thus, while trafficking may occur in both legal and illegal migration streams, smuggling by definition involves the illegal movement of people across national borders. Another key difference between the two protocols lies in the purpose for which an individual is trafficked, since smuggling is deemed not to involve exploitation of the individual at the point of destination:

Whereas the illegal crossing of borders is the aim of smuggling, the aim of trafficking is the exploitation of one's labour. In other words, the issue of smuggling concerns the protection of the state against illegal migrants, while the issue of trafficking concerns the protection of individual persons against violence and abuse.

(Ditmore and Wijers 2003: 80)

The crucial distinction, therefore, is the forced labour or slavery-like conditions that always characterize trafficking, which is understood to be inherently exploitative and not incidentally exploitative as is the case with smuggling (Kempadoo 2005: xii).

The location of the two protocols within the Transnational Crime Convention assumes that there is 'a clear line between legal and illegal migration' (van den Anker and Doornik, 2006: 2). In reality, however, the boundaries between smuggling and trafficking are blurred. The groups that manage the recruitment and smuggling of migrants are frequently the same groups involved in human trafficking (Skeldon 2000). Individuals who have been smuggled may find themselves working in the same industries as persons who have been trafficked and may be subject to the same exploitative practices. Conversely, victims of trafficking may be treated as undocumented migrants if they are caught outside a trafficking context. The artificial distinctions between trafficking and smuggling also overlook the temporal

dimension to migration cycles, as migrant workers who cross borders for illegal work may change jobs and face exploitation (thus moving from a situation of smuggling to trafficking) many months or years after they first crossed the border, and children and teenagers, who were by definition ‘trafficked’, become adult migrants. Moreover, there are some groups of migrants, such as those fleeing human rights abuses in Burma, whose legal and migration status are so complex that they are not easily categorized as economic migrants, refugees, or trafficked persons (Pollack 2007, Farrelly in this volume).¹¹ As Wong (2005: 71) notes in her study of labour migrants in Malaysia, ‘individual migrant lives constantly weave their way in and out of intersecting spheres of legality and illegality’ and thus while ‘trafficking’ and ‘smuggling’ are legally different, the consequences in terms of migrants’ vulnerability to exploitation are similar.

Given the blurred boundaries between human trafficking and migrant smuggling, some scholars suggest that it might be best to jettison the distinction altogether on the grounds that it leads to unnecessary confusion and focuses attention on the *means* rather than the conditions of recruitment and deployment (cf. Brock *et al.* 2000; Grewcock 2003; O’Connell Davidson and Anderson 2006). As Anderson and O’Connell Davidson (2003: 7) put it:

[I]f the primary concern is to locate, explain and combat the use of forced labour, slavery, servitude and the like, then there is no moral or analytical reason to distinguish between forced labour involving ‘illegal immigrants’, ‘smuggled persons’ or ‘victims of trafficking’.

The UNODC acknowledges these blurred boundaries, but clings to a distinction based on the presence of ‘coercion/deception *and* exploitation’:

One difference between these two groups of persons may be the amount of money that is paid prior to departure from the country of origin. Smuggled persons usually pay the amount ‘upfront’ and upon entering the destination country have ended their ‘contractual’ arrangement with their smugglers. Trafficked persons, on the other hand, may pay a percentage or pay nothing upfront and incur a debt for the remainder of the trip. This situation creates a type of debt bondage and places them at the mercy of the traffickers and in situations in which they are easily exploited.

(UNODC 2003: 25)

These ambiguities serve an important policy purpose, enabling compromises to be made between actors with different interests and concerns.

Nation-states have a vested interest in maintaining the distinction between trafficking and human smuggling whereby trafficked persons (usually women) are viewed as vulnerable victims and those who pay to be smuggled are ‘queue jumpers’. This implicit link between migration and security explains why the global response to counter-trafficking has been so strong. The result is an elision between anti-trafficking and immigration control (Kempadoo 2005: xiii), in which the spectre of human trafficking is effectively mobilized to legitimize the increasing criminalization of migrants and those who assist them (Sharma 2005: 92). This elision renders border control and anti-immigration activities more ‘palatable’ to the public

on the grounds that it contributes to the process of helping innocent victims of trafficking (Berman 2010: 89).

The consequence of fusing migration and crime in this way is that it confines all forms of migration to the narrow and restrictive security framework.¹² The UNODC is not alone in claiming that ‘trafficking is almost always a form of organized crime’ involving ‘extensive and highly sophisticated international crime networks’ (UNODC 2010). This link is made explicit in a number of studies which claim that human trafficking is the third largest organized criminal activity, after drugs and arms trafficking (cf. Jayagupta 2009). According to this logic, human trafficking and people smuggling must necessarily be combated within a law and order paradigm, most commonly by establishing legal frameworks aimed at restricting immigration and prosecuting illegal entries (Segrave and Milivojevic 2005). This involves increasingly restrictive immigration and border control regimes, the implementation of trafficking laws, the punishment of traffickers and smugglers, the repatriation of victims and the deportation of ‘illegals’. The result is an approach that establishes and reinforces a false distinction between trafficking, which is typically regarded as a problem that affects women and girls in the commercial sex industry, and other migration flows, which are understood via the lens of immigration status. This approach reinforces a tendency to see women as trafficked ‘victims’, irregular labour migrants as ‘illegals’ and documented workers as ‘temporary labour migrants’.

Human rights advocates have been particularly vocal in arguing that the focus on law enforcement can lead to further violations of the human rights of migrants, most significantly because the artificial distinction between trafficked persons and undocumented migrants can exclude the latter from protection as victims of human rights violations. Gallagher (2009: 834) argues that – in a context where other human rights mechanisms have considerable limitations – the Trafficking Protocol can curb the excesses of state-driven immigration and border control regimes, because it encourages states to enact local laws that prevent the exploitative recruitment and treatment of migrant workers, provide protection and assistance to victims and prosecute offenders.¹³ However, other human rights advocates point out that the Trafficking Protocol is not a human rights treaty, noting that while the provisions relating to punishing traffickers are mandatory, those relating to victim protection and assistance are left to the discretion of the state.¹⁴

Concerned that victim protection was receiving little attention by states preoccupied with border security, in 2002 the UN High Commissioner for Human Rights submitted ‘Recommended Principles and Guidelines for Human Rights and Human Trafficking’ to the UN Economic and Social Council (OHCHR 2002). These Principles and Guidelines are directed at policy makers and stress the primacy of human rights when dealing with victims of trafficking, invoking the principles of ‘non-discrimination, safety and fair treatment, access to justice, access to private actions and reparations, resident status, health and other services, repatriation and reintegration, recovery and state cooperation’ for all victims of exploitation (Hopkins and Nijboer 2004: 91). This rights-based approach has the benefit of focusing on the trafficked person as a ‘rights-holder’ rather than a ‘victim’ or an ‘illegal’, recognizing that a migrant is entitled to protection by virtue of being human, regardless of how s/he may have

entered a country (Inglis 2001; Jordan 2002; Bruch 2004). These principles retain the status of guidelines, however, and are implemented at state discretion.

Some advocates of the human rights approach argue that in addition to the Trafficking Protocol there are a range of international human rights treaties under which instances of human trafficking could be prosecuted.¹⁵ This suite of treaties and conventions may provide a more productive basis to address the exploitation of migrant workers in a context where human rights concerns are often displaced by a focus on immigration offences or crime prevention under the Transnational Crime Convention (Hopkins and Nijboer 2004; Todres 2006). However, others are less sanguine about the benefits of relying on human rights mechanisms on the grounds that they employ a vague and imprecise definition of trafficking and typically understand trafficking to be a ‘violence against women’ issue. In any case, the capacity of an international human rights framework to temper state behaviour is necessarily limited because there are few mandatory conditions or mechanisms to police them (Fitzpatrick 2003).

Labour migration as trafficking

In recent years, another approach to the complex relationship between human trafficking, smuggling and migration has emerged. In the face of mounting evidence documenting the range of exploitative practices encountered by labour migrants in destination countries, a number of international development agencies and NGOs have started to employ an ‘anti-trafficking framework’ in their thinking and practice when dealing cases of labour exploitation faced by ‘legal’ migrants. The problems that many of these workers face include confinement and restricted freedom of movement; falsified and fake documents; bonded labour and debt bondage; deception; violence and abuse; poor working conditions; and non-payment of wages. Rather than dealing with these issues as cases of labour abuse using the labour laws of receiving countries, migrant rights activists – and some governments – have turned to anti-trafficking laws instead. They argue that the endemic nature of these problems, and the ease with which documented migrant workers can become undocumented, means that the vast majority of low-skilled migrant workers can quite easily be characterized as ‘victims of human trafficking’ using the definition contained within the UN Trafficking Protocol (cf. ASI 2003; IOM 2007).

Treating ‘documented/legal’ migrants as ‘victims of trafficking’ disrupts the categories typically used by governments to regulate temporary labour migration. While the capacity for individual states to regulate labour migration varies considerably, there is a remarkable consistency in the ways in which state authorities seek to manage temporary labour flows. Both sending and receiving countries have developed complex immigration and employment regimes to recruit and deploy labour migrants and most of these regimes assume a clear distinction between legal and illegal arrival and deployment.¹⁶ The ‘labour migration as trafficking’ approach reveals the tensions in this model by calling into question the basic premises that underpin most immigration and labour regimes.

This approach has been facilitated by the massive investment in anti-trafficking initiatives by

international agencies and donors since 2000. While donor aid provides the resources to pursue labour abuse cases as ‘trafficking cases’, the political motivation for this shift in focus comes from international pressure to ratify the Trafficking Protocol and to demonstrate compliance with minimum standards outlined in the annual TIP Reports. In addition, trafficking and smuggling, as core elements of the UN Convention on Transnational Crime, are linked with measures to address ‘global terrorism’ in the heightened security environment post 9/11 and governments are encouraged to take a tough stance on irregular migration through tighter border controls (Kaur and Metcalfe 2006). In this environment, dealing with documented labour migrants under anti-trafficking laws or programs can provide states with the means to demonstrate that not only are they are ‘tough’ on trafficking and smuggling, but also on terrorism.

However, the framing of labour migration as trafficking should not be cynically regarded as simply a means to deal with international pressure from the US and other donor countries. It also reflects a growing view amongst some scholars and activists that labour laws are doing little to curb demand for cheap, unprotected labour (ILO 2005: 7). For example, Roger Plant, former head of the International Labour Organization (ILO) Special Action Programme to Combat Forced Labour, notes that trafficked persons may in fact be better protected than other groups of vulnerable migrants who work in slavery-like conditions (cited in Danailova-Trainor and Laczko 2010: 67-8). The ILO notes that although most its members have signed one or both of its forced labour conventions:

[F]orced labour is not defined in any detail, making it difficult for law enforcement agents to identify and prosecute the offence. Second, and in consequence of this, there have been very few prosecutions for forced labour offences anywhere in the world. A vicious cycle is thereby established: no clear legislation, little or no resources for prosecutions, limited awareness or publicity, thus no pressure for clear legislation, and so on.

(ILO 2005: 2)

In the face of government inaction on labour exploitation, the ILO suggests that ‘legislative and judicial action against forced labour and against human trafficking can serve the same goals and be mutually supportive’ (ILO 2009: 8). This is because while the definition of forced labour places emphasis on the involuntariness of the work, the Trafficking Protocol emphasizes the means by which initial consent is obtained (i.e. force, deception, coercion, etc).

To address this intersection between forced labour and trafficking, the ILO utilizes a ‘forced labour continuum’ in which it identifies three categories of labour – trafficked victims of forced labour, non-trafficked victims of forced labour and successful migrants (Andrees and van der Linden 2005). It argues that trafficked victims of forced labour are subject to the worst abuses because they often have the least freedom of movement and are the most vulnerable while non-trafficked victims of forced labour face a range of exploitative conditions, including non-payment of wages, retention of identity documents, long working hours and unacceptable working conditions. The advantage of the ‘forced labour continuum’ over the traditional distinction between ‘victims of trafficking’ and ‘illegal migrants’ is that it

provides a means to examine the ‘varying degrees to which migrants can become victim of exploitation, routes that lead into forced labour and individual strategies to escape from coercion and control’ (Andrees and van der Linden 2005: 63).¹⁷ Once the focus of attention moves away from the means by which a migrant arrives in a destination country and to the conditions of work, the emphasis shifts to developing strategies that address labour exploitation and promote the social and labour rights of migrants. This includes greater regulation of migrant labour markets (Kaur and Metcalfe 2006); opportunities for labour organization and collective bargaining (Ford 2006b; ILO 2009); the strengthening of national labour laws; the development of regional labour protocols to address the exploitation of labour migrants (Kelly 2005); and multi-stakeholder initiatives and corporate social responsibility programs (ILO 2009). But while these initiatives may improve working conditions, they are inadequate for dealing with the particular conditions facing commercial sex workers, informal sector workers or for addressing the role played by organized crime.¹⁸ Moreover, because the ILO’s analysis of forced labour is focused on the ‘worst’ forms of exploitation it remains de-coupled from a broader discussion of the development of all labour relations (Lerche 2007).

Some international development agencies and international NGOs go further to argue that all migrant workers who experience exploitative labour practices are ‘victims of trafficking’ (Rosenberg 2003; UNODC 2003; Sugiarti *et al.* 2006).). Research that demonstrates the blurred boundaries between trafficking, smuggling and labour migration provides some of the rationale for these efforts: if economic migrants experience a range of ‘trafficking-like practices’, then perhaps trafficking laws (rather than labour laws) offer a solution. Rather than jettisoning the concept of ‘trafficking’ in favour of an approach that focuses on all instances of forced labour, such a position seeks to employ the key concepts outlined in the Protocol to determine what constitutes an exploitative employment practice in relation to migrant labour. In doing so, it seeks to widen the definition of human trafficking to include ‘regular’, ‘documented’ and/or ‘lawful’ migrant workers who confront a range of exploitative labour conditions during their migratory experience.¹⁹ This approach has led to a situation in which cases of forced labour and debt bondage of documented temporary labour migrants are used as evidence of the prevalence of trafficking (cf. ASI 2003; IOM 2007). For example, Anti-Slavery International includes documented migrant domestic workers in its definition of victims of trafficking, arguing that a ‘sophisticated system of debt-bondage and forced labour’ characterizes the domestic work industry (Ould 2004: 62). Similarly, Human Rights Watch (2008: 40) concludes that trafficking is widespread amongst migrant domestic workers. According to Jureidini and Moukarbel (2004: 585), the majority of migrant domestic workers enter into employment contracts which are deliberately misleading and that ‘such direct and indirect deception regarding contractual security ... places workers within the category of having been trafficked’.

This framing of all forms of exploitation involving temporary labour migrants as ‘trafficking’ ignores the agency of migrant workers and fails to acknowledge that many migrants knowingly cross borders without ‘legal’ papers and choose to undertake jobs deemed illegal by both sending and host societies (cf. Idrus 2008). It also overlooks what it is that migrants

themselves want out of the migration process. Anti-trafficking laws and regulations not only establish a victim's status but also determine the ways in which a victim will be treated. This usually involves removal from the situation of exploitation; a period of residency in the receiving country while evidence is collected and statements are recorded; and repatriation. In many cases, migrant workers may not want any of these things to occur – they may want to continue working for their employer (but with wages paid and/or decent working hours), they may want to leave the workplace in order to find new work and/or they may want their immigration status to be regularized. Anti-trafficking laws simply cannot provide these outcomes.

In the final instance only states can determine whether an individual act should be punished as forced labour or as trafficking. The chapters in this collection reveal that while the 'labour migration as trafficking' approach is favoured by some international NGOs, most states have been much less willing to include documented labour migrants in their anti-trafficking efforts. The financial, legal and administrative problems associated with identifying labour migrants as victims of trafficking have ensured that only the 'worst cases' of exploitation, usually cases of sexual exploitation of women and children, are being dealt with in this way (Piper 2005). This does not mean that the Trafficking Protocol is not gaining traction: in fact it has begun to shape international, national, regional and local level responses to migration flows in the region. However, the implications of this shift are yet to be revealed.

Outline of the book

Through the presentation of detailed ethnographic accounts of the everyday practices of the diverse range of actors involved in trafficking-like practices and in counter-trafficking programs, the chapters that follow explore the extent to which the anti-trafficking framework's focus on force, deception and exploitation constrains cross-border mobility in different locations. In demonstrating how the anti-trafficking framework has become influential – even over-determining – in some locations while remaining mostly irrelevant in others, the chapters in this collection reveal the intersections between state agents and other kinds of authority, in doing so problematizing the notion of the state itself.

The chapters reveal a number of key findings about the nature of anti-trafficking efforts in Southeast Asia. One issue explored in the chapters is the role that US TIP Reports have played in shaping the development of anti-trafficking laws and policies at a national level. A number of the studies confirm the view that the TIP Reports have had an over-determining role in shaping the development of national laws and anti-trafficking programs (Sandy, Ford and Lyons, Molland, Tigno). Other chapters, however, reveal that while the TIP Reports have influenced state policy-making, domestic political agendas have played a much more significant role (Eilenberg, Farrelly, Palmer, Zhang). These differences are significant because they demonstrate the importance of paying attention to policy and discursive shifts at both the national and local scales in order to lay bare the multiple ways in which legal regimes emerge out of contestations between state and non-state actors.

Another related theme explored in some of the chapters is the need to focus attention beyond metropole-based analyses of the state to examine the periphery of the nation and the impact of counter-trafficking programs at specific border locations. A focus on the borderlands, rather than on the point of arrival or departure, encourages an approach that addresses the phenomenon of trafficking as a process rather than an event. It also brings into sharp relief the ways in which state-driven development agendas; inter-state relations; non-state agents of political power and authority; and the nature of the border itself shape anti-trafficking programs and agendas. Some of the case studies explored in this collection demonstrate that counter-trafficking can be used to legitimize the need to develop the borderland (Eilenberg) or can be dismissed by other development agendas (Zhang). In other contexts, the relationship between states, and particularly histories of conflict and increasing securitization of borders (Farrelly), play a significant role in determining the nature and character of counter-trafficking initiatives. Other chapters demonstrate that states are not the only agents of political power and authority in border zones (Ford and Lyons, Molland).

Exploring the historical evolution of (counter-) trafficking discourses at national and local scales, the authors in this collection overcome the tendency to focus on fixed categories of ‘trafficking victims’ and ‘labour migrants’ and explore the nexus between trafficking, smuggling and labour migration. While scholars have long argued that the legal distinctions between human trafficking and people smuggling fail to adequately address the interconnected phenomenon of forced labour and migration, the consequences of this for policymaking on other ‘categories’ of migrants, including temporary labour migrants, refugees, asylum seekers, and displaced persons are rarely considered. Arguably, the most significant outcome of this collection is the sustained attention it gives to the relative positioning of human trafficking and temporary labour migration: a number of authors examine national contexts where human trafficking and labour migration have been elided, with detrimental results for labour migrants (Farrelly, Ford and Lyons, Molland, Palmer, and Tigno).

A final key focus of a number of the chapters is the ‘unintended consequences’ of anti-trafficking legislation and programs. Some chapters move beyond the discussion of policy development to explore the consequences of laws and guidelines on the agency of labour migrants (Tigno) and commercial sex workers (Sandy). Their conclusions raise serious questions about the links between counter-trafficking efforts and human rights abuses. At the same time, however, these unintended consequences are not always negative. Where discretion plays a role in decision-making strategies employed by state agents the outcomes may be sometimes be positive. For example, state agents who are posted overseas may respond to and interpret national laws and policies much more liberally than their domestically-based colleagues, or may develop responses to individual cases that do not strictly follow prescribed protocols, thereby improving outcomes for individuals (Palmer). These studies emphasize the need to evaluate anti-trafficking laws and programs in different locations and at different scales in order to gain a clearer picture of the impact that the UN Trafficking Protocol is having in Southeast Asia as a whole.

The first two chapters introduce the themes at the heart of this collection. Through an examination of the Philippines labour export program, Jorge Tigno demonstrates how understandings of human trafficking are embedded in and intermeshed with narratives of personal martyrdom, sacrifice and survival that underpin Filipino accounts of the country's large migrant labour workforce. In this chapter, Tigno argues that the rhetoric that surrounds trafficking in the Philippines emphasizes the vulnerabilities and subsequent victimization of women migrants, and that such a discourse does little to assist failed migrant workers or those who find themselves in exploitative labour situations. The failure of anti-trafficking laws to assist vulnerable migrant workers is taken up by Larissa Sandy, who examines the politics surrounding the passing of national anti-trafficking legislation and its immediate and far-reaching impact on the mobility and labour rights of Cambodian sex workers. Sandy argues that the 2008 Human Trafficking Law, which is exclusively focused on women and girls involved in commercialized sexual exchange, has further compounded the stigmatization, marginalization and oppression of sex workers. Through her discussion of the dangers associated with the elision of sex work and trafficking, Sandy unpacks the debates around forced and voluntary labour and provides a robust critique of the international emphasis on criminalization, rescue and rehabilitation. Her chapter demonstrates the ways in which moralistic discourses surrounding prostitution intersect with national and international development and foreign policy agendas to produce a narrow definition of human trafficking that can have devastating effects on migrant women.

The two chapters that follow take up the theme of the tension between the international and the local, but with a focus on the activities of non-state actors. Sverre Molland begins by examining the ways in which trafficking along the Thai-Lao border is made legible and thus receptive to policy interventions by the development aid sector. Molland argues that the de-territorialized nature of trafficking presents a challenge to development aid programs, which are always demarcated in spatial terms. The ensuing emphasis on the identification of 'hotspots' (which can then become the focus of interventions) is underpinned by a market logic that understands trafficking in terms of demand and supply and anti-trafficking efforts in terms of cause and effect. Molland's detailed ethnographic analysis demonstrates that anti-trafficking programs thus operate on according to their own discursive logic – a logic that has little to do with social reality in the borderlands. In the second of these chapters, Michele Ford and Lenore Lyons assess the impact of anti-trafficking projects on migrant labour NGOs in the Riau Islands, a trafficking 'hot spot' located on Indonesia's maritime border with Singapore and Malaysia. Ford and Lyons document the extent to which US-sponsored anti-trafficking programs succeeded in shifting the focus and activities of both local government and NGO activists concerned with sex work and labour migration. They argue that while everyday realities in these sectors have led activists to temper the extent to which they embrace the anti-trafficking agenda, its ubiquity has left them with few other options, particularly in relation to labour migration. As a consequence, temporary labour migration became synonymous with human trafficking. While some NGOs resisted this move, others were left floundering in a context where international donor funding was essential to their survival. This chapter, like Molland's before it, reveals the mismatch between the views held

by international donors/agencies and those of NGOs working on the ground in internationally designated ‘hotspots’.

The chapter by Zhang Juan reveals a very different account of trafficking efforts in a border hotspot. Her study of Hekou, a town on the China-Vietnam border, points to the simultaneous absence and presence of anti-trafficking discourses at the local level. According to Zhang, the Chinese government’s development priorities have ensured that local state agents are hesitant to embrace the international anti-trafficking agenda despite the clear presence of trafficking in the region. By drawing attention away from Hekou as a trafficking hotspot, local officials pay lip service to moralizing discourses that portray trafficking as an issue that affects women while keeping the border open to cross-border flows that include a substantial number of commercial sex workers. Zhang describes the ways in which these women’s destination – Vietnam Street, Hekou’s main commercial sex market – has become a ‘not spot’ in China’s counter-trafficking agenda. The next chapter also explores the link between anti-trafficking laws and economic development initiatives in a border zone of high strategic importance. Michael Eilenberg’s study examines the place of the global discourse of anti-trafficking in the Indonesian government’s efforts to justify increased militarization along the on the West Kalimantan-Sarawak border. Eilenberg argues that undocumented labour migration – a legitimate livelihood strategy used by borderlanders – has increasingly been criminalized as a consequence of an increased focus on counter-trafficking as a border security strategy.

The fact that international influence is by no means uniform or uncontested is a theme taken up in Nicholas Farrelly’s chapter, which examines what ‘human trafficking’ means for migrants who leave Burma in search of better economic opportunities in Thailand. Farrelly’s account supports the views of the other authors in this collection that human trafficking and smuggling is a routinized border activity. As in the case described by Zhang, Farrelly’s account reveals that anti-trafficking laws and regulations serve a range of political ends, the majority of which have little to do with stopping human trafficking and exploitative labour practices. Instead, he suggests, human trafficking laws serve to define the ‘problem’ of illegal migration in ways which limit assistance for Burmese migrants/refugees without threatening the supply of cheap migrant labour into Thailand’s farms, factories and homes.

The final chapter in the collection extends the analysis of how states operationalize anti-trafficking laws by moving beyond the geographical borders of the nation-state. In it, Wayne Palmer provides a detailed account of the micro-processes through which Indonesian bureaucrats respond to anti-trafficking legislation at home and abroad. Palmer demonstrates how dissension over the legislation within a state bureaucracy plays out overseas, arguing that the decision by labour attachés to turn a blind eye to falsified documents and underage deployment most often reflects the exercise of discretion to maintain the distinctions they believe exist between labour exploitation and trafficking. His analysis reveals that the ‘pragmatic and well-meaning’ actions of these bureaucrats have the consequence of involving the Indonesian state itself in trafficking-like practices. Palmer thus brings the collection full circle to consider the question of ‘who are the traffickers and who are the victims?’

The study of human trafficking is a burgeoning field of research. Despite the strong and growing scholarly interest in issues related to forced labour, migrant smuggling, temporary labour migration and human trafficking, much contemporary scholarship on the region continues to focus almost exclusively on trafficking for sexual exploitation or temporary labour migration, and has little to say about the ways in which these important empirical phenomena overlap and differ, or how they are constantly recast and dealt with by lobbyists and policy-makers. The chapters in *Labour Migration and Human Trafficking* examine the nexus between mobility and forced labour and provide new insights into the ways in which governments, international agencies and NGOs in Southeast Asia are promoting and responding to the emergence of the global anti-trafficking framework.

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Notes

¹ Also commonly referred to as the Palermo Protocol.

² On counter-trafficking programs see, for example Derks (2000), Schloenhardt (2001a), Piper (2003) and Sugiarti *et al.* (2006) and on anti-trafficking laws and policies, Emmers *et al.* (2006), McSherry and Cullen (2007) and Segrave *et al.* (2009). Empirical studies of cases and trends in the region include Grundy-Warr *et al.* (1996), Darwin *et al.* (2003), Surtees (2003), Piper (2005), Lee (2007) and Asis (2008).

³ This introduction draws on Ford and Lyons (2012) and Lyons and Ford (2009, 2010a).

⁴ The US and Argentinean governments made a commitment to submit initial proposals of the trafficking protocol, which they subsequently did by the end of November 1998.

⁵ The debates about 'forced' versus 'voluntary' prostitution/sex work that took place between 'abolitionists' and 'regulationists' which influenced the drafting of the UN Protocol also shaped the drafting of the TPVA (Doezema 2005; Chuang 2006b).

⁶ The US was included in the TIP Report for the first time in 2010.

⁷ A number of scholars have also questioned the objectives of the TVPA, pointing to US reluctance to use sanctions against non-compliant states when they are key economic partners or important security allies

(Kempadoo 2005; Kapstein 2006). A July 2006 report by the US Government Accountability Office also concluded that the TIP Reports have ‘limited credibility’ and do not ‘consistently influence antitrafficking programs’ (cited in GAATW 2007: 235).

⁸ Similarly, the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (known as the Global AIDS Act) required that any international organization working to curb HIV/AIDS must ‘have a policy explicitly opposing prostitution and sex trafficking’ if it wished to receive such funding (Weitzer 2007). Otherwise eligible organizations were deemed ineligible to receive US government HIV or anti-trafficking funds if they did not expressly adopt the US government’s policy on eradicating prostitution. US funding restrictions applied to all recipient countries, irrespective of the legal status of sex work in the country.

⁹ Anti-trafficking efforts have also had a negative impact on migrant sex worker health (McMahon 2005). See Lyons and Ford (2010b) for details of the devastating effect that these programs can have on NGO activities designed to assist women with HIV and other STDs in Indonesia.

¹⁰ The term ‘sex trafficking’ sets up a false distinction between sex workers and other migrant workers by suggesting that workers in the commercial sex industry are qualitatively different from all other types of workers who face exploitative labour practices. By privileging (and fetishizing) sexual acts, it also overlooks enormous diversity of experiences of migrant sex workers, some of whom engage in forced sex.

¹¹ This blurring between refugees and labour migrants is surprisingly underexplored in the literature on labour migration in Southeast Asia, which is predominantly focused on documented temporary labour migrants. For an overview of the issues, see Ford (2007).

¹² Kapur (2005) goes so far as to suggest that framing the Trafficking Protocol within a convention on organized crime reflects a preoccupation with illegal immigration rather than the human rights of migrants.

¹³ Frequently referred to as the ‘Three Ps Approach’ – prevention, protection, prosecution.

¹⁴ Joan Fitzpatrick (2003: 1152) describes these as ‘relatively modest obligations, written either in precatory [desirable] language or stating no more than what states would already be obliged to do under general legal principles’.

¹⁵ These include the Universal Declaration on Human Rights; the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT); and the Convention on the Rights of the Child (CRC).

¹⁶ Nonetheless, most states exercise restraint and selectivity in addressing irregular labour migration, and their repertoire of responses varies according to socio-economic and political realities (Ahmad 2008). In some cases it may suit the interests of both states and employers to have access to a large irregular workforce (Cunningham and Heyman 2004; Ford 2006a), while in others, strict regulation of all migration flows is intimately tied to public debates about ‘law and order’ and ‘border security’.

¹⁷ The concept of ‘forced labour’ has received relatively little attention within the scholarly literature on human trafficking and/or labour migration in contemporary Southeast Asia. The ILO’s stance on forced labour is much more widely critiqued in studies of labour exploitation in South Asia (cf. Lerche 2007; Rogaly 2008).

¹⁸ This is of particular concern in relation to trafficking for forced labour which is deemed illegal (e.g. commercial sex work) or informal. Elizabeth Bruch notes that ‘The biggest obstacle to the effective use of the labor framework to address human trafficking, however, is the continuing disagreement among states and activists as to the nature and legality of prostitution and other sex work’ (Bruch 2004: 27).

¹⁹ It is important to note that because the TIP Report does not see movement as a condition for trafficking, under the US State Department definition all people in forced labour situations could be considered ‘victims of trafficking’ (Danailova-Trainor and Laczko 2010: 42).