



International Human Trafficking in Canada and the United States: Policy Assessment and Comparison

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Abstract:

This paper provides analysis and comparison of international human trafficking policies developed by the United States and Canada at the federal level in terms of their effectiveness. The way the effectiveness is evaluated depends on whether the goals of these states in combating human trafficking are achieved or close to be achieved, that is whether the victims are protected, traffickers are prosecuted, cooperation and partnership are ensured with other states, and trafficking preventive measures are undertaken. The main argument of this paper is that despite the efforts made by the United States and Canada to fight human trafficking, their policies are ineffective because human trafficking is framed as a state security issue as opposed to human security. In the first section of the essay, the author presents definition of human trafficking as well as discusses methodology and research limitations. The second section focuses on the theoretical framework of the essay. In the third section, the author elaborates on the international efforts to combat human trafficking to give a historical perspective and general framework for the policy analysis in the following sections. Finally, the author analyzes and compares the United States and Canada's human trafficking policies in regards to protection, prosecution, partnerships and prevention. Since there has been little counter-trafficking policy analysis and no Canada-US comparative assessment, the author intends to provide valuable policy comparison that will hopefully trigger more research interest on the same topic in the future by international studies students and specialists.

Résumé :

Cet essai comprend une analyse et une comparaison de l'efficacité des politiques développées par les États-Unis et le Canada sur le trafic humain international. La façon dont l'efficacité est évaluée dépend des objectifs des états vis-à-vis la lutte de la traite des êtres humains et du degré de réalisation de ces objectifs : les victimes sont-elles protégées? Les trafiquants sont-ils poursuivis? La coopération et le partenariat sont-ils assurés avec les autres états? Des mesures préventives ont-elles été prises? L'argument principal de cet essai est que, malgré tous les efforts des États-Unis et du Canada, les politiques contre la traite des êtres humains sont inefficaces parce que le trafic est traité comme une question de sécurité étatique plutôt qu'une question de sécurité humaine. La première section apporte une définition du trafic humain et discute de la

méthodologie et des limites de cette recherche tandis que la deuxième section se concentre sur son cadre théorique. La troisième section élabore sur le contexte historique des efforts internationaux dans la lutte contre le trafic humain, éléments utiles à l'analyse des politiques des sections suivantes. Enfin, les politiques de protection, de prévention, de poursuites judiciaires et de partenariat du Canada et des États-Unis seront analysées et comparées. Parce qu'il n'existe que très peu d'analyses sur les politiques contre le trafic humain et très peu d'évaluations comparatives de ces politiques au niveau du Canada fédéral et des États-Unis, l'auteur espère que sa propre analyse permettra de déclencher un intérêt chez les étudiants et spécialistes d'études internationales et peut-être même de servir de base pour d'éventuelles recherches sur le même sujet.

Overview of International Human Trafficking: the Importance of the Issue

“Human trafficking: a crime that shames us all,” says the title page of the United Nations Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons.¹ This statement is true because most of us are involved in the facilitation of human trafficking. Consumers unknowingly buy cheap food and clothes produced by trafficking victims while Multinational corporations use cheap or free labour of trafficked persons. Politicians and lawmakers do not consider trafficking serious enough to take action to stop it; they do not allocate enough funding to fight against human trafficking because it would not bring them more votes. Patients are willing to pay huge amounts of money for illegally obtained human organs from the trafficked victims. Hosts abuse their caregivers and nannies, keep them in unlivable conditions and refuse to pay for their work. Drivers and pilots transport victims from point A to point B; sometimes without realizing that they are transporting the victims of such horrible crime. Government officials and immigration officers accept bribes from traffickers and provide them with fake visas for the victims. Peacekeepers and national armed forces create the demand for sex trafficking in conflict zones. Families sell their children whom they cannot support to be child soldiers, sex workers or to work in sweatshops in horrible conditions. Young teenagers sell their high school peers into forced labour or sexual slavery, and sex tourists travel in the countries where they cannot be caught abusing children. Millions of Internet users watch pornography featuring trafficking victims. Diplomats facilitate traffic of victims from their host countries to their home country. This list can continue on and on. In fact, the problem of human trafficking cannot be merely limited to a number of victims and their traffickers; it has a much more devastating scale and

¹ UNODC, *Global Report on Trafficking in Persons 2009*. United Nations publication, accessed March 25, 2014, from http://www.unodc.org/documents/Global_Report_on_TIP.pdf

scope because there is a greater number of people involved one way or another in this shameful crime against humanity.²

According to the UNODC, “thousands of men, women and children fall into the hands of traffickers, in their own countries and abroad. Every country in the world is affected by trafficking, whether as a country of origin, transit or destination for victims.”³ The victims of human trafficking “come in all races, all types, ... all ethnicities.”⁴ Traffickers usually recruit marginalized men, women, and children from poorer areas and societies as well as in “conflict zones, war torn regions and after large-scale natural disasters.”⁵ Furthermore, there are various methods that traffickers use to recruit their victims: from promising employment to kidnapping them. After being recruited, the victims are moved across borders or within state borders and “controlled by [such means as] acute violence, psychological intimidation, and threats to the families.”⁶

The face of traffickers is also diverse: “former prostitutes; military, security, and law enforcement personnel; athletes, as well as typical criminals found in organized crime groups,” mobilized military personnel employed by multinational peacekeeping forces or government contractors.⁷ Both men and women facilitate human trafficking; the latter “assume an active and prominent position.”⁸ Interestingly, human traffickers often have high social status and

² International Criminal Court. “What are crimes against humanity?” Accessed March 25, 2014, http://www.icc-cpi.int/en_menus/icc/about%20the%20court/frequently%20asked%20questions/Pages/12.aspx

³ UNODC. “Human Trafficking: the Facts,” accessed March 25, 2014, http://www.unodc.org/documents/blueheart/Fact_sheet_english.pdf

⁴ Kevin Bales and Ron Soodalter, *The Slave Next Door: Human Trafficking and Slavery in America Today*. Berkeley: University of California Press, 2009, 8.

⁵ Louise I. Shelley, *Human Trafficking: A Global Perspective*. New York: Cambridge University Press, 2010, 99.

⁶ Ibid. 107.

⁷ Ibid. 85.

⁸ Louise I. Shelley, “Human Trafficking as a Form of Transnational Crime.” In Lee, Maggy (Ed.) *Human Trafficking*. Cullompton ; Portland, Or.: Willan Pub., 2007, 121.

education, unlike, for example, drug traffickers.⁹ One thing they all have in common is the desire to make profits by means of selling other people.

Kathryn Cullen-DuPont, the author of *Global Issues: Human Trafficking*, provides a detailed classification of trafficking in persons based on the purpose of exploitation. She distinguishes the following types: prostitution and the sex trades including child sex tourism; brokered or forced marriages; trafficking in infants; forced labour including involuntary domestic servitude and forced child labour; child soldiers; trafficking for involuntary organ harvests.¹⁰ Embryo, ova and surrogacy trafficking¹¹ can also be added to this long list as well as cyber-trafficking.¹² It is clear from this classification that trafficking in persons has a wide range of manifestations, but the main purpose is exploitation. In addition to that, the K. Cullen-DuPont's classification also sheds a light on the demand side of human trafficking: there is a high demand for various services that can be provided by the trafficking victims due to the beneficial economic conditions. The victims are not paid (or barely paid) so they can be sold at a cheaper price (which creates higher demand) and bring more profits to the traffickers at almost no cost. In other words, "the cheapness makes the modern slave easily affordable, but it also makes him or her a disposable commodity."¹³

Global, regional and national measures have been undertaken to combat human trafficking, but at times unsuccessfully because the numbers of human trafficking victims do not

⁹ Ministry of Internal Affairs (MVD) report at first conference sponsored by Elena Tiuriukanova under TraCCC anti-trafficking project in Russia, Moscow, September 28-29, 2006; Stoecker, Sally W., and Louise I. Shelley. *Human Traffic and Transnational Crime: Eurasian and American Perspectives*. Lanham: Rowman & Littlefield, 2005.

¹⁰ Kathryn Cullen-DuPont, *Human Trafficking*. New York, NY: Facts On File, 2009, 10-23.

¹¹ Hedva Eyal, "Reproductive Trafficking," Council for Responsible Genetics, accessed April 29, 2014, <http://www.councilforresponsiblegenetics.org/genewatch/GeneWatchPage.aspx?pageId=313>

¹² Sunshine de Leon, "Cyber-sex trafficking: A 21st century scourge," *CNN World*, July 18, 2013, accessed March 29, 2014, <http://www.cnn.com/2013/07/17/world/asia/philippines-cybersex-trafficking/>

¹³ Kevin Bales and Ron Soodalter, *The Slave Next Door: Human Trafficking and Slavery in America Today*. Berkeley: University of California Press, 2009, 6.

seem to be decreasing. As Susan Miers, author of several books on slavery, writes about the international efforts to combat modern day slavery,

treaties had been negotiated. Standards had been set. Some groups had been mobilized to claim their rights. Efforts had been made to alert the public to a whole range of abuses. Boycotts of goods produced by sweated and child labour had been organized. NGOs were active. But there remained no mechanism to enforce the conventions.¹⁴

This statement can be contested because, in fact, *there are* mechanisms which “enforce the conventions” – states. If a state signs and ratifies *the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (thereinafter referred to as *the Trafficking Protocol*), this state becomes legally bound by the international law and is obliged to develop policies on human trafficking at the domestic level. The question is how effective are these policies, if there are any. The reason why human trafficking flourishes is not because there is “no mechanism to enforce the conventions” – states play the role of the mechanisms, – but because of the ways in which states approach trafficking in persons. In other words, their policy responses may not be effective enough to combat this serious problem.

According to Frank Laczko, the Head of the Migration Research Division in the Department of the International Cooperation and Partnerships of the IOM, “there has been relatively little independent evaluation of counter-trafficking policies and programmes to assess the real impact and effectiveness of different interventions.”¹⁵ He argues that “[w]ithout such research it is difficult to identify best policies and assess which countries have been most successful in their efforts to combat trafficking.”¹⁶ For this reason, my research will focus on human trafficking policy assessment.

¹⁴ Suzanne Miers, *Slavery in the Twentieth Century: The Evolution of a Global Problem*. Walnut Creek, Calif.: AltaMira Press, 2003, 454.

¹⁵ Frank Laczko, Elzbieta M. Gozdzia, International Organization for Migration. *Data and Research On Human Trafficking: A Global Survey*. Geneva: International Organization for Migration, 2005, 9.

¹⁶ *Ibid.* 9.

I will also limit the scope of my work by drawing a policy analysis and comparison of two countries – Canada and the United States – for the following reasons. First, there have been no comparative human trafficking policy studies on the United States and Canada. Second, both of these countries have signed and ratified *the Trafficking Protocol*, thereby agreeing to criminalize trafficking in persons and “adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol.”¹⁷ Third, Canada and the United States are countries of the same region – North America – and are close and interconnected neighbours; therefore, the movement patterns of trafficking victims are somewhat similar.¹⁸ Finally, both of them represent some of the major economically developed countries in the world and in this region with admittedly high standard of living, and both of them are major destinations for international migration in North America, including forced migration. It would be methodologically incorrect to compare either of these countries with other North American countries, such as Mexico or the countries of Central America and the Caribbean, at least because of significant differences in the criteria mentioned above.

I will not compare Canada and the United States with the European Union (EU) because of the difference in the level of analysis: the EU is a regional organization, comprised of multiple countries, some of which have their own legislature on human trafficking. Another reason why I will not draw a comparison with the EU is because it faces a different reality in terms of the flows of forced migrants, which may be shaping the policy response to trafficking in persons in a different way.¹⁹ Additionally, there is already a vast body of literature on human trafficking in

¹⁷ UN General Assembly. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, accessed March 25, 2014, <http://www.osce.org/odihr/19223>

¹⁸ UNODC. *Global Report on Trafficking in Persons 2012*. United Nations publication, 2012, 14.

¹⁹ UNODC, *Global Report on Trafficking in Persons 2012*. United Nations publication, 57, accessed March 25, 2014 http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf

the EU, unlike Canada and the United States.²⁰ For example, Leslie Holmes, Heli Askola, Claudia Aradau, Andrea Di Nicola, and Elspeth Guild are only some authors whose informative research is among the vast body of literature on this topic.²¹

In this work, I will focus only on international human trafficking in the United States and Canada, as opposed to domestic. This is not to disregard the importance of trafficking within the state borders, but to limit the scope of the research and concentrate on the international victims whose conditions are more complex due to their undocumented status. Also, I will not specifically discuss child trafficking because there are different laws that require in depth examination and analysis.

To sum up the points stated above, I will analyze and compare international human trafficking policies developed by the United States and Canada at the federal level in terms of their effectiveness. The way the effectiveness will be evaluated depends on whether the goals of these states in combating human trafficking are achieved or close to be achieved, that is whether the victims are protected, traffickers are prosecuted, cooperation and partnership are ensured with other states, and trafficking preventive measures are undertaken.

My main argument is that despite all of the United States and Canada's efforts to fight human trafficking (some of which have been successful), their policies are ineffective because human trafficking is framed as a state security issue as opposed to human security. In the first

²⁰ Frank Laczko and Elzbieta M. Gozdziaik, and International Organization for Migration. *Data and Research On Human Trafficking: A Global Survey*. Geneva: International Organization for Migration, 2005, 8.

²¹ Leslie Holmes, *Trafficking and Human Rights: European and Asia-Pacific Perspectives*. Cheltenham, UK ; Northampton, MA: Edward Elgar, 2010.

Heli Askola, *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union*. Oxford ; Portland, Or.: Hart, 2007.

Claudia Aradau, *Rethinking Trafficking in Women: Politics Out of Security*. Basingstoke [England] ; New York: Palgrave Macmillan, 2008.

Andrea Di Nicola, *Prostitution and Human Trafficking: Focus On Clients*. New York: Springer, 2009.

Elsbeth Guild and Minderhoud, P. E. and European Commission. Framework Programme for Research and Technological Development. *Immigration and criminal law in the European Union : the legal measures and social consequences of criminal law in member states on trafficking and smuggling in human beings*. Ed. Elspeth Guild and Paul Minderhoud; Martinus Nijhoff Leiden: Boston, 2006.

section of the essay, I will present the definition of human trafficking, methodology and research limitations. The second section will focus on the theoretical framework of the essay. In the third section, I will elaborate on the international efforts to combat human trafficking to give a historical perspective and general framework for the policy analysis. After that, I will discuss the legal definition of human trafficking in Canada and the United States. Then I will analyze and compare the United States and Canada's human trafficking policies in regards to the protection of the victims. Following this, the prosecution section will evaluate whether or not the legal proceedings against traffickers are successful in the United States and Canada and compare both countries. In the next section, I will present and compare how these countries implement prevention strategies. Finally, the last section will analyze the effectiveness of the partnership strategies to fight human trafficking developed by the United States and Canada. In the conclusion I will provide a short summary of the research findings and arguments.

Definition, Methodology and Research Limitations

For the purposes of this essay, I will use an internationally recognized human trafficking definition, which can be found in *the Trafficking Protocol*, supplementing the *United Nations Convention Against Transnational Organized Crime (2000)*. This definition outlines the phenomenon, defines victims of trafficking, how they are trafficked and for what purposes:

- (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.²²

In other words, trafficking in persons is an internationally recognized crime and includes three major components as explained by the UNODC: (1) the act of recruitment, transport, transfer, harbouring, receipt of persons; (2) the means such as threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, giving payments or benefits; (3) the purpose such as exploitation. Although UNODC provides a clear definition of human trafficking in the Trafficking Protocol, Canada and the United States have adopted somewhat different definitions in their legislatures. I will assess and compare these definitions in section IV and demonstrate how they shape the direction of the state policy responses in many ways.

As an illicit activity, trafficking in persons is a methodologically complex and challenging issue for research. Most of the trafficking in persons studies involve researching “hidden populations”²³ that are usually out of reach for the scholars due to a variety of reasons: involvement in illegal activities, undocumented status, psychological trauma, or the issues of ethics and confidentiality. Also for those reasons, some researchers indicate that the existing data is unreliable and very often represents “general estimates created on the basis of unclear methodologies.”²⁴ Even the United Nations’ figures might not be entirely accurate. Furthermore, the NGOs’ numbers are usually much higher than those of the official governments’ sources,

²² UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, accessed March 25, 2014, <http://www.osce.org/odihr/19223>

²³ Frank Laczko and Elzbieta M. Gozdziaik, and International Organization for Migration. *Data and Research On Human Trafficking: A Global Survey*. Geneva: International Organization for Migration, 2005, 18.

²⁴ *Ibid.* 14.

thus creating limitations for human trafficking research. Despite all that, consulting the statistical data linked to the numbers of victims and prosecutions is inevitable, I will therefore rely on the existing numbers while recognizing their possible flaws and limitations.

My research question does not require organizing interviews with the victims, conducting field research or gathering data. I will use qualitative method to analyze Canada and the United States policy responses to human trafficking, relying on primary and secondary sources, such as the existing academic literature on trafficking in persons, news reports and releases, documentary films, conventions and protocols, government documents, and NGOs' reports.

There are a few challenges that I faced when selecting the academic sources for my research and assessing the policies. First, there are significantly more studies on human trafficking in the United States than in Canada. Apart from the research specifically on the United States, this country is also discussed as a case study in the chapters of the sources that give a more general overview of the problem. In contrast to that, academic literature on Canadian human trafficking is more limited; one of the most helpful scholars is Benjamin Perrin, an Associate Professor at the University of British Columbia, a human trafficking activist and author, who was the first scholar to write a comprehensive overview of the problem in Canada.²⁵ Since I was limited in academic sources about Canada, I used multiple primary sources for my analysis such as the Criminal Code of Canada,²⁶ Temporary Resident Permits guidelines,²⁷ the United States Trafficking in Persons Reports that discussed Canada,²⁸ Royal Canadian Mounted

²⁵ "Benjamin Perrin," The University of British Columbia, accessed April 29, 2014, <http://www.law.ubc.ca/faculty/Perrin/>

²⁶ Criminal Code, R.S.C. 1985.

²⁷ Citizenship and Immigration Canada, "IP 1 Temporary Resident Permits," accessed April 29, 2014, <http://www.cic.gc.ca/english/resources/manuals/ip/ip01-eng.pdf>

²⁸ United States Department of State, *2013 Trafficking in Persons Report*, 19 June 2013, accessed April 29, <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

Police's (RCMP) reports,²⁹ Canada's National Action Plan to Combat Human Trafficking³⁰ and others.

Second, I found it problematic to measure and assess prevention and partnerships strategies in the United States and Canada. Most of the examined scholars focus on protection and prosecution policy aspects, while there has not been much research about the effectiveness of prevention and partnerships in the United States and Canada. As Anthony DeStefano explains, "prosecution results are easiest to quantify" because governments keep records of the convictions. The author continues that "[p]rotection and prevention are more difficult to measure ... because they deal abstractly with criminal conduct"³¹ and granting visas does not protect countless victims that are undiscovered in the United States and Canada. In terms of prevention, these countries established anti-trafficking campaigns, and I will evaluate them in terms of their frameworks; but the reach-out extent of these awareness measures requires in depth research which has not yet been undertaken. In terms of prevention, I will compare the United States and Canada in regards to the measures they are taking to establish partnerships; however, I will not discuss the effectiveness of any particular projects because this is beyond the scope of this work.

Finally, another challenge that I found working with different sources, both academic and non-academic, is that governments' sources usually present their policies as being successful and effective; however, NGOs, human rights activists and scholars provide a more critical perspective on the issue. Being aware of this, I was critical in assessing the information in the consulted sources. In the following section, I will shortly present theoretical approaches to

²⁹ Royal Canadian Mounted Police (RCMP), *Human Trafficking in Canada*, 2010, accessed April 29, 2014, http://publications.gc.ca/collections/collection_2011/grc-rcmp/PS64-78-2010-eng.pdf

³⁰ Government of Canada. "National Action Plan to Combat Human Trafficking," 2012, accessed April 29, 2014, <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/ntnl-ctn-pln-cmbt-eng.pdf>

³¹ Anthony M. DeStefano, *The War On Human Trafficking: U.S. Policy Assessed*. New Brunswick, N.J.: Rutgers University Press, 2007, 128.

human trafficking and discuss the theoretical framework I used to evaluate human trafficking policies in Canada and the United States.

Theoretical Framework

Human trafficking is a highly multidisciplinary issue and can be studied using different theoretical approaches, such as labour, public health, forced migration or security. For example, labour approach looks at human trafficking as exploitation of workers and violation of their labour rights. However, this approach is limited because it does not consider such type of human trafficking as, for example, for the purposes of organs removal. Trafficking in persons can also be framed as a public health issue which leads to the spread of sexually transmitted diseases including HIV/AIDS, horrible psychological trauma consequences,³² and the ethics of organs commercialization.³³ The limitation of the approach is that it only considers one aspect of human trafficking – health. Another perspective discussed by François Crépeau and Delphine Nakache suggests that trafficking in persons should be analyzed under the umbrella of forced migration.³⁴ These scholars regard this approach as the opportunity to “discuss involuntary displacement in all of its manifestations as alternative to the more limited “refugee studies” which refers to those who fall under the international legal definitions of refugee.”³⁵ This approach encompasses different important dimensions linked to trafficking in persons such as development, human rights and security.³⁶

³² Louise I Shelley, *Human Trafficking: A Global Perspective*. New York: Cambridge University Press, 2010, 72-76

³³ David Boucher and Diane Duquet, Ebrary CEL - York University, and Québec (Province). Commission de l'éthique de la science et de la technologie. *Organ Donation and Transplantation: Ethical Dilemmas Due to Shortage*. Sainte-Foy, Qué.: Commission de l'éthique, de la science et de la technologie, 2004, 85.

³⁴ François Crépeau, International Association for the Study of Forced Migration. International Conference. *Forced Migration and Global Processes: A View From Forced Migration Studies*. Lanham: Lexington Books, 2006, 2-3

³⁵ Ibid. 2-3.

³⁶ Ibid. 3-5.

While all of these approaches are useful for understanding human trafficking and emphasize a variety of dimensions of this issue, I choose to focus on state security and human security approaches for the purposes of this essay because they provide the tools to best analyze and explain states' policies. The notion of state security is one of the main highlights of the realist school of thought in International Relations and has its philosophical foundations in Thomas Hobbes' work *Leviathan* where he distinguished three principal causes of quarrel, including competition, difference and glory.³⁷ T. Hobbes wrote,

The first, maketh men invade for Gain; the second, for Safety; and the third, for Reputation. The first use Violence, to make themselves Masters of other mens persons, wives, children, and cattell; the second, to defend them; the third, for trifles, as a word, a smile, a different opinion, and any other signe of undervalue.³⁸

In other words, safety (or security) is one of the causes of war or invasion, which means that it is one of the most crucial elements pursued by states. According to realists, states strive for survival; therefore, they follow their national interests and ensure their security by protecting their territory and borders, increasing military capabilities, strengthening economic prosperity, ensuring access to energy and natural resources. All state policies, including human trafficking policies, revolve around their national interests and security. As Louise Shelley explains, "trafficking undermines democracy, rule of law, and accountability of governments."³⁹ International victims violate state borders and engage in criminal activities similar to traffickers who also make incredible profits out of trafficking business without paying taxes to the governments. Moreover, profits from the sale of human beings help to fund conflicts and terrorist activities which are a potential state security threat.⁴⁰ Hence, violating state borders and

³⁷ Thomas Hobbes and Ian Shapiro. *Leviathan: Or the Matter, Forme, & Power of a Common-wealth Ecclesiasticall and Civill*. New Haven: Yale University Press, 2010, 77.

³⁸ Ibid.

³⁹ Louise I. Shelley, *Human Trafficking: A Global Perspective*. New York: Cambridge University Press, 2010, 66

⁴⁰ Ibid.

participating in illegal activities is a crime that needs to be stopped in order to restore state security; and the best policy for that is finding and prosecuting criminals.

There is also an alternative view on human trafficking in terms of security – human security or individual security. After the creation of the United Nations, the focus on the individual in the international relations has been gradually growing, especially with the United Nations Development Program (UNDP).⁴¹ Contemporary international law is not only focused on regulating the interstate relations, but also on the way individuals are treated. Some of the examples of international law directly concerning individuals include *The Universal Declaration of Human Rights*, *The United Nations Convention against Torture*, *The Convention on the Rights of the Child*, *The United Nations Convention on the Rights of Persons with Disabilities*. These are the international law instruments that put the individual first and illustrate “the progressive humanization of the world order”⁴², suggesting a new understanding of security concept. Therefore, security – including its different aspects, such as food security, personal security, health security, energy security, environmental security⁴³ – is conceptualized through not only state security (when states are the main actors or subjects of analysis),⁴⁴ but also through individual security (with a focus on the individual). For this reason, there is no security if human rights are violated.⁴⁵ While trafficking in persons is a grave violation of human rights, it creates human insecurity for the victims in particular and for everyone else in the state. Louise Shelley

⁴¹ Shiro Okubo, “Globalization, Human Security, and the Right to Live in Peace.” In Okubo, Shiro, and Louise I Shelley (ed.). *Human Security, Transnational Crime and Human Trafficking: Asian and Western Perspectives*. Milton Park, Abingdon, Oxon ; New York: Routledge, 2011, 15.

⁴² The idea of the progressive humanization of world order was taken from Professor Awalou Ouedraogo’s lecture on Human Rights, ILST/POLS 3650, Glendon College, York University, 2013.

⁴³ Alan Collins, *Contemporary Security Studies*. 2nd ed. Oxford: Oxford University Press, 2010.

⁴⁴ Ibid. 3.

⁴⁵ Human rights will be defined as “the rights one has because one is human.” And while this seems vague and has some limitations, I will not elaborate on the philosophical debates about the definition and universality of human rights, which are well-demonstrated by D. DeLaet in her book *The Global Struggle for Human Rights: Universal Principles in World Politics**, because it is beyond the scope of this paper.

* Debra L. DeLaet, *The Global Struggle for Human Rights: Universal Principles in World Politics*. Belmont, CA: Thompson Wadsworth, 2006.

writes about the significance of the range of human trafficking impacts on society: “They [the impacts] include political, human rights, demographic, labour, health, gender, and familial effects”⁴⁶ and contribute to human insecurity. Hence, in this essay I will use state and human security theoretical frameworks discussed above to analyze and compare the policy responses to human trafficking developed by the United States and Canada. I will explain how Canada and the United States frame their policies using state security approach; and I will also use human security framework to demonstrate why these policies are ineffective in tackling the issue of human trafficking.

International Efforts to Combat Human Trafficking: Historical Context

In this section, I will focus on the international efforts to combat human trafficking in the historical context. Trafficking in human beings is not a new phenomenon: it has existed in different forms of exploitation for centuries. K. Cullen-DuPont compares human trafficking to slavery; the two phenomena are similar in the relationships between a slaveholder and the person enslaved: the first one controls the latter, and the latter “lives and works as ordered by the slaveholder.”⁴⁷ The difference is that “slavery is no longer a legally recognized institution,” which means that there is no law that would allow keeping any persons as property. Moreover, trafficking victims, unlike slaves, “are generally expected to repay the costs of their own trafficking and ongoing living expenses, a system known as debt bondage.”⁴⁸

There have been significant international efforts to combat slavery and human trafficking, especially in the XX century. *1926 Slavery Convention or the Convention to Suppress the Slave Trade and Slavery* adopted by the League of Nations and later amended by

⁴⁶ Louise I. Shelley, “Human Security and Human Trafficking.” In Jonsson, Anna (Ed.) *Human Trafficking and Human Security*. London; New York: Routledge, 2009, 10.

⁴⁷ Kathryn Cullen-DuPont, *Human Trafficking*. New York, NY: Facts On File, 2009, 7.

⁴⁸ *Ibid.*

the *1953 UN Slavery Convention*⁴⁹ was the first step towards a world without exploitation. Another international convention on human trafficking was *the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)*⁵⁰ which, however, did not gain many signatories among the international community at that time.⁵¹ The United Nations *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)* was another document aiming to stop slavery. International Labour Organization (ILO) has also provided substantial input in addressing the problem of human trafficking, especially forced labour, through *Convention 29, Concerning Forced Labour (1930)*⁵² and *Convention 105, Concerning the Abolition of Forced Labour (1957)*.⁵³

Another significant step toward the protection of human rights and elimination of human trafficking was the United Nations *Universal Declaration of Human Rights (1948)*, which stated that “[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” in Article 4, and that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁵⁴ Declaring these rights is clearly not enough, and much is yet to be done to ensure that these rights can be exercised by every human being.

The modern international law instrument regarding human trafficking is one of the three protocols of the *Convention against Transnational Organized Crime*, namely, *the Trafficking*

⁴⁹Council on Foreign Relations. *League of Nations Anti-Slavery Convention*, December 1969, accessed April 29, 2014, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>

⁵⁰ UN General Assembly, *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 2 December 1949, A/RES/317.

⁵¹ Nadejda K. Marinova and Patrick James, “The Tragedy of Human Trafficking: Competing Theories and European Evidence.” *Foreign Policy Analysis*, 2012, 233.

⁵² International Labour Organization (ILO), *Forced Labour Convention, C29*, 28 June 1930, C29.

⁵³ International Labour Organization (ILO), *Abolition of Forced Labour Convention, C105*, 25 June 1957, C105.

⁵⁴ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), accessed April 29, 2014, <http://www.un.org/en/documents/udhr/>

Protocol that was signed by 117 countries. Canada signed it on 14 Dec 2000 and ratified on 13 May 2002. The United States signed it on 13 Dec 2000 and ratified on 3 Nov 2005.⁵⁵ The Convention represents a major step forward in the fight against transnational organized crime including human trafficking and “signifies the recognition by Member States of the seriousness of the problems posed by it, as well as the need to foster and enhance close international cooperation in order to tackle those problems.”⁵⁶

All these international law instruments demonstrate how the international society has been gradually moving toward protecting individual security, human rights and freedoms; in other words, progressive humanization of world order has been one of the characteristics of international law in the XX century. However, such practices as human trafficking are still widespread around the world, including the United States and Canada. As mentioned in the introduction, states commit to developing policies to fight human trafficking after signing and ratifying international documents. In the following sections I will evaluate these policies using the examples of Canada and the United States in terms of their effectiveness of protection, prosecution, partnerships and prevention.

The Legal Definition of Human Trafficking: Canada and the United States

Canada and the United States’ legal definitions of human trafficking differ from *The Trafficking Protocol*. These definitions are crucial to assess because they determine the direction and effectiveness of the state policy responses.

⁵⁵ UNODC. “*The trafficking Protocol Country List*,” accessed April 29, 2014, <https://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html>

⁵⁶ UNODC. “*United Nations Convention against Transnational Organized Crime and the Protocols Thereto*,” accessed April 29, 2014, <http://www.unodc.org/unodc/treaties/CTOC/>

In the United States, the main legal instrument addressing human trafficking is *The Victims of Trafficking and Violence Protection Act of 2000* (also referred to as *Trafficking Victims Protection Act of 2000 – TVPA 2000*) and its reauthorizations of 2003, 2005 and 2008. In the TVPA 2000, the “severe forms of trafficking in persons” is defined as:

- (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (C) SEX TRAFFICKING - The term ‘sex trafficking’ means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.⁵⁷

It is clear that the United States has adopted a different definition of human trafficking from the UN. The United States’ definition “dichotomized human trafficking into sex trafficking and labor trafficking,”⁵⁸ eliminates other forms of this crime, such as organ and tissue trafficking, which do not fall into the framework of forced labour. As the UNODC noted in its most recent Human Trafficking Report, the United States criminalizes only sex and labour trafficking.⁵⁹ Stephanie Hepburn and Rita Simon point out that the focus of the United States’ policies is uneven: mainly on sex trafficking rather than labour trafficking and other forms.⁶⁰ During the Bush administration, the federal government of the United States prioritized “finding

⁵⁷ H.R. 3244--106th Congress: Victims of Trafficking and Violence Protection Act of 2000, 1999, accessed April 9, 2014, <http://www.govtrack.us/congress/bills/106/hr3244>

⁵⁸ Alese C. Wooditch, M. A. DuPont-Morales and Don Hummer, “Traffick Jam: A Policy Review of the United States’ Trafficking Victims Protection Act of 2000.” *Trends in Organized Crime*, 12 (3-4), (Sep 2009), 236

⁵⁹ UNODC, Country Profiles: the Americas. *Global Report on Trafficking in Persons 2012*. United Nations publication, accessed March 25, 2014, http://www.unodc.org/documents/data-and-analysis/glotip/Country_Profiles_Americas.pdf

⁶⁰ Stephanie Hepburn and Rita Simon, “Hidden in Plain Sight: Human Trafficking in the United States,” *Gender Issues* 27 (1-2), (Jun 2010), 12.

domestic youth in prostitution”⁶¹ which narrowed its focus on human trafficking to sex trafficking drawing unequal attention away from the victims of trafficking for other purposes.

Denise Brennan, a scholar and professor in the Department of Sociology and Anthropology in Georgetown University, argues that the number of undocumented migrants trafficked to the United States and forced into exploitative labour conditions is reported to be lower than the number of trafficked sex workers not because there are fewer victims, but because the victims of forced labour are being neglected by the United States government policies. Doreen Marchionni’s quantitative and qualitative research also confirms this argument by demonstrating that even in the press, sex trafficking dominates over other human trafficking topics in the American newspapers.⁶² Thus, the United States’ definition of human trafficking is very limited, which leads to a limited policy approach to trafficking in persons by the federal government.

Canada’s definition of trafficking in persons can be found in *the Criminal Code of Canada* in section 279.04 about exploitation:

279.04 (1) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

(2) In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the accused

- (a) used or threatened to use force or another form of coercion;
- (b) used deception; or
- (c) abused a position of trust, power or authority.

⁶¹ Denise Brennan, “Competing Claims of Victimhood? Foreign and Domestic Victims of Trafficking in the United States.” *Sexuality Research and Social Policy: Journal of NSRC* 5(4), (Dec 2008), 46.

⁶² Doreen M. Marchionni, “International Human Trafficking: An Agenda-Building Analysis of the US and British Press.” *International Communication Gazette* 74 (2), (Mar 2012).

(3) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.⁶³

This definition of trafficking in persons puts exploitation as the main focus, being inclusive of different types of human trafficking and not limiting itself. Similarly to *the Trafficking Protocol*, the definition also highlights trafficking for the purposes of organ and tissue removal. As the UNODC Trafficking in Persons Report confirms, “The current legislation on trafficking in persons in Canada covers all forms of exploitation indicated in the UN Trafficking Protocol.”⁶⁴

It is important to note that the Canadian definition has been enhanced since it was first adopted. The previous definition did not “provide specific examples of exploitive conduct,”⁶⁵ and eventually was amended by Bill C-310 in 2012 thanks to the efforts of the Member of Parliament Joy Smith. Bill C-310 provides “clear examples of exploitation such as the use of threats, coercion, deception or the abuse of power, trust or authority” (see point 2 in 279.04),⁶⁶ which may help prosecution.

Nevertheless, this definition is too narrow because it creates a condition where the victim has to believe that his/her safety or safety of others “would be threatened” to be considered a victim. As Benjamin Perrin demonstrated with multiple examples in his book *The Invisible Chains: Canada’s Underground World of Human Trafficking*, there have been many cases involving traffickers who could not be prosecuted because it was impossible to prove that

⁶³ Criminal Code, R.S.C. 1985, c. C-46, s. 279.04(1-3)

⁶⁴ UNODC, Country Profiles: the Americas. *Global Report on Trafficking in Persons 2012*. United Nations publication, accessed March 25, 2014, http://www.unodc.org/documents/data-and-analysis/glotip/Country_Profiles_Americas.pdf

⁶⁵“Human Trafficking - Bill C-310,” *Joy Smith’s Official Website*, accessed April 29, 2014, http://www.joysmith.ca/main.asp?fxoid=FXMenu,9&cat_ID=27&sub_ID=112

⁶⁶“Human Trafficking - Bill C-310,” *Joy Smith’s Official Website*, accessed April 29, 2014, http://www.joysmith.ca/main.asp?fxoid=FXMenu,9&cat_ID=27&sub_ID=112

this condition existed.⁶⁷ In fact, a victim may not be afraid or willing to admit to be afraid for his/her safety or the safety of others. For example, some female victims of sex trafficking get recruited by their “boyfriends” and, having become emotionally dependent on them, those victims agree to do anything that the “boyfriend” requires them to do without considering their own safety or the safety of others. One of the examples is Imani Nakpangi’s case, in which trafficker Nakpangi used “deception and psychological manipulation” to make his victim believe that he “respected” her and was her boyfriend.⁶⁸ Another example of victims not possibly realizing that their safety or the safety of others is threatened is Wai Chi Ng’s case. This trafficker brought two Chinese women in Canada and forced them into prostitution; he “was acquitted of both counts of human trafficking due to inconsistencies in the testimony of his alleged victims, along with a reasonable doubt as to whether they had been deceived in being brought to Canada.”⁶⁹

The definition analysis above demonstrates that human trafficking definitions in Canada and the United States are different from the one they agreed upon in the United Nations. Unlike the United States, Canada’s definition is more inclusive of the types of human trafficking; *TVPA 2000* does not mention organ and tissue removal. Unlike Canada, the United States does not pose any condition in which the victim must be afraid for his/her safety or the safety of others to prove that the case is related to trafficking in persons. This makes the United States’ legislation more effective in terms of identifying victims and prosecuting traffickers. In the following sections, I will demonstrate how effective or ineffective these definitions are in shaping counter-trafficking policy responses.

⁶⁷ Benjamin Perrin, *Invisible Chains: Canada's Underground World of Human Trafficking*. Toronto ; New York: Penguin Canada, 2011, 123-135.

⁶⁸ *Ibid.* 123-125.

⁶⁹ Benjamin Perrin, *Invisible Chains: Canada's Underground World of Human Trafficking*. Toronto ; New York: Penguin Canada, 2011, 133.

Protection of International Trafficking Victims

Victims' protection is an essential part of the fight against human trafficking. It is especially important for international victims because they are more vulnerable due to their undocumented status. Both Canada and the United States have established strategies to protect the international victims of human trafficking. One of the most important strategies is visa programs, developed to give the undocumented foreign nationals a legal status in the country. Although these programs provide certain protection and access to some services, their effectiveness is questionable, and I will explain why after analyzing both of the visa programs.

In terms of protection in the United States, international victims have three options for immigration relief: Continued Presence, T-visa and U-visa.⁷⁰ Continued Presence status is granted by DHS Immigration and Customs Enforcement (ICE) to an international human trafficking victim when a federal law enforcement agency petitions to allow potential witnesses to remain in the United States to help prosecute a trafficker.⁷¹ This is a short-term status – up to one year. After that, if victims need or want to further stay in the United States, they may apply for a T-visa program, which was designed specifically for trafficking victims. This type of visa allows certain victims and immediate family members to remain and work temporarily in the United States for up to three years if they agree to assist law enforcement in testifying against the perpetrators.⁷² Additionally, “once a T non-immigrant visa is granted, a victim can apply for

⁷⁰ United States Department of State, *2013 Trafficking in Persons Report*, 19 June 2013, 384.

⁷¹ H.R. 3244--106th Congress: Victims of Trafficking and Violence Protection Act of 2000. (1999), § 1100.35, accessed April 9, 2014, <http://www.govtrack.us/congress/bills/106/hr3244>

⁷² United States Department of State. “Visas for Victims of Human Trafficking.” United States Department of State, *2013 Trafficking in Persons Report*, 19 June 2013, accessed April 29, 2014, <http://travel.state.gov/content/visas/english/other/human-trafficking.html>

permanent residence after three years.”⁷³ The T-visa holders “can receive benefits through Health and Human Services before their visa petition has been finalized.”⁷⁴ There is also a U-visa which, similarly to T-visa, is issued by the US Citizenship and Immigration Services (USCIS) and provides immigration protection to crime victims who have suffered substantial mental or physical abuse as a result of the crime.⁷⁵ This visa is not only for trafficking victims, but they may also apply for it. The U-visa also allows victims to remain in the United States and assist law enforcement authorities in the investigation or prosecution of the criminal activity.

Canada has a somewhat similar visa program for international trafficking victims. Citizenship and Immigration Canada (CIC) may issue a Temporary Resident Permit (TRP) “to respond to the vulnerable situation of foreign nationals who are victims of trafficking by providing them with a means of legalizing their status in Canada, when appropriate.”⁷⁶ The TRP may be short-term (up to 180 days) and long-term up to three years.⁷⁷ It is important to note that the international victims in Canada who hold a TRP may qualify for medical and social counselling assistance which is granted via the Interim Federal Health (IFH) as well as a work permit (even if they hold a short-term TRP).⁷⁸ Eventually, they may “apply for permanent residence from within Canada through the refugee determination process, on humanitarian and

⁷³ United States Citizenship and Immigration Services. “Questions and Answers: Victims of Human Trafficking, T Nonimmigrant Status,” accessed April 29, 2014, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status/questions-and-answers-victims-human-trafficking-t-nonimmigrant-status-0>

⁷⁴ UNODC. “Tool 7.2 Temporary or permanent residence permit,” *Toolkit to Combat Trafficking in Persons*, 341, accessed April 29, 2014, http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_7-2.pdf

⁷⁵ United States Department of Homeland Security. *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, accessed March 25, 2014, http://www.dhs.gov/xlibrary/assets/dhs_u_vis_a_certification_guide.pdf

⁷⁶ Citizenship and Immigration Canada, “IP 1 Temporary Resident Permits,” 23, accessed April 29, 2014, <http://www.cic.gc.ca/english/resources/manuals/ip/ip01-eng.pdf>

⁷⁷ *Ibid.* 25-27.

⁷⁸ *Ibid.* 26.

compassionate grounds or, over time, as members of the permit holder class after three or five years.”⁷⁹

Unfortunately, both visa programs have many limitations in terms of eligibility requirements that undermine the possibility of victims’ protection. To be eligible for a T-visa in the United States, the individual must (a) be a victim of a “severe form” of trafficking (only sex or labor trafficking, whereas organ and tissue removal do not count); (b) must comply with requests of law enforcement; (c) be physically present in the United States as a result of trafficking, and (d) would suffer extreme hardship involving unusual and severe harm if deported.⁸⁰ The eligibility criteria for TRP in Canada requires CIC officer to consider (a) “whether it is reasonably safe and possible for the victims to return to and to re-establish a life in the country of origin or last permanent residence”; (b) “whether the victims are needed, and willing, to assist authorities in an investigation and /or in criminal proceedings of a trafficking offence”; (c) “any other reason the officer may judge relevant.”⁸¹ Table 1 systemizes these criteria and shows the similarities between the two visa programs.

⁷⁹ UNODC. “Tool 7.2 Temporary or permanent residence permit,” *Toolkit to Combat Trafficking in Persons*, 340, accessed April 29, 2014, http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_7-2.pdf

⁸⁰ H.R. 3244--106th Congress: Victims of Trafficking and Violence Protection Act of 2000. (1999), accessed April 9, 2014, <http://www.govtrack.us/congress/bills/106/hr3244>

⁸¹ Citizenship and Immigration Canada, “IP 1 Temporary Resident Permits,” 27, accessed April 29, 2014, <http://www.cic.gc.ca/english/resources/manuals/ip/ip01-eng.pdf>

Table 1: T-visa and TRP Eligibility Requirements

United States T-visa eligibility requirements	Canada TRP eligibility requirements
Be a victim of a “severe form” of trafficking (only sex or labor trafficking, whereas organ and tissue removal do not count)	
Must comply with requests of law enforcement	Whether the victims are needed, and willing, to assist authorities in an investigation and /or in criminal proceedings of a trafficking offence
Be physically present in the United States as a result of trafficking	
Would suffer extreme hardship involving unusual and severe harm if deported	Whether it is reasonably safe and possible for the victims to return to and to re-establish a life in the country of origin or last permanent residence
	Any other reason the officer may judge relevant

According to the United States Trafficking in Persons report 2013,

In the fiscal year of 2012 Continued Presence was issued to 199 trafficking victims, who may be potential witnesses, a decrease from 283 in FY 2011. T non-immigrant status was granted to 674 victims and 758 immediate family members of victims, representing an increase from 557 and 722, respectively, from the previous 385 period. NGOs reported that lengthy wait times for the issuance of Continued Presence impaired their ability to protect victims.⁸²

Thus, there were not many visas issued, especially taking into account the fact that DHS can issue up to 5,000 T-visas per year and 10,000 of U-visas. According to the same report, “the government [of Canada] issued 26 TRPs to 24 foreign trafficking victims in 2012, 13 of which were first-term permits and 13 of which were renewals. In comparison, authorities reported granting 53 TRPs to 48 foreign victims in 2011.”⁸³ As these figures show, not many trafficking victims could take advantage from the visa programs in both countries. For numerous reasons, the condition of the investigation assistance may discourage the victims to apply for the visa due

⁸² United States Department of State, *2013 Trafficking in Persons Report*, 19 June 2013, 383.

⁸³ United States Department of State, *2013 Trafficking in Persons Report – Canada*, 19 June 2013, accessed April 9, 2014, <http://www.state.gov/j/tip/rls/tiprpt/countries/2013/215417.htm>

to the fact that they may experience post-traumatic stress disorder (PTSD), emotional dependence on the trafficker, fear of being deported, threat to be harmed or to have their family harmed, shame, etc.⁸⁴ Although the United States indicated in the latest Trafficking in Persons Report that, now, “a trauma exception exists that permits certain victims to be eligible for T non-immigrant status without meeting the law enforcement requirement if they are unable to cooperate due to physical or psychological trauma”.⁸⁵ It is only for “certain” victims, which means that preference will be given to those who wish to assist with the investigation process. In Canada, “victims of trafficking are not required to testify against their trafficker to gain temporary or permanent resident status”;⁸⁶ nevertheless, it seems to be a tendency for the immigration officers to decline a TRP to the victims who do not agree to testify or help with the investigation.⁸⁷

Those international victims that do not qualify to obtain a documented status in the United States or Canada are treated as undocumented immigrants, which means that they are not considered victims anymore. Instead, they are criminalized and very often put under the category of aliens who are in the country illegally and/or were involved in criminal activities and, for that reason, they are denied protection of their human rights in both the United States and Canada. In many cases, such victims get deported to their home countries and risk getting trafficked again. Finally, it is likely that even after staying in their destination country and helping the United States or Canadian government to find the traffickers, the victim might not qualify to renew a visa and will eventually be deported because the government will not find him/her useful for the

⁸⁴ Stephanie Hepburn and Rita Simon, “Hidden in Plain Sight: Human Trafficking in the United States,” *Gender Issues* 27 (1-2), (Jun 2010), 19.

⁸⁵ United States Department of State, *2013 Trafficking in Persons Report*, 19 June 2013, 384.

⁸⁶ Citizenship and Immigration Canada, “Protection and assistance for victims of human trafficking,” accessed April 29, 2014, <http://www.cic.gc.ca/english/information/applications/trp.asp>

⁸⁷ Canadian Council for Refugees, “Temporary Resident Permits: Limits to Protection for Trafficked Persons,” accessed April 9, 2014, <https://ccrweb.ca/en/trafficking/temporary-resident-permit-report>

investigation or he/she will not qualify to immigrate or seek asylum.⁸⁸ Therefore, the international victims are hardly provided protection in the United States and Canada.

In summary, international human trafficking is deeply embedded in the problem of illegal migration in both Canada and the United States, which is, in turn, framed as a state security issue. Such framework criminalizes the victims of human trafficking and in many cases puts them under the category of undocumented migrants. Strict visa eligibility conditions are the main challenges for the victims' protection in the United States and Canada. Although the governments claim to provide support and protection to the international victims, what they really do is using the victims for the criminal investigation and then, in many cases, simply deporting them. Such strict immigration policies illustrate the problem of "otherness" in the international society, where non-citizens' human rights and human security are disregarded and state security is prioritized.

Prosecution of Traffickers

Prosecution is an important step toward justice and the elimination of human trafficking. This section will evaluate whether or not the legal proceedings against traffickers are successful in the United States and Canada and compare both countries. First of all, let us consider the figures.⁸⁹ The United States government's estimates of human trafficking victims number in 2002 were 50,000 and then scaled back significantly to 14,500-17,500 at the present; whereas some NGOs and researchers argue that there are hundreds of thousands victims in the United States.⁹⁰ The Royal Canadian Mounted Police (RCMP) estimated that 600-800 persons are trafficked into

⁸⁸ Joycelyn Pollock and Valerie Hollier, "T-visas: Prosecution Tool or Humanitarian Response?" *Women & Criminal Justice* 20 (1-2), (Jan 2010), 135.

⁸⁹ The numbers that were available and are used in this section include both domestic and international victims.

⁹⁰ Marisa Silenzi Cianciarulo, Immigration: Modern-Day Slavery and Cultural Bias: Proposals for Reforming the U.S. Visa System for Victims of International Trafficking. *Nevada Law Journal* 7, (2007), 827.

Canada annually and that additional 1,500-2,200 persons are trafficked through Canada into the United States,⁹¹ while some activists and civil society groups claim that there are approximately 15,000 victims of trafficking in Canada.⁹² Such discrepancies in numbers once again signify that the methodology of these calculations is questionable due to the nature of this crime. Even if we consider only the governments' figures, the number of prosecutions in comparison to the number of victims is scarce. In the United States, "DOJ convicted a total of 138 traffickers in cases involving forced labor, sex trafficking of adults, and sex trafficking of children, compared to 151 such convictions obtained in 2011."⁹³ "The average prison sentence imposed for federal trafficking crimes during FY 2012 was nine years, and terms imposed ranged from probation to life imprisonment."⁹⁴ In Canada, there were 27 total trafficking convictions in 2012 and 12 in 2011.⁹⁵ "Sentences ranged from one day to nine years' imprisonment; some of these sentences were suspended, and credit was given for pre-trial custody."⁹⁶

It is clear from the figures that prosecution of traffickers in the United States and Canada faces a range of challenges and limitations. First, as it was stated earlier, there are conceptual limitations of the legal definitions of human trafficking in the TVPA 2000 and the Criminal Code of Canada. The TVPA 2000 does not consider other forms of trafficking than sex and labour trafficking; therefore, other cases do not get the attention that they deserve and may not be identified as trafficking. Additionally, the Trafficking in Persons Report 2013 is the proof

⁹¹ United States Department of State, *2006 Trafficking in Persons Report – Canada*, (2006).

⁹² Alexis A. Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings*. Westport, Conn.: Praeger, 2009, 100.

⁹³ United States Department of State, *2013 Trafficking in Persons Report – United States*, (2013), accessed April 18, 2014, <http://www.state.gov/j/tip/rls/tiprpt/countries/2013/215417.htm>

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

of the fact that sex trafficking gains more attention: most of the cases that were found are sex trafficking cases.⁹⁷

As for Canada, the Criminal Code gives an imperfect definition of trafficking in persons due to the “safety” condition. Although it was amended by Bill C-310 and now includes examples of exploitation, the “safety” condition is still in power, which makes prosecution of traffickers problematic. B. Perrin provides many examples of this nature in his book *Invisible Chains: Canada's Underground World of Human Trafficking*.⁹⁸ Thus, one of the main challenges to effective prosecution of traffickers in both the United States and Canada is their definition of trafficking in persons.

Another challenge for successful prosecution measures stems directly from the lack of training among the law enforcement agencies in the United States and Canada. The reason why trafficking cases in these countries are sometimes unidentified is due to the lack of training available to police officers who “do not yet recognize the signs of trafficking.”⁹⁹ As Deborah Wilson et al. argue, “While trafficking involves transnational crime, it is the local law enforcement officer, rather than the federal agent, who is most likely to encounter crimes such as prostitution that may be related to trafficking in human beings.”¹⁰⁰ For their research, D. Wilson et al. collected the information on local law enforcement perceptions of trafficking and related means of addressing trafficking through the distribution of a survey to selected local law enforcement agencies throughout the United States. Although this research is “explanatory in nature,”¹⁰¹ it clearly shows that the law enforcement officers in the United States are (1) “ill

⁹⁷ United States Department of State, *2013 Trafficking in Persons Report*, 19 June 2013, 383.

⁹⁸ Benjamin Perrin, *Invisible Chains: Canada's Underground World of Human Trafficking*. Toronto ; New York: Penguin Canada, 2011.

⁹⁹ Kathryn Cullen-DuPont, *Human Trafficking*. New York, NY: Facts On File, 2009, 58.

¹⁰⁰ Deborah G. Wilson, William F. Walsh and Sherilyn Kleuber, “Trafficking in human beings: Training and services among US law enforcement agencies.” *Police Practice and Research*, 7(2), (2006), 151.

¹⁰¹ Ibid.

prepared to recognize human trafficking victims or investigate this emerging crime problem” and that (2) their operating attitude resides in their understanding that “women who sell their bodies do so by choice and undocumented foreign women are both prostitutes and trespassers” of the United States’ borders.¹⁰²

A similar point can be made in regards to the Canadian law enforcement agencies. According to B. Perrin, who conducted interviews with Canadian police officers, none of the interviewees received “any training whatsoever on the human trafficking offences in the Criminal Code.”¹⁰³ Thus, the lack of training among the law enforcement officers prevents them from successful identification of human trafficking cases; for this reason, many traffickers who could be prosecuted in Canada do not even get caught in the first place.

In addition to poorly trained enforcement agencies, there are numerous factors that prevent international victims from seeking help and coming out to the police, a situation which causes many possible trafficking cases to remain unidentified. These factors include fear to be punished as a lawbreaker who has been involved in a criminal activity;¹⁰⁴ fear that the family or the victim him-/herself will be harmed;¹⁰⁵ post-traumatic stress disorder, (PTSD) which many victims suffer from; ignorance about the existing law on human trafficking in the destination country and unawareness of the problem;¹⁰⁶ language barriers; fear or mistrust toward authorities; dependency on the traffickers and inability to escape.¹⁰⁷ Some other reasons

¹⁰² Ibid. 158.

¹⁰³ Benjamin Perrin, *Invisible Chains: Canada's Underground World of Human Trafficking*. Toronto ; New York: Penguin Canada, 2011, 139.

¹⁰⁴ David Okech, Whitney Morreau and Kathleen Benson, "Human Trafficking: Improving Victim Identification and Service Provision," *International Social Work* 55 (4) (Jul 2012), 495-96.

¹⁰⁵ T. K. Logan, Robert Walker and Gretchen Hunt, "Understanding Human Trafficking in the United States. *Trauma, Violence, Abuse* 10 (Jan 2009), 10.

¹⁰⁶ Jini L. Roby, Jennifer Turley and JoAnna Garrick Cloward, "U.S. Response to Human Trafficking: Is It Enough?" *Journal of Immigrant & Refugee Studies* 6 (Apr 2008), 514-15.

¹⁰⁷ Denise Brennan, "Competing Claims of Victimhood? Foreign and Domestic Victims of Trafficking in the United States," *Sexuality Research and Social Policy: Journal of NSRC* 5(4) (Dec 2008), 54.

identified by D. Brennan were not mentioned in other sources, but seem very interesting: fear to harm coworkers by coming forward for help, fear of "reprisals" by their co-ethnics (if they live and/or work with people of the same ethnic group), and simply reluctance of being found. Hence, the importance of a law officer's ability to identify a victim is crucial, and it is impossible to achieve without proper training.

Another prosecution challenge, in terms of sex trafficking in particular, for both the United States and Canada is the ways in which these countries frame prostitution. In the United States, prostitution is illegal; a trafficker who forces his/her victim(s) into sex work will be prosecuted. However, international victims could also be charged with a criminal offence and deported to their home country for coming into the United States illegally and engaging in illegal activities such as prostitution. In contrast to the United States, selling sex for money is not illegal in Canada; only the activities surrounding sex work are illegal, such as keeping a brothel, communicating in public about acts of prostitution or living off its proceeds.¹⁰⁸ However, this gives loopholes for sex traffickers who may act as pimps and arrange "meetings" for their victims and clients without getting involved in these illegal activities. The victim, in turn, under psychological manipulation of the trafficker or threats may refuse to testify.

All in all, prosecution measures are not effective in both the United States and Canada for numerous reasons. Both of the states have imperfect definitions of human trafficking. The law enforcement agencies lack sufficient training. Both the United States and Canada approach prostitution in such a way that ultimately disadvantages the victims of sex trafficking.

¹⁰⁸ Criminal Code, R.S.C. 1985, c. C-46, s. 211-213.

Prevention Efforts

Preventive measures are crucial to eliminating human trafficking and the United States and Canada know it; their human trafficking policy agenda both contain certain preventive measures. The United States government has been working on informing and educating the public, including potential victims, about the causes and consequences of human trafficking.¹⁰⁹ For example, the Department of Health and Human Services (HHS) gave funding to 11 projects “to conduct outreach, public awareness, and identification efforts.”¹¹⁰ Moreover, the government of the United States has also been working with various NGOs to raise awareness and provide services to the victims.¹¹¹ The Department of Homeland Security (DHS) started the Blue Campaign “to more effectively combat human trafficking through enhanced public awareness, training, victim assistance, and law enforcement investigations.”¹¹² Similar to a more general human trafficking framework adopted by the United States, the Blue Campaign recognizes only two types of trafficking, or for the purposes of sex and labour, which is clearly a significant limitation.

The Canadian government outlined its prevention strategies in its relatively recent *National Action Plan to Combat Human Trafficking 2012*, which includes the “I’m Not for Sale” campaign by RCMP and ongoing efforts to enhance information and awareness materials related to the Temporary Foreign Worker Program, make employment and health and safety standards information easily accessible for work permit and study permit holders, etc.¹¹³ Unlike the United States, Canada has taken a long time to develop an action plan in regards to trafficking in persons

¹⁰⁹ United States Department of State, *2013 Trafficking in Persons Report*, 19 June 2013, 386.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² United States Department of Homeland Security. *Human Trafficking*, accessed March 25, 2014, <https://www.dhs.gov/topic/human-trafficking>

¹¹³ Government of Canada. “National Action Plan to Combat Human Trafficking,” 2012, accessed April 29, 2014, <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/ntnl-ctn-pln-cmbt-eng.pdf>

and most of the prevention strategies are still ongoing but remain only partially implemented, at best.

While all these prevention efforts are valuable and important, it is difficult to evaluate them in terms of efficiency because this would require conducting a separate research, which is beyond the scope of this work. Nevertheless, some conclusions can be made from the available information. Whereas the United States is more advanced in terms of preventive measures, notably for implementing those measures much earlier than Canada, its definition of human trafficking omits other forms of this crime; for this reason, the awareness campaigns focus only on sex and labour trafficking. Canada does not have a similar definitional problem, but the public poster,¹¹⁴ for instance, reinforces the “safety” condition of human trafficking definition presented in the Criminal Code (“Have you seen someone... who fears for their safety or that of loved ones?”, says the poster) which may not be the case for trafficking victims, as I argued earlier. Furthermore, “I’m Not for Sale” youth booklet focuses solely on sex trafficking¹¹⁵ and does not even mention labour or other forms of trafficking. Therefore, Canada too has many gaps in its prevention policy due to its limited framework of human trafficking.

Partnerships with Other Countries and Organizations

Human trafficking is a transnational problem that cannot be solved only with the efforts of one country. International cooperation and partnerships play a significant role. The United States and Canada have joined several multilateral efforts to combat trafficking in persons, one of which is NATO’s Policy on Combating Trafficking in Human Beings that requires NATO members “to

¹¹⁴ Royal Canadian Mounted Police (RCMP), “I’m Not For Sale” Poster, accessed April 9, 2014, <http://www.rcmp-grc.gc.ca/ht-tp/publications/poster-affiche-sale-vendre-eng.pdf>

¹¹⁵ Royal Canadian Mounted Police (RCMP), “I’m Not For Sale” Youth Brochure, accessed April 9, 2014, <http://www.rcmp-grc.gc.ca/ht-tp/publications/booklet-brochure-youth-jeunes-eng.pdf>

provide training to NATO personnel participating in peacekeeping missions and to support law enforcement efforts in host countries.”¹¹⁶

The United States is highly engaged in promoting partnerships between countries to fight human trafficking. Every year since 2001, it has provided the Trafficking in Persons Report, which is the “principal diplomatic tool” that aims to “engage foreign governments in dialogues to advance anti-trafficking reforms and to combat trafficking and to target resources on prevention, protection and prosecution programs.”¹¹⁷ This is how the report works:

The Department of State places each country onto one of three tiers based on the extent of their governments’ efforts to comply with the “minimum standards for the elimination of trafficking” found in Section 108 of the TVPA. While Tier 1 is the highest ranking, it does not mean that a country has no human trafficking problem. On the contrary, a Tier 1 ranking indicates that a government has acknowledged the existence of human trafficking, made efforts to address the problem, and complies with the TVPA’s minimum standards. Each year, governments need to demonstrate appreciable progress in combating trafficking to maintain a Tier 1 ranking.¹¹⁸

Interestingly, the United States began including itself in the report starting only in 2010 and, of course, it has ranked itself as Tier 1 country since then. As Laura Hebert explains, “the language of human rights pervades American foreign policy discourse but is nearly absent in domestic political discourse, even among civil society” and is “most often invoked by US political leaders when calling attention to the failure of *other* states – usually in the global South – to comply with international obligations in the treatment of their citizens.”¹¹⁹ Whereas human trafficking – a grave violation of human rights – is in fact a problem in the United States as well.

¹¹⁶ Jeff Gulati, “Representing Trafficking: Media in the United States, Great Britain, and Canada.” In Brysk, A., & Choi-Fitzpatrick (ed.) *From human trafficking to human rights: Reframing contemporary slavery*. Philadelphia: University of Pennsylvania Press, (2012), 48.

¹¹⁷ United States Department of State. “Trafficking in Persons Report,” accessed March 25, 2014, <http://www.state.gov/j/tip/rls/tiprpt/>

¹¹⁸ Ibid.

¹¹⁹ Laura Hebert, “The Sexual Politics of US Inter/National Security.” In A. Brysk & A. Choi-Fitzpatrick (Eds.) *From Human Trafficking to Human Rights: Reframing Contemporary Slavery*. Philadelphia: University of Pennsylvania Press, (2012), 99.

Canada falls behind the United States when it comes to partnerships because it does not provide any annual report on human trafficking. It's first *National Action Plan to Combat Human Trafficking*, which was released in 2012, claims that Canada cooperates with the International Organization for Migration (IOM), the United Nations Office on Drugs and Crime (UNODC), the Organization of American States (OAS), the United Nations Children's Fund (UNICEF) and others.¹²⁰

As I mentioned earlier, partnership strategies are problematic to evaluate because there is not enough research on this topic. Nevertheless, the information available leads me to the conclusion that Canada is much less effective than the United States because it takes longer for Canada to develop partnership strategies and those are still in the process of implementation. Additionally, unlike the United States, Canada does not provide a comprehensive report that could contribute to the dialogue with other countries and improve data collection.

Conclusion

Both the United States and Canada have developed policy responses to international human trafficking according to the framework of 4Ps: protection, prosecution, prevention and partnerships. Having analyzed these policies, I conclude that they reflect state security framework as opposed to human security. Both the United States and Canada view international human trafficking as a crime that transcends state borders and, therefore, poses a threat to state security. Although victims' protection is one of the priorities, it is so only because those victims can contribute to the investigation and prosecution of traffickers. The United States and Canada provide, in turn, services and support to the international victims only during the time period

¹²⁰ Government of Canada. "National Action Plan to Combat Human Trafficking," 2012, accessed April 29, 2014, <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/ntnl-ctn-pln-cmbt-eng.pdf>

when the latter are useful to satisfy the states' national interests. After that, the victims become "disposable people,"¹²¹ and face strict immigration laws.

Clearly, state security policy framework of human trafficking does not solve the problem. This essay has demonstrated that, in such countries as the United States and Canada, hundreds of thousands of men, women and children become victims of forced migration by being abused in various ways and forcefully engaged in providing sex, labour services, or even their own organs. In order to find an effective and reasonable solution to human trafficking, states need to adopt a human security framework for their policies that is individual-centered, and in this case, victim-centered. This policy suggestion is easy to make, but the question is whether the state decision makers will find it rational to allocate taxpayers' money to assist international human trafficking victims. Probably not, otherwise they will not gain any votes from the citizens who are not concerned about cases of undocumented workers being abused in horrible work conditions, of nannies and caregivers working incredibly long hours and experiencing harassment from their hosts, of a poor foreigner whose kidney was stolen for a wealthy American or Canadian patient, or of a young woman forced to dance in a strip club and provide sex services to her clients. Indeed, human trafficking is the crime that shames us all.

¹²¹ Kevin Bales, *Disposable People: New Slavery in the Global Economy*, 2nd ed., Berkeley: University of California Press, 2004.

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