“Is trafficking in persons a human rights violation?” Kristina Touzenis, Program Manager for the International Organization for Migration (IOM) and an independent consultant for UNESCO, asked her audience at the Harriman Institute. Most people nodded in affirmation. “This is a common misconception,” explained Touzenis. “While human rights are an important aspect of trafficking, trafficking is a criminal, not a human rights concept.” Trafficking operations emerge from private efforts, while human rights violations can only come from the state. Touzenis stressed that understanding this distinction is essential in order to effectively combat trafficking.

Trafficking and human rights intersect only when the state fails to install protection, prosecution, and prevention measures for trafficking victims. Many countries have failed to install these measures and trafficking is not nationally criminalized by a number of governments. Citizens are most vulnerable to trafficking in nations with widespread human rights abuses because they want to escape oppressive political situations. Traffickers often promise victims passage across the border and then exploit them once they are on the other side. Touzenis emphasized that in order to address trafficking, it is important to address migration “by having dignified and regular migration channels, promoting fair work and pay, and by cutting the livelihoods of organized crime, as well as protecting those who fall victim to it.”

Touzenis explained that because trafficking is closely tied to migration, the terms smuggling and trafficking are frequently confused. “When the relationship with your smuggler does not end at the border, and you end up in an exploitative situation in your place of destination, smuggling becomes trafficking,” she clarified, emphasizing that despite its connection to migration, trafficking is not a strictly international affair, “it can also be internal.”

The Palermo Protocol, passed in Palermo Italy in the year 2000 and put to force in 2003, exists within a larger framework of international conventions – including the major human rights conventions. The protocol is important because it bridges two systems of law—human rights law and criminal law, “both by including human rights protection within a pure criminal law instrument, and by recognizing that such protection will enhance the possibilities for effective prosecution.”

The Protocol also provides the first comprehensive definition of trafficking: “recruitment, transportation, transfer, harboring 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.” Basically, Touzenis simplified, “it is organized movement of people in order to exploit them.”

Exploitation, according to the Protocol, “shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.” Touzenis highlighted that victims have agency, and can consent to work in what would be an exploitative environment; however, consent becomes irrelevant once threat, coercion or deception are used. “The degree of victimization and exploitation of trafficking victims may vary, but fundamentally they are all victimized and exploited – or there would be no case or talk of trafficking,” remarked Touzenis, “The idea that a person may be responsible for some of the decisions that resulted in their finally being trafficked may seem unattractive to some involved agents. The preferred simplistic view is that the victim must be ‘blameless’ in all regards.”

Trafficking victims, who have displayed some agency at a certain point (i.e. most), are most often treated as “co-conspirators.” Touzenis deemed this distinction unproductive because “it denies the multiplicity of factors that facilitate the operations of trafficking networks worldwide.” She pointed to the confusion between “agency” and “choice” as a reason for the notion that an individual must be
entirely “blameless” to be considered a victim of trafficking. “Many trafficked persons demonstrate agency by actively seeking a migration route, but they do not choose to be exploited.”

The Slavery Convention in 1926 was the first attempt to indirectly combat trafficking by addressing forced labor. A major goal of the convention was to put an end to the slave trade, which “includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery,” as defined in the convention’s first article.

The international community addressed sexual exploitation at the “Convention for the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others” in 1949. Here the term “trafficking” first came into play. The Convention was a step forward compared to previous anti-slavery conventions because it used a race, gender and age neutral terminology, not only applicable to white women and children, but more generally to persons, including men and boys. According to Touzenis, the convention was a failure because it was vague and did not address matters of human rights, and also excluded a vast number of victims by focusing only on prostitution. “The necessity for the creation of a UN Protocol underscores the disappointment of the convention in 1949,” she remarked.

Touzenis noted that while the number of forced labor cases is most likely not far behind cases of sexual exploitation, statistics reflect significantly higher figures for sexual exploitation cases. Cases of domestic forced labor are especially difficult to document, because they usually occur within the confines of private homes, while prostitution can be seen on the street. For the most part, “the focus on sexual exploitation has probably distorted the picture,” reflected Touzenis, revealing that greater efforts have gone towards persecuting sex traffickers.

A similar trend appears in statistics of trafficked women and children, which are disproportionally higher than those of trafficked men. The Palermo Protocol is called the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” a title that reflects the Protocol’s skewed focus. “We focus on women and children because we deem them more vulnerable, but I think it is our focus that may partly create these statistics,” Touzenis said. She mentioned that men also have a harder time seeing themselves as victims, and might therefore be less likely to denounce their traffickers. “It is important not to create an invisible group of trafficked persons—both in reality and research.”

Touzenis reported the 2006 statistics for convicted traffickers in persons in Georgia (11), Ukraine (86), and Azerbaijan (63). “These numbers are very low,” stated Touzenis. It is difficult to catch traffickers, because victims are completely in their power and afraid to report them. Traffickers often deceive victims into thinking that they are working with the authorities, so they feel they have nowhere to turn. Not only are traffickers seldom reported, but victims of sexual exploitation are regularly punished by authorities, because when they are caught, it is not clear that they had been trafficked, and they are treated as ordinary street criminals.

A large proportion of convicted or detected traffickers are women. It is unclear why this is so. “I hope it isn’t because women are less savvy and easier to catch,” Touzenis laughed. She speculated that women might be lower in the trafficking organization hierarchies, and more likely to be caught than men, who may be the “bigger fish.”

Touzenis identified a few gaps in the Palermo Protocol. There is no article that focuses on identification of victims, no provision for victim compensation, and no safety of return guarantees. Also there is nothing that ensures the non-punishment of victims, and no allotted period of reflection for victims to focus on what to do next. Touzenis lamented that victims are often re-trafficked after they are rescued because of stigmatization upon return. Victims can be ashamed to admit to friends and families that they have been trafficked, because people at home had assumed they were successful in their migration. She suggested that a “victim-centered criminal justice response” is the most effective in prosecuting the traffickers and in “protecting and supporting the human rights of the trafficked victim.”

Touzenis emphasized the importance of the Protocol as a criminal law tool with a human rights component. “Prosecution depends on the criminal law aspect and notions such as intent,” she said, “but quite clearly, the human rights approach is absolutely necessary in order to protect trafficked persons.” She also highlighted the need to remember that the Protocol operates within a broader framework of international instruments, including human rights and labor law instruments, and that individual states also have obligations to protect against violence and prosecute perpetrators.

Touzenis concluded by reminding the audience that a wide variety of remedies exist
within different fields of law – criminal, human rights, as well as labor and social welfare. “These overlap, combine, and sometimes clash but they must be considered complimentary and cumulative.”

*Reported by Masha Udensiva-Brenner*