

PERFORMING ANTI-TRAFFICKING: HUMAN RIGHTS, THE SECURITY COUNCIL AND THE DISCONNECT WITH THE WPS AGENDA

Gema Fernández Rodríguez de Liévana

20/2019

On 20 December 2016, the United Nations Security Council adopted Resolution (UNSCR) 2331 on the maintenance of international peace and security addressing trafficking in human beings ('trafficking') for the first time.¹ The Resolution was proposed and championed by the Spanish Government. By way of background, in 2013 the Spanish Government cited gender equality as "one of the main goals of Spanish foreign policy and diplomacy" in its bid to become a member of the United Nations Security Council (UNSC) for the 2015-16 period.² Gender equality was included among the 10 reasons underpinning its aspiration to become a non-permanent member of the UNSC, with the government stating that it was "giving human rights, gender equality and the full participation of women in peace-building the high profile they deserve to ensure security and stability."³ At the same time, the Spanish authorities stated that they were also proud to provide the Security Council with the country's "extensive experience in the fight against terrorism".⁴

On 16 October 2014, Spain was elected to occupy a non-permanent seat on the UNSC for the 2015/2016 term. According to the government, Spain's presidency of December 2016 was "the most productive in the history of the Security Council".⁵ In total, 15 resolutions were approved, three of which were proposed by Spain (legal cooperation in the fight against terrorism, non-proliferation, and human trafficking in armed conflicts).⁶ The President of the Government Mariano Rajoy chaired two Security Council debates: one on Women, Peace and Security (WPS) in October 2015 and one on human trafficking in conflict situations in 2016.⁷

Resolution 2331 (2016) was presented and drafted by Spain, and adopted unanimously on 20 December 2016 at an open debate led by its President of the Government. The government described the UNSCR 2331 as "a landmark text, the first of its kind, to combat trafficking in conflict situations as a terrorist practice. The resolution includes significant new measures related to the fight against sexual violence in conflicts."⁸ During the debate, the President stated that Spain proposes a "paradigm shift" by "acknowledging that national judicial systems may break down in situations of conflict, and that action from the Security Council becomes necessary

in these circumstances". He also proposed "exploring ways to strengthen the regulatory framework on sanctions, financial flows, and on protection and assistance for victims; and to design a more effective strategy in the fight against trafficking in conflicts".⁹

Understanding the role of the Spanish Government in the process of production and adoption of UNSCR 2331 brings insight into the framing of this new UNSCR on human trafficking. Whilst the UNSCR calls upon Member States "to address comprehensively victims' needs, including the provision of access to medical, psychosocial assistance



While a UNSCR on trafficking is welcome as it provides recognition of trafficking at the highest level, it also raises questions as to why the UNSC has adopted an approach which seems to side-line a human rights approach to this issue.

- 1 The term “trafficking” will be used throughout the text to refer to human trafficking, often referred to as trafficking in human beings or trafficking in persons in different international documents.
- 2 María Solanas (2014), “Igualdad de género y política exterior española”, Real Instituto Elcano, 9 December 2014, www.realinstitutoelcano.org/wps/portal/rielcano_es/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_es/zonas_es/politicaexteriorspanola/eee21-2014-solanas-igualdad-de-genero-y-politica-exterior-espanola.
- 3 Government of Spain, *Dialogue Solidarity Commitment: Spain 2015-16 Candidate to the United Nations Security Council* (Madrid: Government of Spain, 2013), www.exteriores.gob.es/Portal/es/PoliticaExteriorCooperacion/NacionesUnidas/Documents/CANDIDATURA%20CONSEJO%20SEGURIDAD_EN.pdf. See also Solanas, “Igualdad de género y política exterior española”.
- 4 La Moncloa, “We are satisfied with our constructive, reliable and responsible work’ at the UN, says Mariano Rajoy”, La Moncloa, 20 December 2016, www.lamoncloa.gob.es/lang/en/presidente/news/Paginas/2016/20161220-rajoy-un.aspx.
- 5 Government of Spain, *Spain in the United Nations Security Council: a Comprehensive Review 2015-2016* (Madrid: Government of Spain, 2017), www.exteriores.gob.es/Portal/es/SalaDePrensa/Multimedia/Publicaciones/Documents/2017_BALANCE%20CSNNUU%20ENG.pdf.
- 6 UN Security Council Resolution 2322 (2016), S/RES/2322; UN Security Council Resolution 2325 (2016), S/RES/2325; UN Security Council Resolution 2331 (2016), S/RES/2331 (2016).
- 7 Government of Spain, *Spain in the United Nations Security Council*.
- 8 Government of Spain, *Spain in the United Nations Security Council*, 12.
- 9 La Moncloa, “Mariano Rajoy claims that human trafficking is the ‘21st Century reincarnation of slavery’”, La Moncloa, 20 December 2016, <http://www.lamoncloa.gob.es/lang/en/presidente/news/Paginas/2016/20161221-rajoyslavery.aspx>.
- 10 UN General Assembly, *Plan of Action to Prevent Violent Extremism*, A/70/674 24 December 2015; UN General Assembly, *The United Nations Global Counter-Terrorism Strategy Review*, A/RES/70/291, 1 July 2016.

and legal aid” it does not mention the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) or other international human rights treaties. The Resolution is also silent on the WPS agenda. This is particularly surprising for two reasons. First, because it builds upon the nexus between trafficking for sexual exploitation, conflict-related sexual violence and terrorism, issues which fall squarely within the WPS agenda. Second, because the Spanish Government had chaired the debate on WPS, showing awareness of and support for the matter.

Effectively, the resolution places trafficking within the UN security agenda and its aims to fight “extreme violence” and terrorism.¹⁰ In this way, UNSCR 2331 amplifies the already existing tensions in the different agendas that struggle to combat gender-based violence against women, in peacetime and in conflict, and human trafficking, especially of women and girls, namely (i) CEDAW and

WPS (including the work of the Special Representative of the Secretary-General on Conflict Related Sexual Violence established under UNSCR 1888; (ii) the fight against trafficking in human beings, the criminalisation of traffickers and the protection of victims of trafficking; and (iii) the international peace and security agenda. While a UNSCR on trafficking is welcome as it provides recognition of trafficking at the highest level, it also raises questions as to why the UNSC has adopted an approach which seems to side-line a human rights approach to this issue.

Trafficking in women and girls, including in times of conflict, is not explicitly included in any of the eight WPS resolutions, despite the evident association of subject matter. While it has been addressed by the Security Council in Resolutions 2331 (2016) and 2388 (2017), these resolutions privilege a security framework, which focus on terrorism and violent extremism, and is detached from a development and a human rights framework.

This paper seeks to do three things. First, it provides an analysis of the Security Council approach to combating human trafficking to understand if and how it incorporates already existing standards that categorise trafficking as a human rights violation, a form of gender-based violence that can amount to torture and an international crime.¹¹ The analysis

The inclusion of human trafficking in the Security Council agenda was, in part, a response to the open promotion and practice of enslavement by the Islamic State in Iraq and the Levant (ISIL, also known as Daesh) and Boko Haram, particularly of women and girls for the purposes of sexual slavery and of children as labourers, fighters and suicide bombers. The attitude of ISIL and Boko Haram to human trafficking differs from that of many other non-state armed groups: they treat human trafficking not just as a means to generate free labour, services and profit, but as a method of degradation, displacement and subjugation of targeted civilian populations.

Letter dated 2 December 2016 from the Permanent Representative of Spain to the United Nations addressed to the Secretary-General

will pay special attention to the process of adoption of Resolution 2331 (2016) and the role of the Spanish Government in this process. Second, it argues that as a human rights violation, the whole human rights legal architecture should apply when addressing human trafficking. Failure to incorporate the well-established legal framework on trafficking contributes to a fragmentation of the legal corpus governing trafficking, which potentially undermines the role of international human rights law in providing an effective response to the human rights violations of trafficking.¹² It also argues that since trafficking in armed conflict is a form of gender-based violence, it comes within the four pillars of the UNSC's agenda for WPS. Lastly, it explores the connections (and disconnections) between the Spanish leadership on WPS, the anti-trafficking UNSCR and the way the state is fulfilling its due diligence obligations towards victims of trafficking internally.

FRAMEWORK AND TENSIONS

The history of legal prohibitions of human trafficking and state obligations has been comprehensively discussed elsewhere.¹³ This section provides a brief overview of the legal background and international instruments which have developed to fight trafficking in human beings.

Instruments that have dealt with human trafficking date back to the early 20th Century and the abolition of slavery. They include provisions within the Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention (the Slavery Convention, 1926) and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956). Human trafficking as a term in international law was first used in relation to "white slavery", which referred to the recruitment of European and North American women

into prostitution in the colonies of Asia, Africa and South America. The label "white slavery" was meant to distinguish the practice from 19th Century 'black slavery'.¹⁴ Conservative attitudes towards women's sexuality, and the fears that 'white' women would be trafficked from Europe and North America for the purposes of prostitution by 'other' men in the colonies have been argued to be among the reasons that led to the adoption of international measures.¹⁵ The International Agreement for the Suppression of the "White Slave Traffic" (1904) and the International Convention for the Suppression of the "White Slave Traffic" (1910) both include this language and approach.¹⁶ Additional tools of international law that include states' obligations to combat the trafficking of persons include the Universal Declaration of Human Rights (1948), the International Covenants on Civil and Political Rights (1966), and the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949).¹⁷

It is significant to note that the first time that trafficking entered explicitly into a human rights treaty was in 1979 through article 6 of CEDAW, which provides that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."¹⁸ Between 1979 and 2000, however, it is fair to say that the international law was slow to engage with trafficking.

In 2000, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol) was adopted. The framework under which the Protocol was adopted (supplementing the UN Convention against Transnational Organised Crime) guided the actions to be taken by States, typically criminalising trafficking in human beings in their domestic laws and providing for jurisdiction over perpetrators. Although

11 Rome Statute of the International Criminal Court, articles 7 (1) (c), 7 (1) (g), 8 (2) (b) (xxii) and 8 (2) (e) (vi); and Lorna McGregor, "Applying the Definition of Torture to the Acts of Non-State Actors: The Case of Trafficking in Human Beings", *Human Rights Quarterly*, 36(1) (2014): 210-241.

12 For a reflection on the interplay between international human rights law and criminal law – both national and international – through the international legal regimes that have evolved for combating gender-based violence against women, in peacetime and in conflict, and human trafficking, especially of women and girls, see Christine Chinkin, "International Human Rights, Criminal Law and the Women, Peace and Security Agenda", LSE Women, Peace and Security Working Paper Series 12 (2018): 1-8.

13 Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in European Law* (Cambridge: Cambridge University Press, 2017).

14 Stoyanova, *Human Trafficking and Slavery Reconsidered*, 19. See also Anne Gallagher, *The International Law of Human Trafficking* (Cambridge: Cambridge University Press, 2010).

15 Stoyanova, *Human Trafficking and Slavery Reconsidered*, 20.

16 For a historiography of trafficking and white slavery, see Jo Doezema, "Loose Women or Lost Women? The re-emergence of the myth of "white slavery" in contemporary discourses of "trafficking in women", *Gender Issues* 18 (1) (2000): 23-50.

17 Keina Yoshida and Gema Fernández Rodríguez de Liévana, "Human Trafficking as a Gendered Phenomenon: CEDAW in perspective", *Immigration, Asylum and Nationality Law* 32 (1) (2018): 28-49.

18 UN General Assembly, *Convention on the Elimination of all forms of Discrimination Against Women*, 19 December 1979, Article 6.



States have not favoured a comprehensive human rights approach in the measures adopted to combat trafficking, which would prioritise compliance with their regional and international human rights obligations. Nor have they generally recognised being trafficked as a human rights violation per se. Rather, the emphasis (if at all) is on protection of the human rights of victims in criminal or other proceedings.

in gender inequalities and asymmetric power relationships and, at the same time, it causes further gender-based discrimination and stereotyping, violence and sexual abuse.²³

Even though some trafficking instruments have thus introduced human rights language in their texts, and human rights treaties encompass human trafficking, most states have so far addressed trafficking from within both a criminal law framework and an immigration control model. States have not favoured a comprehensive human rights approach in the measures adopted to combat trafficking, which would prioritise compliance with their regional and international human rights obligations. Nor have they generally recognised being trafficked as a human rights violation per se. Rather, the emphasis (if at all) is on protection of the human rights of victims in criminal or other proceedings. This has led, inter alia, to protection measures being made conditional on the victims' cooperation in the criminal proceedings against the traffickers and has resulted in extremely low numbers of victims being granted prescribed protective measures such as a reflection period or a residence permit in Europe.²⁴ The identification of victims continues to be a challenge and recent figures show that very low numbers of victims are granted asylum.²⁵

Significantly, there is a growing body of evidence demonstrating that humanitarian crises such as armed conflicts and natural disasters can lead to an increase in trafficking in persons.²⁶ Trafficking can occur both in crisis-affected areas and out of crisis-affected areas, and people may be trafficked as combatants, in order to finance armed conflict, to provide sexual services, for forced labour, for forced marriage and, in some cases, to reinforce the enslavement of ethnic minorities. Large scale internal and cross-border movements caused by crises also create vulnerable populations that can become victims of trafficking.²⁷

the Palermo Protocol was and continues to be a necessary instrument to combat human trafficking, the Protocol has been criticised for its failure to address victims' rights and to fully explore the causes and consequences of human trafficking.¹⁹

The first regional instrument on trafficking was the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002).²⁰ It framed trafficking as a human rights violation, but it only addresses sexual exploitation, named as prostitution. The entry into force of the Council of Europe Convention on Action Against Trafficking (the Warsaw Convention) in 2008 offered a wider framework by including different types of exploitation—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—and focusing on states' obligations towards victims' protection and the safeguard of their rights.²¹ Alongside these regional developments, international human rights law has also recognised how some forms of trafficking disproportionately affect women and girls. There is a growing recognition that trafficking in women and girls is a form of violence against women and thus, of sex discrimination and a human rights violation.²² These instruments recognised that it is rooted

- 19 Jo Doezema, "Now You See Her, Now You Don't: Sex Workers at the UN Trafficking Protocol Negotiations", *Social & Legal Studies* 14 (1) (2005): 61-89; Jo Doezema, "Who Gets to Choose? Coercion, Consent, and the UN Trafficking Protocol", *Gender and Development*, 10 (1) (2002): 20-27.
- 20 Established with the signing of the SAARC Charter in Dhaka on 8 December 1985.
- 21 Council of Europe Convention on Action against Trafficking in Human Beings, Treaty No.197 (2005).
- 22 CEDAW Committee, *General Recommendation No. 19 on Violence Against Women*, 1992, <https://www.oursplatform.org/wp-content/uploads/CEDAW-Committee-General-Recommendation-19-Violence-against-Women.pdf>; CEDAW, *General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19*, CEDAW/C/GC/35, 14 July 2017, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf; UN General Assembly, *Declaration on the Elimination of Violence against Women*, A/RES/48/104, 20 December 1993.
- 23 Trafficking was one of the four key areas of focus for the mandate identified in UN Special Rapporteur on Violence against Women, Its Causes and Consequences, *15 Years of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences* (Geneva: Office of the United Nations High Commissioner for Human Rights, 2009), www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf.
- 24 Eurostat, "Trafficking in Human Beings", 2015 edition, *Eurostat Statistical Working Papers* (2015): 1-135, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-_2015_edition.pdf.
- 25 Eurostat, "Trafficking in Human Beings".
- 26 Inter-Agency Coordination Group against Trafficking in Persons, *Trafficking in Persons in Humanitarian Crises*, (Vienna: Inter-Agency Coordination Group against Trafficking in Persons, 2017), <http://icat.network/sites/default/files/publications/documents/ICAT-IB-02-Final.pdf>.

Children, especially girls, become highly vulnerable to being trafficked in conflict situations.²⁸ Worldwide, an alarmingly high number of children—both boys and girls—are in a forced labour situation as a result of trafficking.²⁹ Trafficking for commercial sexual exploitation also affects girls at a large scale.³⁰

This short description of the extremely complex reality of trafficking illustrates that it is necessary that trafficking is dealt with and fully incorporated into a human rights framework that affirms states' responsibility to exercise due diligence with respect to prevention and prosecution of gender-based and sexual violence against women and victims' reparation. The following sections seek to back up this idea.

FRAMING OF UNSCR 2331

The Special Rapporteur on Trafficking in Persons, Especially Women and Children (SR in Trafficking) identified the linkage between trafficking in persons and conflict as one of the areas of interest to her mandate in her report to the Human Rights Council of March 2015.³¹ The mandate subsequently conducted extensive research on the topic and devoted its May 2016 and August 2016 reports to the Council and to the General Assembly to trafficking in persons in conflict and post-conflict situations, calling on member states to prioritise the protection of people during conflict and people fleeing conflict from all forms of human trafficking.

The UN Secretary General had previously identified the nexus between conflict-related sexual violence and human trafficking and their cross-border dynamics in his report on conflict-related sexual violence, in which he provided information on smugglers demanding sex for "payment of passage" and on an evolving criminal infrastructure designed to exploit refugees through human

trafficking, commercial sex and sexual slavery, including in the context of the current mass migration movements.³²

An intensification of the Security Council's focus on conflict-related human trafficking can be traced back to 2015, when it addressed the issue in a briefing held in December, organised by the US during its presidency, where the Council adopted its first decision on human trafficking in a presidential statement.³³ This statement condemned instances of trafficking in conflict-affected areas; noted that trafficking in persons undermines the rule of law and contributes to other forms of transnational organised crime, which can exacerbate conflict and foster insecurity. It also expressed concern that in some regions terrorists benefit from transnational organised crime, including from the trafficking in persons, among other things.

The growing attention to the relationship between conflict and post-conflict situations and trafficking served as the background for the adoption of Resolution 2331 (2016). As previously mentioned, the importance of this resolution is that it marks the first time that the UNSC addresses trafficking, meaning that it has identified the existence of links between trafficking—when committed under certain circumstances—and the maintenance of international peace and security. The text of the resolution indicates that this link emerges from the implication of terrorist groups in the trafficking of women and girls in conflict-related areas and from the fact that trafficking serves as an instrument to increase these organised criminal groups' finances and power.

UNSCR 2331, building on the links between trafficking and the acts of terrorist groups and non-state actors in conflict situations, points to different purposes of trafficking such as funding terrorist activity, financially sustaining terrorist groups or destroying, punishing,

27 *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, A/71/303*, 5 August 2016, <https://reliefweb.int/sites/reliefweb.int/files/resources/N1625078.pdf>.

28 *Annual Report of the Special Representative of the Secretary-General for Children and Armed Conflict to the Human Rights Council, A/HRC/34/44*, 22 December 2016, para. 12, <http://undocs.org/A/HRC/34/44>.

29 International Labour Office, *A Global Alliance Against Forced Labour: Global Report of the Director-General Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005* (Geneva: International Labour Office, 2005), www.ilo.org/public/english/standards/reim/ilc/ilc93/pdf/rep-i-b.pdf.

30 UN Office on Drugs and Crime, *Global Report on Trafficking in Persons 2016*. (Vienna: UN Office on Drugs and Crime, 2016), www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf.

31 *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Maria Grazia Giammarinaro, A/HRC/29/38*, 31 March 2015, www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_38_ENG.DOCX.

32 *Report of the Secretary General on Conflict-Related Sexual Violence, S/2016/361/Rev.1*, 22 June 2016, par. 15, <http://undocs.org/S/2016/361/Rev.1>.

33 *Statement by the President of the Security Council, S/PRST/2015/25*, 16 December 2015, <http://undocs.org/S/PRST/2015/25>.



While the impact of the resolution remains to be seen, the UNSC's approach to the issue can further be criticised for segregating and distinguishing between trafficking when it happens in conflict-related contexts and when it happens in other contexts.

subjugating or controlling communities. The language is as follows:

(...) acts of trafficking in persons in armed conflict and sexual and gender-based violence in conflict, including when it is associated to trafficking in persons in armed conflict, can be part of the strategic objectives and ideology of, and used as a tactic by certain terrorist groups, by, inter alia, incentivising recruitment; supporting financing through the sale, trade and trafficking of women, girls and boys; destroying, punishing, subjugating, or controlling communities; displacing populations from strategically important zones; extracting information for intelligence purposes from male and female detainees; advancing ideology which includes the suppression of women's rights and the use of religious justification to codify and institutionalise sexual slavery and exert control over women's reproduction; and therefore encourages all relevant actors at the national, regional and international level to ensure that such considerations are taken into account, in accordance with their obligations under international law and national laws.³⁴

UNSCR 2331 is clearly and narrowly focused on conflict-related trafficking. While recognition of trafficking as a threat to international peace and security is welcome, the resolution can be criticised for failing to draw upon the human rights and the women's rights framework which have developed to place obligations on states to combat a phenomenon which

violates a host of fundamental human rights. While the impact of the resolution remains to be seen, the UNSC's approach to the issue can further be criticised for segregating and distinguishing between trafficking when it happens in conflict-related contexts and when it happens in other contexts. Further, Resolution 2331 creates a hierarchy of victims by its affirmation "that victims of trafficking in persons ... and of sexual violence, committed by terrorist groups should be classified as victims of terrorism with the purpose of rendering them eligible for official support, recognition and redress available to victims of terrorism, have access to national relief and reparations programmes."

Interestingly, the resolution seems detached from the UNSC's own agenda, particularly when one considers the development of the WPS agenda through its eight resolutions. On the one hand, UNSCR 2331 recognises that trafficking in armed conflict and post-conflict situations can be associated with sexual violence in conflict, thus bringing trafficking into the prevention of sexual violence in conflict framework. By recognising the incidence of trafficking in armed conflict and its association with gender-based violence, the UNSC is also bringing trafficking directly into its WPS agenda. On the other hand, it falls short of recognising trafficking as a violation of women's human rights per se that entails giving effect to the entire canon of human rights.

This is noticeable from a comparative reading of the language in UNSCR 2331 and in the United Nations Global Plan of Action to Combat Trafficking in Persons.³⁵ While the latter condemns "trafficking in persons, especially women and children," as it "constitutes a serious threat to human dignity, human rights and development" and – reflecting on CEDAW – recognises "that poverty, unemployment, lack of socio-economic opportunities, gender-based violence, discrimination and marginalisation are some of the

34 UN Security Council Resolution 2331 (2016), S/RES/2331, para. 8.

35 *United Nations Global Plan of Action to Combat Trafficking in Persons*, A/RES/64/293, 12 August 2010, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/479/41/PDF/N0947941.pdf>.

contributing factors that make persons vulnerable to trafficking in persons”,³⁶ UNSCR 2331 condemns “all instances of trafficking in persons in areas affected by armed conflicts, and stresses that trafficking in persons undermines the rule of law and contributes to other forms of transnational organised crime, which can exacerbate conflict and foster insecurity and instability and undermine development.”³⁷

The lack of apparent synergy between these frameworks may be explained by the UNSC’s focus on its security agenda as part of its role in the maintenance of international peace and security. The resolution reflects the UNSC’s understanding of peace as linked to security rather than to development or human rights, including economic, social and cultural rights that are linked with the structural causes that allow for vulnerability of women and girls to being trafficked, in conflict-related and out of conflict-related contexts. It also echoes the UNSC’s narrowed understanding of violence against women, from UNSCR 1325 urging the importance of addressing the broad band of “gender-based violence” to the following resolutions concerned with the narrower category of “sexual violence”.³⁸

But conflict-related violence against women does not take place in a vacuum. It is part of a continuum of violence across societies, in which women’s rights are degraded and gender inequality is the norm.³⁹ Armed conflict magnifies and exacerbates those problems.⁴⁰ As Mary Kaldor and Christine Chinkin have explained, this violence is “layered”:

Violence and conflict are also deeply gendered. Conflict is about a violent distribution of power where ‘culturally and historically specific understandings of power relationships are reproduced (and produced); ... Crisis of violence ... are not phenomena apart from normal underlying gender-based violence; rather

there is an effect of “layered violence”, whereby pre-existing violence is exploded, exposing those targeted to ‘deeper and greater threats of harm and insecurity’.⁴¹

Conflict can shape the way in which a country understands, experiences and responds to trafficking, sometimes for many years after hostilities have ceased. The extreme and often gender-based violence that takes place during conflict can set the scene for greater toleration of trafficking-related exploitation in peacetime.⁴² The question remains as to how UNSCR 2331 helps to prevent trafficking and protect those vulnerable to being trafficked in the aftermath of conflict when it fails to explicitly reinforce human rights and women’s rights.

Finally, while the UNSC limits trafficking in conflict to the acts of extremists, the CEDAW Committee understands trafficking in women and girls in its wider context as constituting “gender-based discrimination ... exacerbated during and after the conflict, owing to the breakdown of political, economic and social structures, high levels of violence and increased militarism. Conflict and post-conflict situations develop particular war-related demand structures for women’s sexual, economic and military exploitation.”⁴³ The latter, adopting a human rights framework to trafficking, advocates for the access of all victims to appropriate reparations, not just those trafficked by terrorist groups.

UNSCR 2331 IN THE FRAMEWORK – FRAGMENTATION AND OTHER THREATS

The preparatory documents to Resolution 2331 reveal the discourses around trafficking and how the links between human trafficking and conflict-related sexual violence and terrorism are drawn. In particular, the human rights discourse seems to become gradually diluted and is

36 *United Nations Global Plan of Action to Combat Trafficking in Persons*, Preamble.

37 UN Security Council Resolution 2331 (2016), S/RES/2331, para. 1.

38 Dianne Otto, “Women, Peace and Security: A Critical Analysis of the Security Council’s Vision”, LSE Centre for Women, Peace and Security Working Paper Series 1 (2016): 1-10, www.lse.ac.uk/WomenPeaceSecurity/pdf/2016/wps1Otto.pdf.

39 CEDAW, *General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations*, CEDAW/C/GC/30, 18 October 2013, www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf; and CEDAW, *General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19*, CEDAW/C/GC/35, 14 July 2017, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf.

40 “Violence against women and girls is a form of discrimination prohibited by the Convention and is a violation of human rights. Conflicts exacerbate existing gender inequalities, placing women at a heightened risk of various forms of gender-based violence by both State and non-State actors.” CEDAW, *General Recommendation No. 30*, para. 34. See also *Security Council Meeting on Women, Peace and Security*, S/PV.7704, 2 June 2016, <http://undocs.org/S/PV.7704>.

41 Christine Chinkin and Mary Kaldor, *International Law and New Wars* (Cambridge: Cambridge University Press, 2017), 496.

42 Anne T Gallagher, “Trafficking in Persons and Armed Conflict”, Background report prepared for the United Nations Special Rapporteur on Trafficking in Persons, (2015), https://works.bepress.com/anne_gallagher/46/download/.

43 CEDAW, *General Recommendation No. 30*, para. 39.



Trafficking has also been framed from a migration control perspective in domestic legislation of many countries, given that victims are most commonly undocumented migrants. The consequence of this lens of migration is that human trafficking is often erroneously conflated with human smuggling and human trafficking victims are detained in immigration detention centres or treated as economic migrants.

control at one end and victims' human rights protection at the other.⁴⁶ In between these extremes are grey areas: asylum, ending gender-based violence, eliminating gender inequalities or protecting victims of crime. Understanding this tension is axiomatic as it permeates through the decision making and regulatory frameworks of trafficking of both states and regional organisations, and influences the measures they adopt to combat it.

The Palermo Protocol, the first major international regulatory framework for trafficking framed human trafficking primarily as a criminal and law enforcement issue. Trafficking has also been framed from a migration control perspective in domestic legislation of many countries, given that victims are most commonly undocumented migrants. The consequence of this lens of migration is that human trafficking is often erroneously conflated with human smuggling and human trafficking victims are detained in immigration detention centres or treated as economic migrants.

Despite the inclusion of trafficking by CEDAW initially, there has been slow recognition of trafficking in human beings as a gendered phenomenon.⁴⁷ An estimated 79% of all detected trafficking victims are women and children and traffickers are "overwhelmingly male".⁴⁸ In addition, some forms of trafficking such as trafficking for sexual exploitation, for labour exploitation in domestic service and forced marriage have been identified as human rights violations of women and girls, as forms of gender-based violence, sex and gender discrimination, gendered forms of persecution under refugee law, forms of slavery, sexual abuse, crimes against humanity, and war crimes.⁴⁹

Trafficking for the purpose of sexual exploitation has been described as a form of sexual violence by the UN Secretary-General, encompassing "acts of a sexual nature against one or more persons or that

weak in Resolutions 2331 and 2388. It is also important to look at the coherence of the resolutions within the context of the pre-existing legal frameworks. While UNSCR 2331 mentions the Palermo Protocol at the very outset, it does not include its language in terms of the elements of the crime or the different forms of exploitation that it encompasses along the text.

While instruments on combatting trafficking mention human rights and identify women and children as groups especially vulnerable to being trafficked, a human rights perspective has been generally lacking in the implementation of anti-trafficking measures by states.⁴⁴ Despite the more recent legal instruments having incorporated a human rights framework with a gender perspective, implementation has been slow and has yet to improve. Human trafficking has moved from being considered solely from the transnational criminal issue to one which engages a number of legal and regulatory frameworks: law enforcement, migration and border control, human rights law, women's human rights, asylum and refugee law and international criminal law, all have something to say on how human trafficking should be tackled by States.⁴⁵

The regulation of trafficking by states faces a tension between different approaches and interests. The tension oscillates between two poles – criminal prosecution and border and immigration

44 Gema Fernández Rodríguez de Liévana and Viviana Waisman, "Lost in Translation: Assessment of the (Non)-Implementation of the Trafficking Directive from a Gender Perspective in Spain", *Oxford Journal of Human Rights Practice*, 9 (3) (2017): 504-525.

45 Chinkin, "International Human Rights, Criminal Law and the Women, Peace and Security Agenda".

46 Gema Fernández Rodríguez de Liévana and Viviana Waisman, "Implementation of Directive 2011/36/EU from a Gender Perspective in Spain", in *Trafficking in Human Beings from a Gender Perspective Directive 2011/36/EU European Implementation Assessment*, ed. Amandine Scherrer and Helmut Werner. (Brussels: European Parliamentary Research Service, 2016): 212–239, [www.europarl.europa.eu/RegData/etudes/STUD/2016/581412/EPRS_STU\(2016\)581412_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/581412/EPRS_STU(2016)581412_EN.pdf).

47 Inter-Agency Coordination Group against Trafficking in Persons, *The Gender Dimensions of Human Trafficking*, (Vienna: Inter-Agency Coordination Group against Trafficking in Persons, 2017), <http://icat.network/sites/default/files/publications/documents/ICAT-IB-04-V.1.pdf>.

48 The UN Office on Drugs and Crime (UNODC) notes that an increasing number of men have been detected as trafficking victims: see UNODC, *Global Report on Trafficking in Persons 2016* (Vienna: UNODC, 2016), www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf.

49 The Rome Statute of the International Criminal Court states that the conduct described in the elements of the following crimes include trafficking in persons, in particular women and children: Article 7 (1) (c), Crime against humanity of enslavement; Article 7 (1) (g)-2, Crime against humanity of sexual slavery; Article 8 (2) (b) (xxii)-2 and Article 8 (2) (e) (vi)-2, War crime of sexual slavery.

cause such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent."⁵⁰

UNSCR 2331 highlights the relationship between conflict and post-conflict situations and trafficking and aims at tackling the use of trafficking as a terrorist and a war economy tactic by terrorist groups. It operates in the interaction of three 'agendas': WPS, the fight against trafficking and the protection of its victims and the international peace and security arena, and suggests a tension between the three. This tension is fuelled by the impression that UNSCR 2331 contributes to fragmentation, failing to incorporate the standards and the language of legal instruments dealing with trafficking, forgetting the commitment that states made to ensure "the promotion and protection of human rights for all" and that "effective measures to respond to trafficking in persons are complementary and mutually reinforcing."⁵¹

Despite the direct or indirect involvement of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic personnel in trafficking activities having been pinpointed as an issue of concern in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, the UNSC is silent on this point.⁵² The only perpetrators that are considered are individuals and networks linked to terrorist groups. However, WPS experts and organisations have long been calling the attention of the UN apparatus to the problem of participation of peacekeepers in human trafficking and sexual violence in post-conflict areas.⁵³ The UN Global Plan for Action also mentions the need to "investigate, prosecute and punish corrupt public

officials who engage in or facilitate trafficking in persons and promote a zero-tolerance policy against those corrupt officials."⁵⁴

DISCONNECTED AGENDAS? THE SPANISH EXAMPLE

Spain is a destination, origin, and transit country for men, women, and children subjected to forced labour and sex trafficking. According to the U.S. State Department Trafficking in Persons Report 2017, women from Eastern Europe (particularly Romania and Bulgaria), Latin America and the Caribbean (particularly Paraguay, Brazil, Colombia, and Ecuador), China, and Nigeria are subjected to sex trafficking in Spain.⁵⁵ Many women forced into prostitution are held under the control of Nigerian, Romanian, and Spanish trafficking networks that operate out of major cities in Spain. In addition, victims are increasingly subjected to trafficking by individuals and smaller groups of traffickers. Unaccompanied migrant children continue to be vulnerable to sex trafficking and forced begging in Spain.

In terms of protection, trafficking victims have faced serious barriers to accessing refugee status in Spain. The first time that a victim of trafficking was ever granted asylum was as late as 2013.⁵⁶ In the period between 2013 and 2015 only seven other women victims of trafficking had been granted international protection; five of them were granted refugee status and three subsidiary protection. Contrary to the UNHCR Guidelines on the Application of Article 1A(2) of the 1951 Convention or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked, the asylum authorities' rationale has long been that the agents of persecution are non-state actors when it comes to trafficking and thus the lack of protection by the state of origin is not sufficiently proved.⁵⁷

50 *Special Measures for Protection from Sexual Exploitation and Abuse: a New Approach*, A/71/818, 28 February 2017, para. 26. <http://undocs.org/A/71/818>.

51 *United Nations Global Plan of Action to Combat Trafficking in Persons*, para. 25.

52 *Guideline 10: Obligations of peacekeepers, civilian police and humanitarian and diplomatic personnel. Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, <http://undocs.org/E/2002/68/Add.1>.

53 Alarmed by this problem, the Women's International League for Peace and Freedom (WILPF) organised the conference "Human Trafficking: When Peacekeepers Become the Problem" in 2012 with the aim to develop an improved UN policy based on international law and obligation, as opposed to an administrative process based on morality. See WILPF, *Human Trafficking and Related Crimes in The Context of Peacekeeping* (Geneva: WILPF, 2012), http://wilpf.org/wp-content/uploads/2014/07/Compiled.M.Rees_Trafficking.Report.pdf.

54 *United Nations Global Plan of Action to Combat Trafficking in Persons*, para. 47.

55 US Department of State, *Trafficking in Persons Report 2017* (Washington DC: US Department of State, 2017), www.state.gov/j/tip/rls/tiprpt/2017/index.htm

56 El País, "España Otorga por Primera Vez el Asilo a una Víctima de la Trata de Mujeres", El País, 21 October 2013, https://politica.elpais.com/politica/2013/10/21/actualidad/1382340211_584098.html.

57 Fernández and Waisman, "Assessment of the Implementation of the Directive".



The low number of identified and effectively protected women is a result of Spain's crime control model to tackling trafficking.

Regarding the reception of refugees fleeing armed conflict, Spain agreed to receive 1,449 people from the Middle East and North Africa under resettlement schemes, but according to Amnesty International only 289 people, all Syrian nationals, had reached Spanish territory by December 2016. Likewise, in contrast to the commitment made to receive 15,888 people in need of international protection from Italy and Greece under the EU internal relocation programme, only 609 were relocated to Spain as of December 2016 according to the same source. Spain has failed to implement European Directives on stateless persons, asylum procedures and reception conditions. There continues to be no implementation of the Asylum Act, six years after its entry into force. As a result, asylum seekers across the country experience uneven access to the assistance they are entitled to.⁵⁸

Protection and recovery measures accorded to trafficked women remain weak due to low numbers of officially identified victims. The US Department of State affirmed in 2011 that in Spain “(the) continued lack of formalised procedures for proactive identification increased the likelihood that unidentified victims were treated like illegal migrants and deported.”⁵⁹ Although identification procedures have been set up in the country since 2011, the alarmingly low number of women that accept the reflection period that is offered to them demonstrates the inadequacy of the procedures. The low number of identified and effectively protected women is a result of Spain's crime control model to tackling trafficking. The Ombudsperson

expressed concern before Parliament in 2014 about the way in which identification has been undertaken and gave some data: in 2013, the police offered 736 reflection periods to trafficking victims and of those, 603 rejected the protection mechanism.⁶⁰ Significantly, since 2013 this information has not been compiled or made public.

Spain's role in the enactment of UNSCR 2331 demonstrates that Spain has a stronger interest in a security agenda than in human rights and that its understanding of trafficking in conflict-related contexts is disconnected from the forced displacement dynamics that it generates, paying little attention to the refugee and migration flows that follow. The state 'performance' in combatting trafficking and protecting victims internally collides with the country's leadership in WPS and its role in the adoption of the UNSC's anti-trafficking resolution, and reveals some incoherences in state action. This approach echoes the position of many countries which have embraced the WPS agenda as a means of criticising sexual violence in conflict, whilst failing to understand and address the continuum of violence, and the underlying causes of discrimination at home. A prime example is the UK, with its Prevention of Sexual Violence in Conflict Initiative on one hand, whilst on the other, failing to include Northern Ireland within its National Action Plan.

As previously mentioned, UNSCR 2331 links the combat of trafficking as a way of countering terrorism and violent extremism, a loose concept that is in need of further clarity. Neither the United Nations nor the European Union has an official definition of 'violent extremism'. The US Agency for International Development (USAID) defines it as “advocating, engaging in, preparing, or otherwise supporting ideologically motivated or justified violence to further social, economic or political objectives”.⁶¹ This statement has provoked a great deal of controversy and uncertainty

58 Amnesty International, *Amnesty International Report 2016/17: The State of the World's Human Rights* (London: Amnesty International, 2017), www.amnesty.org/en/documents/poi10/4800/2017/en/.

59 US Department of State, *Trafficking in Persons Report 2011* (Washington DC: US Department of State, 2011), www.state.gov/j/tip/rls/tiprpt/2011/164233.htm.

60 Appearance of Ombudsperson Soledad Becerril before the Parliament's Gender Equality Commission on 11 June 2014, www.defensordelpueblo.es/wp-content/uploads/2015/05/2014_11_junio_Defensora_Trata.pdf.

61 Andrew Glazzard and Martine Zeuthen, *Violent Extremism. GSDRC Professional Development Reading Pack no. 34* (Birmingham, UK: University of Birmingham, 2016), http://gsdrc.org/wp-content/uploads/2016/02/Violent-extremism_RP.pdf.

and some questions have emerged. Is violent extremism, by definition, something carried out by non-state actors? In conflict situations, how can we differentiate violent extremists from other, more legitimate conflict actors? Does violent extremism always have to be ideological – can it, for example, be criminal, or even purposeless? Is “violent extremism” merely a synonym for “terrorism”? More fundamentally, are terms like “extremism” relative – in which case does “violent extremism” mean different things to different people?⁶² Others have built on the links of violent extremism as a result of systemic corruption.⁶³

The reality is that, while there is extensive literature on terrorism, “much remains speculative, unknown or uncertain” in the field of violent extremism.⁶⁴ Most of the work conducted to date has focused on understanding why and how people become attracted to terrorist action – the so called “radicalisation” trends – particularly that which affects Western countries.⁶⁵ From a feminist perspective, there is a concern that women’s rights are instrumentalised, their protection being used as an excuse to justify further military intervention, the application of sanctions or other coercive measures to punish those committing acts of trafficking in conflict-related areas, whereas when trafficking happens outside of conflict areas there seems to be much less interest to protect its victims.⁶⁶ Postcolonial studies’ critique of the survival of European colonial powers’ attitudes in the international community in terms of “white men saving brown women from brown men” becomes relevant to unveil how this dynamic works.⁶⁷ Women’s rights protection, including protection of trafficking victims, gets greater attention when it happens in conflict and in post-conflict areas because it can serve states’ security and countering violent extremism agendas.



From a feminist perspective, there is a concern that women’s rights are instrumentalised, their protection being used as an excuse to justify further military intervention, the application of sanctions or other coercive measures to punish those committing acts of trafficking in conflict-related areas, whereas when trafficking happens outside of conflict areas there seems to be much less interest to protect its victims.

The implementation of a countering violent extremism structure in conflict areas has had several impacts on women’s rights organising, women’s rights organisations, and gender equality.⁶⁸ According to research undertaken in conflict and post-conflict areas, as well as those considered to be “at risk” of terrorism and/or violent extremism, women’s rights defenders across the globe are frequently “squeezed between terrorism and violent extremism on the one hand, and counter-terrorism or preventing and countering violent extremism on the other.”⁶⁹

This again calls for a shift in the UNSC’s understanding of what the underlying causes of violent extremism, terrorism or trafficking are. As long as these phenomena are tackled looking solely at its ultimate manifestations instead of introducing a deeper analysis of how they are rooted in broader economic and social inequalities, the measures designed for its elimination will prove unable to transform the structures that allow for them.

Instead of military counter-terrorism operations that exacerbate people flows, the international community should ensure economic and other measures to address human rights abuses in countries, including support for economic and social rights so as to minimise migration and vulnerability to

62 Glazzard and Zeuthen, *Violent Extremism*. USAID defines ‘countering violent extremism’ as “proactive actions to counter efforts by violent extremists to radicalise, recruit, and mobilise followers to violence and to address specific factors that facilitate violent extremist recruitment and radicalisation to violence. This includes both disrupting the tactics used by violent extremists to attract new recruits to violence and building specific alternatives, narratives, capabilities, and resiliencies in targeted communities and populations to reduce the risk of radicalisation and recruitment to violence.” See US Department of State & USAID, *US Department of State & USAID Joint Strategy on Countering Violent Extremism*, (Washington DC: US Department of State & USAID 2016), https://pdf.usaid.gov/pdf_docs/PBAAE503.pdf.

63 Luke Waggoner and Eguiar Lizundia, “Is Systemic Corruption Driving Violent Extremism?”, *Diplomatic Courier*, 26 May 2017, www.diplomaticcourier.com/systemic-corruption-driving-violent-extremism/.

64 Glazzard and Zeuthen, *Violent Extremism*, 1.

65 Glazzard and Zeuthen, *Violent Extremism*.

66 Trafficking is prevalent outside of conflict areas, such as in the European Union. According to Eurostat, 30,146 victims were registered in the 28 EU Member States over the three years 2010-2012. Eurostat, “Trafficking in Human Beings”, 10.

67 Gayatri Spivak, “Can the Subaltern Speak?”, in *Marxism and the Interpretation of Culture*, ed. Cary Nelson and Lawrence Grossberg. (London: Macmillan, 1988), 92.

68 Duke Law International Human Rights Clinic and Women Peacemakers Program, *Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security* (Duke Law International Human Rights Clinic and Women Peacemakers Program, 2017), <https://law.duke.edu/sites/default/files/humanrights/tighteningpursestrings.pdf>.

69 Duke Law International Human Rights Clinic and Women Peacemakers Program, *Tightening the Purse Strings*, 8.

trafficking. This way, the link between WPS and counter-trafficking measures with the security and countering violent extremism agendas would be a recognition that measures to prevent conflict such as those relating to gender equality and non-discrimination, are also countering violent extremism strategies.

CONCLUSIONS

Any state action that seeks to effectively combat human trafficking and to protect its victims must incorporate a human rights approach and understand the gendered dimension of trafficking as a form of gender-based violence against women. It is paramount that all the instruments are understood as being complementary and mutually reinforcing. Gender-based violence and discrimination are both a cause and a consequence of trafficking in women and girls. Like other forms of gender-based violence, human trafficking does not stop when the conflict ceases. On the contrary, reports on different conflict and post-conflict settings have shown that trafficking in persons, especially in women and children is prevalent in these contexts facilitated by economic chaos and the destruction of economic structures that provide for basic needs.

There is often a disconnect between the protection mechanisms in place, and trafficking is often not included under the forms of conflict-related sexual violence to be addressed in planning for post-conflict reconstruction. As a consequence, trafficking victims are under-identified and the links between conflict, displacement and trafficking are overlooked, including in peace processes. This leads to a missed opportunity for understanding how these dynamics work and how to combat them.

The silence of the WPS framework on this issue remains a significant lacuna in protecting women's fundamental rights and further weakens the potential of WPS to bring structural transformation to post-conflict contexts. Placing trafficking of women and girls within the framework of WPS provides for joined up thinking across a number of different international agendas, grounded in international law and a rights-based approach, that centre on the need for prevention of gender-based violence and protection of women and girls against such violence in situations of armed conflict, displacement and post-conflict.



This is paper 20/2019 in the LSE Women, Peace and Security Working Paper Series. The author would like to thank Dr Keina Yoshida and Professor Christine Chinkin, as well as the editorial board, for their useful comments and suggestions.

The Centre for Women, Peace and Security Working Paper Series is an outlet for research findings, position papers and policy briefs. The editorial board is led by Dr Paul Kirby and Professor Laura J. Shepherd. lse.ac.uk/wps/wps

Design by LSE designunit (lse.ac.uk/designunit)

Centre for Women, Peace and Security, London School of Economics and Political Science, Houghton Street, London WC2A 2AE

lse.ac.uk/wps + blogs.lse.ac.uk/wps + [@LSE_WPS](https://twitter.com/LSE_WPS)