

Susan Kneebone and Julie Debeljak,
*Transnational Crime and Human Rights:
Responses to Human Trafficking in the Greater Mekong Subregion*
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Feminist legal scholar Ratna Kapur has written recently that in many discussions of human trafficking in human rights circles, “[t]he complex processes of migration and constitution of subjectivity, including sexual subjectivity, are flattened and replaced with simplistic, linear narratives about “sex trafficking””.¹ Such flattening also frequently occurs within legal scholarship on trafficking when it focuses exhaustively on the tensions between the criminal justice framework (which can treat trafficked people primarily as a means of achieving prosecutions) and a victim-centred approach (which prioritises victims as bearers of rights), including in relation to South East Asia.

Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion,² by contrast, presents an intricate analysis of the intersecting political, legal and institutional drivers of counter-trafficking measures in the Greater Mekong Subregion (‘GMS’). Susan Kneebone and Julie Debeljak’s three-year empirical study conducted in the region (which comprises Cambodia, the Yunnan Province of the People’s Republic of China, Lao People’s Democratic Republic, Myanmar, Thailand, and Vietnam) involved interviews with more than 60 individuals from relevant agencies in Bangkok, Phnom Penh, Vientiane, Hanoi and Ho Chi Minh City, as well as Sydney and Melbourne, between 2006 and 2010. Their access to expertise at national, regional and international levels is extremely impressive, and it is in light of their methodological approach that the nuances of this study can be best appreciated.

Kneebone and Debeljak are committed to viewing human trafficking and policy responses as the product of complex political and economic realities in the region. They explore, therefore, some of the social, political and historical factors which contribute to human trafficking in the relevant national contexts, including gender and age, labour exploitation and migration. This presents a significant challenge to some within criminal justice systems who believe that policing strategies alone can prevent human trafficking.

This discussion acts as background for their wider-ranging study of legal frameworks (international, regional and domestic), regional governance processes and the role of local

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¹ Ratna Kapur, *Makeshift Migrants and Law: Gender, Belonging, and Postcolonial Anxieties* (Routledge, 2010) 100.

² Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion* (Routledge, 2012).

and international non-governmental organisations in responding to trafficking in the GMS. Their conceptual frames are drawn from Michel Foucault and Jürgen Habermas in a way that is accessible to a broad readership. Notions of discourse and consensus are well-adapted to their central task of unpacking the political and ideological drivers of counter-trafficking policies, and exploring why certain norms attract stronger compliance than others. For instance, they explore how the imperative of economic integration in the region can often be at odds with cultural diversity, creating multiple pressure points for either coordinated or differentiated enforcement strategies.

A key strength of Kneebone and Debeljak's approach lies in the relationships they draw between areas of law formation that are often considered in isolation. This results in nuanced analysis tracing complex connections beyond the scope of most treatments of counter-trafficking law. For instance, an early chapter is dedicated to the highly contested field of migration within international organisations. The authors explain the evolution of international legal frameworks on sex trafficking and labour migration, exploring the parallel initiatives targeting migrant exploitation at the International Labour Organisation and United Nations in the 1970s: the ILO *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers*, created in 1974,³ and the UN *International Convention on the Protection of the Rights of All Migrant Workers*, adopted in 1990.⁴ Both anticipated the anti-trafficking framework which came into effect in the early days of the 21st century. The authors observe that it was a significant political success that aspects of both labour rights and human rights perspectives were captured in the definition of trafficking enshrined in the 2000 UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (particularly the express inclusion of forced labour as an example of exploitation which may amount to trafficking).⁵

At the same time, Kneebone and Debeljak argue that the *Trafficking Protocol's* implementation of counter-trafficking norms has been far more partial than the legal framework on its face. They explain that the full scope of the *Trafficking Protocol's* definition of trafficking may not have been operationalised due to the ideological rifts between the UN and ILO. Because strong linkages were never forged between the discourses of migration and development, on the one hand, and of migration and human rights, on the other, securitisation perspectives were able to gain prominence in UN trafficking debates in the 1990s. They agree with Kapur that, as a result, the focus on prostitution has substantially overshadowed exploitation within a broader labour perspective. Naturally, the political interests of Western states parties to the *Trafficking Protocol* in marshalling resources for border control played a role here too. While links between migration, exploitation and trafficking are now being reasserted, the uneasy partnership between various agencies within the UN Global Initiative to Fight Human Trafficking has continued. This is

³ *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers*, opened for signature 24 June 1975, 1120 UNTS 323 (entered into force 9 December 1978).

⁴ *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, opened for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003).

⁵ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003) ('*Trafficking Protocol*') art 3(a).

abundantly clear from the vast discrepancies between the statistics on the scope of human trafficking promulgated by different international agencies, such as the UN Office on Drugs and Crime, the ILO and the International Organisation for Migration.

The book's account of regional efforts is far more optimistic, however. The GMS becomes, in the authors' words, a 'laboratory' of relatively successful coordination between international agencies and multilateral cooperation.⁶ This outcome, they argue, was a result of deeply regional factors. First, counter-trafficking efforts in the GMS occurred against a background consensus about the urgency of stopping the commercial sexual exploitation of children which had arisen in the region in the 1980s and early 1990s, as well as exploitation of women tied to military hostilities in Indochina in the 1970s and sex tourism thereafter. The ILO was able to gain far more traction here than at the global level by framing the problem as, in part, one of child labour. There was also robust political will by the Association of South East Asian Nations (ASEAN) states, especially Thailand, to combat exploitative labour within but also beyond the commercial sex industry. These elements set strong historical precedents for constructive government-NGO cooperation, as well as intra-regional coordination through bilateral agreements, on which trafficking interventions drew.

However, the authors acknowledge that the region has not been immune from the distorted focus of international efforts. Global preoccupations with sexual exploitation still played a strong role in shaping responses, and these overshadowed attention to children's rights and non-sexual labour exploitation in the region. Partly this was a result of donor preferences. For instance, the authors point out that when Australian development agencies began addressing trafficking issues in Cambodia and Lao PDR in 2003, the intervention was framed in terms of the 'gender dimensions of trafficking'.⁷ Naturally, pre-existing political concerns to limit workers' mobility in the region also allowed trafficking to be conflated with irregular migration in a way that aligned neatly with the interests of the global north to promote border security.

Nevertheless, implementation in the region (especially Thailand) was particularly attentive to local needs and conditions chiefly, the authors argue, because constructive multilateral responses were already in place. Furthermore, regional actors already maintained an attitude of mistrust of Western characterisations of Asian women as hypersexualised. This produced a degree of reluctance in the region to adopt the gendered international framing of trafficking uncritically. This meant that the regional response was more nuanced than simply implementing generic tools produced at a global level to address a global problem.

Themes emerging from the GMS provide suggestions for future governance strategies. While Kneebone and Debeljak's study does not reference Australia's own domestic counter-trafficking framework, it is clear that Australia has much to learn from its northern neighbours. There is detailed discussion in the text of the gaps which frequently exist between how trafficking is conceptualised (in the popular imagination as well as in national

⁶ Kneebone and Debeljak, above n 2, 1.

⁷ Ibid 85.

legal systems) and how it is defined in the *Trafficking Protocol*. Certainly, Australia has faced challenges in giving prominence to the exploitative labour migration dimensions of trafficking, although much progress has recently been made.⁸ In addition, Australian criminal laws have, until this year, been based on the erroneous assumption that trafficking under the *Trafficking Protocol* must involve movement of people. A new offence of harbouring a victim of trafficking in Australian law does more justice to the actual scope of Australia's obligations under the *Trafficking Protocol*.⁹

This book is an important contribution which advances not only scholarship in this area, but has the potential to shape the thinking of a range of actors working on an issue of great significance in our region. Indeed, the Australian federal government recent announced a further A\$50 million will be dedicated to anti-trafficking schemes in the region focused principally on criminal justice capacity-building.¹⁰ This study inspires deeper reflection on issues which hit press headlines with relative frequency, but which warrant further careful analysis.

⁸ Fiona David, *Labour Trafficking* (Australian Institute of Criminology, Research and Public Policy Series No 108, 2010) ix. As evidence that this imbalance is being redressed, a new offence of forced labour (*Criminal Code Act 1995* (Cth) s 270.6A) was introduced in 2013 by the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth).

⁹ A new offence of harbouring a victim of trafficking (*Criminal Code Act 1995* (Cth) s 271.7F) was also introduced by the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth).

¹⁰ AusAID, 'Prime Minister Announces New Program to Combat Human Trafficking', (Media release, 20 November 2012) <<http://www.ausaid.gov.au/HofTopics/Pages/Display.aspx?QID=882>>. See also Kneebone and Debeljak, above n 2, 177ff.