

Is the Trafficking Victims Protection Act a Transnational Success? Lessons from Israel's Strategic Compliance

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ABSTRACT

The enactment of the Trafficking Victims Protection Act (TVPA), in 2000, marked the beginning of the ongoing systematic attempt by the United States of America to combat human trafficking transnationally. Through this Act, the U.S. employs a regime of positive and negative incentives, aimed at pressuring other countries to comply with its minimum anti-trafficking standards. This attempt has prompted debate concerning the legitimacy of this initiative, as well as some efforts to evaluate its effectiveness quantitatively. Still, very little is known about the action taking place within the countries thus pressurized and in the transnational shadow of the TVPA. Especially neglected is the aspect relating to the protection of victims of trafficking, including their rehabilitation. In an attempt to address this lacuna, this paper reports a first-of-its-kind empirical study of the approach to victims of trafficking of a country pressured by the TVPA. By interviewing officials, activists, professionals and survivors of human trafficking, and by analyzing policy and legal documents and reports, the study maps the success of the U.S. in pressuring Israel into establishing two shelters designated to victims of human trafficking. Notwithstanding, the study demonstrates the development of compliance strategies that allow Israel to satisfy U.S. demands, without sacrificing the Jewish majority's interest in the maintenance of an ethnic nation state. Recent developments in Israel also point to the power of the victims of trafficking to mobilize both the domestic legal system and the global human rights discourse to their advantage. Hence, the Israeli case study points to the need to integrate existing theories on compliance to global norms, and to develop a model that treats superpower states – as well as weaker states and the victims of human rights violations themselves – as significant players in the global field of norm-making. Studying and analyzing the action taking place within the pressured country moreover highlight the need to differentiate between “compliance” and “success”, often confused within the literature on global governance in general and on the TVPA in particular.

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INTRODUCTION

Trafficking in persons has attracted much attention over the last decade and a half.¹ On the one hand, this phenomenon can be seen as the epitome of the dark side of globalization, as it is linked to transnational organized crime² and illegal trade,³ illicit migration and migrant smuggling,⁴ and intensified abuse and human rights violations.⁵ On the other hand, the struggle against human trafficking can also be perceived as an example of international cooperation and committed, unifying transnational involvement. In particular, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, (Trafficking Protocol),⁶ and the U.S. Trafficking Victims Protection Act (TVPA),⁷ both drafted at the beginning of the third millennium and demanding the prevention of trafficking, the prosecution of traffickers, and the protection of victims of trafficking, can be understood as evidence of global commitment to an uncompromising battle against human trafficking and the protection of its victims.⁸ Indeed, almost all the countries of the world have transplanted⁹ international anti-trafficking norms into their national legal systems, especially through the criminalization of trafficking.¹⁰ However, and as will be detailed below, these international and transnational efforts, have been criticized normatively as well as pragmatically.

This paper contributes to the critical examination of the transnational efforts to combat human trafficking and of their local transplantation, by focusing on Israel's compliance with international anti-trafficking norms, and in particular with the expectation to protect the victims of human trafficking. This focus is justified on two fronts. Firstly, there is the general relative scholastic neglect of the study of domestic responses to global norm-making, compared to the attention that the global forces receive.¹¹ Beyond this, there is also the particular relative neglect of the protection

¹ Marie Segrave, Senja Milivojevic & Sharon Pickering, *SEX TRAFFICKING INTERNATIONAL CONTEXT AND RESPONSE*, (William Publishing 2009), at 1; Hila Shamir, A Labor Paradigm for Human Trafficking, 60 *UCLA Law Review* 76 (2012), at 78-79.

² *Id.*, at 7.

³ Asif Efrat, *Governing Guns, Preventing Plunder*, (Oxford University Press 2012), ch. 5.

⁴ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010), at 1-2.

⁵ *Id.*, at 2-3.

⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, S. TREATY DOC. NO. 108-16, 2237 U.N.T.S. 319 (entered into force Dec. 25, 2003) [hereinafter Trafficking Protocol].

⁷ Trafficking Victims Protection Act, 2000, 22 U.S.C.

⁸ Other international efforts include the 2002 European Trafficking Convention and the 2011 Association of South East Asian Nations Progress Report on Criminal Justice Responses to Trafficking in Persons, see Anne T. Gallagher and Janet Chuang, "The Use of Indicators to Measure Government Responses to Human Trafficking", in *Governance by Indicators: Global Power through Quantification and Ranking*, Kevin Davis, Angelina Fisher, Benedict Kingsbury and Sally Engle Merry (Eds.), 2012, pp. (Oxford University Press), <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199658244.001.0001/acprof-9780199658244-chapter-13>

⁹ On the notion of legal transplantation, which will not be develop here, see, TIL, vol. 10(2).

¹⁰ By 2012, 134 countries added criminalizing offences against all or most forms of human trafficking into their national penal code, and an additional 19 countries added partial criminalization. See UNODC Global Report on Trafficking in Persons, 2012 http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf, at p. 82.

¹¹ Terence C. Halliday, *Recursivity of Global Normmaking: A Sociolegal Agenda*, 5 *Annu. Rev. Soc. Sci.* 263, 284 (2009) ("It still remains quite rare in any discipline for accounts of global normmaking in

component – in comparison to the prevention and prosecution components – within the rich literature on anti-human trafficking legislation and enforcement.¹²

This paper's emphasis on compliance corresponds with the growing attention being paid by researchers of global norm-making to the difference between commitment to international norms and compliance, i.e., between declarations and behavioral actions. One well-known example¹³ is the work of Thomas Risse and Kathryn Sikkink, who offer a theoretical model to explain the conditions under which international human rights regimes – and the principles, norms and rules embedded in them – are internalized and implemented domestically.¹⁴ According to their model, the first step of a domestic socialization to human rights change occurs when a transnational advocacy network succeeds in gathering enough information about a repressive nation-state. In the next stage, the repressive state, which would have been placed on the international agenda of the human rights network, deny the legitimacy of attempts to interfere in its internal affairs. If international pressure continues, the pressured country will move to the third stage, which would include cosmetic changes to the policy in question. These changes are strategic and aimed at easing international pressure. This stage may lead to the flourishing of local groups able to mobilize the international network towards prompting an enduring change in the state's human rights policy; or it may lead to a backlash and increased repression. In the fourth stage, which Risse and Sikkink label 'prescription status', the legitimacy of the human rights norms is acknowledged by all the relevant domestic actors, at least discursively. According to Risse and Sikkink, the domestic-transnational-international networks must maintain the pressure on the targeted state, in order to ensure that the legitimizing discourse will be transformed to the final stage of rule-consistent behavior.¹⁵

The findings reported in this paper can be partially interpreted according to this model of Risse and Sikkink. However, the findings also point to two additional variables relevant to the compliance of states to humanitarian norms, variables overlooked by Risse and Sikkink. One, the power dynamics that exist between powerful states and the pressured sovereign, is discussed in recent literature. The other, concerning the victims of human rights violations, is overlooked. With regards to inter-states power relations, Asif argues that the dynamics of international regulations are shaped by a state's preferences on the one hand, and the distribution of power in the global sphere on the other. First, the state shapes its preferences according to its economic interests, ideology, and internal political struggles. Second, the state interacts, by way of conflict and negotiations, with other states. The international regulation that subsequently emerges will be the outcome of the power

an issue area to give as much attention to national and local politics as the global politics with which it is in tension”).

¹² Daphna Hacker & Orna Cohen, *Research Report: The Shelters in Israel for Survivors of Human Trafficking*, submitted to the US Department of State (2012), 20, available at http://www.hotline.org.il/english/pdf/shelters_in_israel_for_survivors_of_trafficking_eng_310312.pdf.

¹³ This model have been used in several studies, see papers in *The Power of Human Rights* (Thomas Risse, Stephen C. Ropp & Kathryn Sikkink, Eds.) (Cambridge University Press, 1999); and papers in *The Persistence Power of Human Rights, from Commitment to Compliance*, Thomas Risse, Stephen C. Ropp & Kathryn Sikkink, Eds.), Cambridge University Press, 2013.

¹⁴ Thomas Risse and Kathryn Sikkink, “The Socialization of International Human Rights Norms into Domestic Practice: Introduction”, in *The Power of Human Rights* (Thomas Risse, Stephen C. Ropp & Kathryn Sikkink, Eds.) (Cambridge University Press, 1999).

¹⁵ *Id.*, 20-35.

distribution between the states involved. Powerful governments are able to change the preferences of weaker governments by economic and reputation coercion, i.e. by economic sanctions and rewards, and by the intentional tarnishing of the violating state's good name in the global community. One might add military coercion as an additional strategy available to powerful governments, to ensure compliance.¹⁶ All this notwithstanding, history teaches us that even military force cannot guarantee compliance with human rights norms. Indeed, Sonia Cardenas argues that states remain very strong players in the global era and are unlikely to dramatically moderate their sovereignty as a result of external human rights norms.¹⁷

Risse and Sikkink treat theories that center on international power imbalance, or that argue for the dominance of the sovereign, as “alternatives” to their theory.¹⁸ Even though these two kinds of theories are themselves in conflict, I would argue they can and should be perceived as complementary to Risse and Sikkink's model, since the evolvement from the first to the fifth stage in that model is not deterministic nor necessarily linear. As recent studies demonstrates, states can simultaneously commit to and violate human rights norms, and have compliance choices that are determined in the light of internal and external forces.¹⁹ Furthermore, I will offer the term “strategic compliance”, which emerged from the empirical findings, to further problematize the often assumed dichotomy and tension between compliance with international norms and sovereignty. I will show that while Israel was substantially affected by the U.S. incentive regime, shifting its perception of victims of human trafficking from unwanted criminal aliens to victims deserving shelter, it at the same time, managed to preserve its paramount interest in preserving an ethnic immigration policy, by practicing “over” compliance, “schizophrenic” and “hybrid” compliance, and “isolating” compliance.

Israel's strategic compliance raises questions regarding the potential incongruence between the definition of successful protection measures shaped by the anti-trafficking norm-making global forces and the pressured countries on the one hand, and the victims' definition of successful protection on the other hand. Indeed, listening to the victims of human trafficking and immigration-related abuse reveals the different viewpoints and subjective definitions of “successful protection”. Moreover, and notwithstanding the above, I will show that recent developments in the protective measures taken by Israel have been shaped as a direct outcome of the actions taken by the victims of trafficking themselves, highlighting the need to add victims of human rights violations as an explanatory variable into the theoretical models of humanitarian global norm-making. Thus, by providing a rare detailed description of a country pressured by transnational norm-making, this paper contributes to the theoretical discussion concerning the variables that affect

¹⁶ Thomas Risse, Stephen C. Ropp, “Introduction and Overview”, in *The persistence of human rights*, 2013, *supra* note... pp. 3-25.

¹⁷ Sonia Cardenas, *Conflict and Compliance State Responses to International Human Rights Pressure*, (University of Pennsylvania Press, 2007), at 131-132.

¹⁸ At 35-36

¹⁹Cardena, *supra* note....; Marina Zaloznaya and John Hagan “Fighting Human Trafficking or Instituting Authoritarian Control? The Political Co-optation of Human Rights Protection in Belarus”, in *Governance by Indicators: Global Power through Quantification and Ranking*, Kevin Davis, Angelina Fisher, Benedict Kingsbury and Sally Engle Merry (Eds.), 2012, pp. <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199658244.001.0001/acprof-9780199658244-chapter-14>

compliance with these norms, and demonstrates the possibly conflicting definitions of success regarding such norms.

The next part of the paper briefly presents the anti-trafficking normative framework of the Trafficking Victims Protection Act (TVPA), and the current debate over its legitimacy and efficiency. It focuses on the TVPA and not on the Trafficking Protocol because, as will be seen in Part II of the paper, whilst Israel ratified the Trafficking Protocol, it is the TVPA incentive regime that motivated it to act towards the protection of victims of trafficking. Indeed, Israel is but an example of Gallagher and Chuang's claim that the scope, influence and authority of other anti-trafficking global initiatives pale in comparison to the TVPA.²⁰ Part II of the paper will further detail the four compliance strategies used by Israel in face of U.S. pressure to protect victims of trafficking. These strategies minimize the tension between the transnational pressure and the sovereign's interests. Part III of the paper will focus on the victims' perspectives and actions, with the intention of enriching the theoretical discussion concerning compliance by distinguishing between "compliance" and "success", and by highlighting the role of the victims themselves in the global norm-making process.

I. THE TVPA INCENTIVE REGIME

In October 2000, President of the United States of America Bill Clinton signed the TVPA, in an attempt to provide a transnational framework for the solution to the global problem of human trafficking.²¹ The TVPA focuses on "severe forms of trafficking in persons", which are defined as: "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"; and "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".²² The Act is centered on what is called the three P's framework, according to which combating human trafficking must include the **prevention** of trafficking, the **prosecution** of traffickers, and the **protection** of victims of trafficking.²³

Among other measures aimed at eliminating trafficking in humans around the world, the TVPA established a regime of positive and negative incentives, already labeled by scholars as "Carrot and Stick"²⁴ and "tough love".²⁵ On the one hand, the TVPA secures U.S. government funds to support overseas projects aimed at

²⁰ Gallagher & Chuang, *supra* note...

²¹ For the history of the TVPA, see Efrat, *supra* note... at 178-190.

²² Trafficking Victims Protection Act, 2000, 22 U.S.C. § 7101, sec. 103[8][A] & [B].

²³ Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sections to Combat Human Trafficking*, 27 *Mich. J. Int'l L.* 437, 450 (2005-2006); Ayla Weiss, *Ten Years of Fighting Trafficking: Critiquing the Trafficking in Persons Report through the Case of South Korea*, 13(2) *Asian-Pacific L. & Policy J.* 304, 310 (2012). In 2009, a fourth P – Partnership, was added to the first three by State Secretary Hilary Clinton, see <http://www.state.gov/j/tip/4p/partner/index.htm>; Frances Bernat & Tatyana Zhilina, *Trafficking in Humans: The TIP Report*, 5/6 *Sociology Compass* 452, 458 (2011). Matter mentions additional Ps: Provision and Participation, as important pillars of anti-trafficking efforts, see Mohamed Y. Matter, *Comparative Models of Reporting Mechanisms on the Status of Trafficking in Human Beings*, 41 *Vanderbilt J. of Transnational L.* 1355 (2008).

²⁴ Melissa Holman, *The Modern-Day Slave Trade: How the United States should Alter the Victims of Trafficking and Violence Protection Act in Order to Combat International Sex Trafficking more Effectively*, 44 *Tex. Int'l L. J.* 99.

²⁵ Mark P. Lagon, *The Global Abolition of Human Trafficking*, 12 *Geo. J. Int'l Aff.* 89, 94.

combating human trafficking and the rehabilitation of the victims of human trafficking. On the other hand, the Act threatens to sanction countries that do not comply with the “U.S. minimum standards” for eliminating trafficking, by denying foreign assistance from the U.S. government and by opposing assistance that might be provided to non-compliant countries by global financial organizations such as the World Bank.²⁶ The U.S. expects minimum standards to include anti-trafficking legislation relating to all forms of trafficking; punishments for sex traffickers commensurate with that for grave crimes as a deterrence for all severe forms of trafficking; and “serious and substantial efforts to eliminate severe forms of trafficking in persons”, including, among other measures, investigation, prosecution, reporting to the U.S. government, protection of victims, and co-operation with other governments.²⁷

This supervision regime is based, first and foremost, on the U.S. State Department’s Annual Trafficking in Persons Reports (TIP Reports), which ranks nations in three tiers according to their compliance with the U.S. minimum standards. Countries that maintain an adequate struggle against human trafficking within their borders are placed in the top tier. Countries that have taken tangible steps to combat trafficking, but fail to meet the minimum standards are classed in the second tier, which also includes a secondary category, the Watch List. The Watch List serves as a warning to nations that are liable to be demoted to the third and lowest tier. The third tier includes countries that are not making adequate efforts to address trafficking in their territory. Placement in the third tier can lead to the imposition of the above-mentioned economic sanctions.²⁸

The attempt by the U.S. to regulate and monitor the response of other countries to human trafficking has earned it titles such as the “watchdog of human trafficking around the world”,²⁹ and a self-appointed “global sheriff”.³⁰ More importantly, this effort has prompted debate concerning the legitimacy of this approach, as well as some efforts to evaluate its effectiveness. On the one hand, Bernat and Zhilina argue that the TVPA and the TIP Reports are a success, since they successfully nudged the attention of governments towards the issue of human trafficking by collecting data, encouraging discourse, and threatening sanctions through the Tier 3 status stigmatization.³¹ Likewise, Chuang³² and Gallagher³³ have argued convincingly that the unilateral economic sanctions regime motivated an unprecedented number of countries worldwide to pass anti-trafficking laws and to develop a domestic infrastructure that met the U.S. minimum standards.³⁴

²⁶ Susan W. Tiefenbrun, *Sex Slavery in the United States and the Law Enacted to Stop It Here and Abroad*, 11 *Wm. & Mary J. Women & L.* 317 (2004-2005); Chuang 2005-2006; Ann T. Gallagher, *Improving the Effectiveness of the International Law of Human Trafficking: A vision for the Future of the US Trafficking in Persons Report*, 12 *Hum. Rights Rev.* 381 (2011); Chuang, *supra note...*

²⁷ 22 U.S.C. § 7106.

²⁸ Sarah Leevan, *Comparative Treatment of Human Trafficking in the United States and Israel: Financial Tools to Encourage Victim rehabilitation and Prevent Trafficking*, 6 *Cardozo Pub. L. Pol’y & Ethics J.* 773 (2008).

²⁹ Leevan, *id.* at 775.

³⁰ Chuang, *supra note...*

³¹ *Supra note...*

³² *Supra note...*

³³ *Supra note...*

³⁴ Notwithstanding, Chuang has found that until 2007, the reports gave more credit to governments that made an effort to combat sex trafficking than to those who focused on trafficking for non-sexual purposes, and that only since the 2007 report and thereafter did the reports also highlight the need to

Claims for the positive impact of the TVPA are also supported by a relatively systematic investigation conducted by Tiefenbrun.³⁵ She attempted to measure the impact of the TVPA through the analysis of official U.S. documents, interviews with U.S. officials, and available statistics concerning the numbers of victims of human trafficking and the numbers of criminal prosecutions and assistance programs. She concludes that “there is no doubt that the TVPA in general, and the Department of State TIP Reports in particular, have had a small but positive effect on many foreign governments”.³⁶ This effect is manifested by the substantial U.S. funding of foreign anti-trafficking programs, and in the worldwide increase in anti-trafficking legislation and convictions of traffickers. Tiefenbrun, as others,³⁷ also interprets the move of several countries from lower to upper tiers as additional evidence of the TVPA’s positive impact.³⁸

On the other hand, there are scholars who accuse the U.S. of using the reports as a mechanism to label the non-western world as a deviant “Other” and to mask domestic trafficking and abuse,³⁹ and who claim that the U.S. sets a higher standard for other countries than it does for itself.⁴⁰ Critics also suggest that the uniform solution imposed on all foreign countries is not sensitive enough to specific national socio-economic and cultural characteristics, and consequently is liable to cause harm to those it allegedly seeks to rescue.⁴¹ Moreover, some argue that the methodology utilized in the reports is faulty,⁴² and that the ranking – and hence the attendant sanctions – are biased and manipulated due to U.S. political interests.⁴³

An illuminating example that supports these critical claims is Weiss’s study of South Korea’s ranking.⁴⁴ Though South Korea did not have an anti-trafficking law until 2004, it was moved from Tier 3 to Tier 1 in 2002. It has continued to enjoy the highest tier ranking ever since. Weiss argues that this is so even though South Korea does not comply with the U.S. minimum standards, given that it criminalizes only sex-related trafficking, does not have severe and deterring punishments for sex traffickers, and does very little to block trafficking demand, which comes particularly from U.S. military bases located on South Korean territory. Weiss claims that South Korea’s high tier ranking – like the high tier ranking of the U.K., Sweden and Germany, who also lack laws that target non-sexual trafficking – is evidence that “being a U.S. ally can be an unspoken positive factor in a country’s ranking”.⁴⁵

combat labor trafficking. See Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 *Uni. Penn. L. Rev.* 1655 (2010).

³⁵ *Supra* note...

³⁶ *Id.*, at 271.

³⁷ For example, Holman, *supra* note...

³⁸ Tiefenbrun, *supra* note..., at 371.

³⁹ Jonathan Todders, *Law, Otherness, and Human Trafficking*, 49 *Santa Clara L. Rev.* 605 (2009).

⁴⁰ Dina Francesca Haynes, (Not) Found Chained to a Bed in a Brothel: Conceptual, Legal and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act, 21 *Geo. Immigr. L. J.* 377 (2006-2007). It was only in 2010 that the U.S. included itself in the U.S. State Department’s Annual Trafficking in Persons Report; it has ranked itself, ever since, in the top category of Tier 1, see Bernat & Zhilina, *supra* note...

⁴¹ Rachel Salazar Parrñas, *Trafficked? Filipino Hostesses in Tokyo’s Nightlife Industry*, 18 *Yale J. L. Feminism* 145 (2006).

⁴² See discussion at Bernat & Zhilina, *supra* note..., at 455-457.

⁴³ Haynes, *supra* note...

⁴⁴ *Supra* note...

⁴⁵ *Id.*, at 337.

An even harsher criticism against the U.S. transnational anti-trafficking attempts is voiced by Zaloznaya and Hagan, who studied anti-trafficking practices in Belarus. Based on their findings, they argue that the Belarusian government performs an anti-trafficking “crusade” to consolidate its authoritarianism,⁴⁶ and to mask its ongoing human rights violations from the international community.⁴⁷ The TIP reports fail to acknowledge these motivations and their harmful outcomes, and grant the Belarusian government legitimation it does not deserve. Hence, Zaloznaya and Hagan argue, the Belarus case study demonstrates the ability of oppressive regimes to reverse the usual power dynamics between the ranker and the ranked, to the advantage of the latter.

The debate between the supporters of the TVPA and its critics notwithstanding, it is clear that there is very little empirical knowledge about its impact on different countries beyond the number of anti-trafficking laws and criminal procedures against alleged traffickers.⁴⁸ Especially neglected is the aspect of the protection of victims of trafficking. This aspect of the three P’s must include, under the U.S. guidelines, three R’s: **R**escue, **R**ehabilitation and **R**eintegration.⁴⁹ Arguably, this component of combating human trafficking is the most complex of the three P’s, not only because the task is very demanding in itself, but also because it does not overlap with a nation’s common interests in minimizing crime and in preventing illegal immigration, as prevention and prosecution do.⁵⁰ To the contrary, since in many cases trafficking includes a move from the victim’s country of origin to another country,⁵¹ and since the latter country is expected to address the victim’s needs of rescue and rehabilitation – at least until reintegration into the country of origin is possible⁵² – a conflict is created between the protection of the victims as demanded by U.S. standards, and the country of destination’s interest in protecting its borders from “illegal immigrants”. Indeed, in a review conducted in 2011, Cho, Dreher and Neumayer found that all around the world, trafficking victims’ protection policies are

⁴⁶ For example, in the name of anti-trafficking efforts, the government legislated laws that restrict Belarusian citizens’ freedom of movement, expression and occupation, see Zaloznaya & Hagan, *supra* note....

⁴⁷ Zaloznaya & Hagan call the Belarusian government’s compliance with anti-trafficking norms “selective compliance strategy”.

⁴⁸ Gallagher & Chuang, *supra* note... (there is little data on the TIP reports impact in the different countries and “the limited research undertaken thus far provides little useful guidance on this point”). This is part of a more general empirical lacuna related to the national and local axes of the “glocal”, see Terence C. Halliday, *Recursivity of Global Normmaking: A Sociolegal Agenda*, 5 *Annu. Rev. Soc. Sci.* 263, 284 (2009) (“It still remains quite rare in any discipline for accounts of global normmaking in an issue area to give as much attention to national and local politics as the global politics with which it is in tension”).

⁴⁹ <http://www.state.gov/j/tip/rls/tiprpt/2009/123123.htm>

⁵⁰ In a similar vein, Halley and her colleagues argue that the states that ratified the Trafficking Protocol were chiefly concerned with transnational crime and illegal immigration and not with human rights or workers’ rights, and that indeed, with regard to trafficking victims’ protection, the Protocol uses mostly non-binding formulation. Delegates from destination countries rejected proposed mandatory obligations to safeguard the human rights of non-nationals, preferring instead to leave such protections to the discretion of each state. See “Introduction”, in *GOVERNANCE FEMINISM: AN INTRODUCTION* (Janet Halley, Prabha Kotiswaran, Rachel Rebouche and Hila Shamir, Eds.), forthcoming at Minnesota University Press.

⁵¹ Chuang, *supra* note..., at 438; Vanessa E. Munro, *Stopping Trafficking? A Comparative Study of Responses to the Trafficking in Women for Prostitution*, 46 *Brit. J. Criminol.* 318 (2006).

⁵² Kelly E. Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 *Berkley Women’s L. J.* 29 (2001); Marie Segrave, Senja Milivojevic & Sharon Pickering, *SEX TRAFFICKING INTERNATIONAL CONTEXT AND RESPONSE*, (William Publishing 2009).

significantly less developed and are slowest to improve, when compared with anti-trafficking prevention and prosecution policies.⁵³ This is so even though the TVPA was ahead of the international community in trying to develop compliance indicators related to victims' protection, and the TIP reports' move, in recent years, even beyond the TVPA formal indicators in identifying "protection" as a central platform of their policy approach.⁵⁴

Hence, looking at Israel's response to the expectation to protect victims of trafficking is a good case study to explore the alleged competing compliance theories presented in the Introduction, as well as the concrete debate over the TVPA success. Indeed, the study reported here follows Chuang's call for qualitative research to measure whether the actions taken by governments result from a genuine commitment to the eradication of human trafficking and the internalization of anti-trafficking norms, or merely serves as expedient cover against the threat of U.S. economic sanctions.⁵⁵ For now, I will accept Chuang's argument that this is the appropriate test of the success of the TVPA and the TIP Reports, and will return to the "success" definition after detailing the methodology of the study and its findings regarding Israel's compliance strategies.

II. THE ISRAELI CASE STUDY

A country that found it much harder to climb the tier ladder than South Korea – even though it is also a U.S. ally⁵⁶ – is Israel. In its first TIP Report, published in 2001, the U.S. placed Israel in the lowest tier, stating that "Israel is a destination country for trafficked persons, primarily women. [...] The Government of Israel does not meet the minimum standards for combating trafficking in persons, and has not yet made significant efforts to combat the problem, although it has begun to take some steps to do so."⁵⁷ Between 2002-2011 Israel was placed in Tier 2,⁵⁸ and in 2006 was even warned against a return to Tier 3 by placement on the "Watch List", due to "its failure to provide evidence of increasing efforts to address trafficking, namely the conditions of involuntary servitude allegedly facing thousands of foreign migrant workers."⁵⁹ This was so even though Israel had taken many anti-trafficking steps during this period, and since 2008 had been an exceptional example of a country that had managed to almost completely eliminate sex-related trafficking into its territory.⁶⁰ It

⁵³ Seo-Young Cho, Axel Dreher and Eric Neumayer, *The Spread of Anti-Trafficking Policies – Evidence from a New Index*, CESifo Working Paper no. 3376, 2011.

⁵⁴ Gallagher & Chuang, *supra* note... (this is in comparison to the Trafficking Protocol, in which "the international legal obligation on states to protect and support victims of trafficking was only vaguely recognized and almost entirely devoid of substantive content"). See, also, *supra* note 50. An example, especially relevant to this paper is the "Care Principles for Shelters Programs", published in the 2010 TIP report, see <http://www.state.gov/j/tip/rls/tiprpt/2010/142750.htm#8>, which is part of what Gallagher & Chuang call "shadow indicators".

⁵⁵ Chuang, *supra* note... at 465.

⁵⁶ Gabriel Sheffer (Ed.), *U.S- ISRAELI RELATIONS AT THE CROSSROADS*, London: Frank Cass, 1997; Mark R. Clyde, "Israel-United State Relations, in *ISRAELI-UNITED STATES RELATIONSHIP*, JOHN E. LANG (EDITOR), 2006. Nova Science Publishers, Inc. New York. Pp: 21-41.

⁵⁷ <http://www.state.gov/j/tip/rls/tiprpt/2001/3930.htm>. For further reading on the subject of women trafficked to Israel for prostitution, see: Gabriel Cavaglion, *Trafficking in Women for Sex in a Global Context: The Case of Israel*, in *WHO PAYS THE PRICE? FOREIGN WORKERS, SOCIETY, CRIME AND THE LAW 201* (Mally Shechory, Sarah Ben-David & Dan Soen, eds., 2010).

⁵⁸ For all the TIP Reports, see, <http://www.state.gov/j/tip/rls/tiprpt/index.htm>

⁵⁹ <http://www.state.gov/j/tip/rls/tiprpt/2006/index.htm>

⁶⁰ Hacker & Cohen, *supra* note... , at 43-44 & 62.

was only in 2012 that Israel secured placement in Tier 1, retaining this placement in the most recent report, in 2013.⁶¹

The study reported here sheds light on the action taking place in the shadow of the U.S. norms-making and ranking, from the perspective(s) of the pressured country. The focus here is on one of the P's – the protection of victims of human trafficking – and within it, particularly on one of the R's, rehabilitation.⁶² Notwithstanding, as will become clear from the findings, protection of the survivors of trafficking interrelates with trafficking prevention and with the prosecution of traffickers, and the rehabilitation of survivors depends upon their rescue and reintegration. Hence, while the study follows the U.S. dichotomous terminology, it also demonstrates its superficiality.

Due to the complex and dynamic nature of the research field, the study relied on qualitative research tools that allowed for the in-depth, holistic and naturalistic investigation of practices and justifications.⁶³ Interviews were conducted with two groups: (1) Policy makers and professionals in official bodies and in nongovernmental organizations who participated in the development and execution of, or challenges to, the policy relating to the rehabilitation of victims of human trafficking in Israel (n=16); (2) Women (n=15) and men (n=15) residing in the two Israeli shelters designated to survivors of human trafficking at the time of the interview, or who had resided in them in the past. In addition, group discussions were held with the social workers employed at the shelters, and extensive written materials, including laws, Parliament protocols, governmental decisions, ministerial directives, court decisions and official and Non-Governmental Organization (NGO) reports, as well as the sections on Israel in all the TIP Reports, were analyzed.⁶⁴ Forty of the forty-six interviews were recorded and transcribed, and were analyzed together with stenographs of the other interactions and with the legal documents and reports. In order to enhance the reliability of the findings, they were sent to key informants before theorization, and insights gained from their feedback were integrated into the data.⁶⁵ The findings reported here were gathered mostly during 2010-2011. Since the research field is highly dynamic, it is possible that some aspects have already changed, justifying additional and ongoing research. Indeed, in the final part of the paper I will discuss a very recent development within the research field, which although not thoroughly investigated, is so significant that it could not be ignored.

⁶¹ For all TIP Reports' reviews of Israel, see *supra* note 58.

⁶² Some of the project's findings were published as part of an evaluation report that was submitted to the U.S. Department of State, see Hacker & Cohen, *supra* note...

⁶³ On qualitative research in general, see Norman K. Denzin & Yvonna S. Lincoln (Eds.), *THE SAGE HANDBOOK OF QUALITATIVE RESEARCH* (Sage: 2011). On qualitative research in law, see Lisa Webley, *Qualitative Approaches to Empirical Legal Studies*, in *THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH* (Peter Cane & Herbert M. Kritzer Eds.), (Oxford, 2011), pp. 926-950.

⁶⁴ On the challenges in studying trafficking victims and the importance of using multiple research tools while gaining the trust of victims, officials and activists, see Julie Cwikel and Elizabeth Hoban, *Contentious Issues in Research on Trafficked Women Working in the Sex Industry: Study Design, Ethics, and Methodology*, 42(4) *The J. of Sex Research* 306 (2005); Mary Bosworth, Carolyn Hoyle and Michelle Madden Dempsey, *Researching Trafficked Women: On Institutional Resistance and the Limits of Feminist Reflexivity*, 17(9) *Qualitative Inquiry* 769 (2011). While not without difficulties, we were fortunate to receive effective cooperation from all relevant informants.

⁶⁵ On trustworthiness in qualitative research and ways to enhance it, see Yvonna S. Lincoln & Egon G. Guba, *But Is It Rigorous? Trustworthiness and Authenticity in Naturalistic Evaluation*, 30 *New Directions in Evaluation* 73 (1986).

A. The Dominance of U.S. Pressure

Israel became a destination for sex trafficking in the mid-1990s, and until 2008 – when Israel managed to defeat this kind of trafficking – the sex industry smuggled thousands of women from the former USSR to Israel.⁶⁶ In November 1997, an NGO called the Israel Women’s Network published the first report on the phenomenon.⁶⁷ In the recommendation section of the report, the NGO urged the Israeli government to stop jailing victims, and rather to provide them with social services and assistance. Three years later, in May 2000, Amnesty International published a report documenting sex trafficking in Israel, blaming the Israeli government for failing to address the problem and for violating the victims’ human rights. Among other recommendations, the report urged Israel to recognize trafficked women as victims rather than as offenders, to protect them and to open a shelter where they could live while awaiting deportation. The report also called for victims to be provided with legal aid, psychological counseling and medical services.⁶⁸ A month later, Member of the Israeli Knesset (Parliament) Zehava Galon managed to convince the Israeli Parliament to establish a special committee to investigate the phenomena of trafficking in women.⁶⁹ In her interview for this study,⁷⁰ she recalled that it was a television item that showed an “auction” – in which women smuggled into Israel were bought by pimps – which motivated her to look into the matter, even though she was very much ignorant about the magnitude of the phenomena.⁷¹ In July 2000, several months before the TVPA was enacted, the Israeli Parliament added a new offence to its penal code, which criminalized trafficking for the purpose of prostitution.⁷²

In September 2000, the Israeli Attorney General at the time, Elyakim Rubenstein, initiated a multi-ministerial team to discuss the phenomenon of trafficking in women in Israel. The team members included high-ranking officials from the Ministry of Justice, the Police, the Interior Ministry, the Labor and Welfare Ministry, and the Ministry of Foreign Affairs.⁷³ During the team’s deliberations,

⁶⁶ Limor Ezioni, *The Legal Change in the Trafficking in Women Offence in Israel: The Practical Future Goes through the Theory*, 6 *Sharie Mishpat L. Rev.* 161 (2013); Nomi Levenkron & Yosi Dahan, *A WOMAN FOR SALE, TRAFFICKING IN WOMEN IN ISRAEL*, 2003, 19, (Hotline for Migrant Workers, I’sha Le’isha Haifa, Adva Center, 2003), *available at* http://www.hotline.org.il/hebrew/pdf/Women_as_Commodities_Trafficking_in_women_in_Israel_2003_Heb.pdf [Hebrew].

⁶⁷ Martina Vandenberg, *Trafficking of Women to Israel and Forced Prostitution: A Report*, The Israeli Women’s Network, (1997), (also published in Hebrew). An excerpt of the report was also published at 17(5) *Refuse* 26, and is *available at* <http://pi.library.yorku.ca/ojs/index.php/refuge/article/viewFile/21990/20659>.

⁶⁸ *Women Rights Abuses of Women Trafficked from Countries of the Former Soviet Union into Israel’s Sex Industry*, (Amnesty International, 2000), (also published in Hebrew), *available at* <http://www.amnesty.org/en/library/asset/MDE15/017/2000/en/2f2fb1c7-df52-11dd-89a6-e712e728ac9e/mde150172000en.pdf>

⁶⁹ See, http://www.knesset.gov.il/committees/heb/docs/sachar_main.htm

⁷⁰ Interview conducted in January 11, 2011.

⁷¹ Indeed, this item by Gal Gabai, was broadcasted on February 1, 2000, on Israeli television station Channel 2, and had already been discussed the next day at the Knesset plenum, with Member of Knesset Galon and others appalled by what they saw and calling for the elimination of sex trafficking into Israel. See Knesset protocol, February 2, 2000 [all Israeli legal materials and analyzed artifacts are in Hebrew, unless mentioned otherwise].

⁷² *Penalty Code (Amendment no. 56)*, 2000, article 2 (article 203A of the Code).

⁷³ *The Report of Inter-Ministerial Team for the Coping with and Monitoring of the Phenomena of Trafficking in Women for Prostitution*, Jerusalem, November 21, 2002, at 3, *available at* <http://zik.co.il/3pe>.

several court decisions criticized the State authorities for imprisoning victims of trafficking whilst awaiting the opportunity to testify against the traffickers; the courts ordered that they should be released and provided with livelihood resources. These decisions made the authorities change their policy. While victims who were not willing to testify were deported immediately, those who participated in legal proceedings against the trafficker were to be placed in a hostel.⁷⁴ Moreover, in November 2001 the Israeli government signed the United Nations Trafficking Protocol,⁷⁵ which shares the three P's framework with the U.S.'s TVPA, whilst offering a wider definition of trafficking.⁷⁶

In the introduction to the Inter-Ministerial Team's Report, submitted in November 2002, we find a reflexive and remorseful statement:

“This report is written with the background of a conceptual revolution in Israeli society. Society has moved from an ambivalence towards prostitution in general to an unequivocally severe attitude against trafficking in women for prostitution. [...] we are witnessing the first signs of another revolution, and this is in society's attitude towards the victims of trafficking of women. When the phenomenon was first detected, the enforcing authorities did not treat these women as victims who need special aid, but as illegal aliens that should be deported from Israel as soon as possible. This treatment led to their arrest and placement in detention centers and the women's jail, until their removal from the country. The state did not develop special assistance services for these victims, and did not shape techniques to encourage them to submit complaints in an active and systematic manner. However, in recent years we have witnessed a growing and deepening shift in this treatment, and a growing recognition that these women are first and foremost felony victims, whom one must hurry to assist”.⁷⁷

One of the team's recommendations was to establish a special shelter for female victims of sex trafficking, where they would receive emotional, social, medical and legal assistance, and would be encouraged to testify against their traffickers. This recommendation was adopted shortly afterwards by the Israeli government.⁷⁸

One might expect that the reports from the Israeli Women's Network and Amnesty International, media coverage of the trading in women's bodies for prostitution, and certainly Israeli courts decisions and the Trafficking Protocol and its signing, would be credited for this change of heart and protective measures. However, the research findings demonstrate clearly that it was U.S. pressure, manifested by

⁷⁴ In 2001, 62 women stayed at hostels while awaiting for testimony. In 2002, the number rose to 130. See data, discussions and references to unpublished court decisions in the Report of the Inter-Ministerial Team, *supra note...*, 14; Levenkron & Dahan, *supra note...*, at 57. However, the Parliament Investigation Committee on Women Trafficking found that although new directives were issued mandating placement in hostels to all victims of trafficking awaiting testimony, the police continued to arrest and detain many of them, see Final Report, March 2005, *available at* http://www.knesset.gov.il/committees/heb/docs/sachar_final2005.htm.

⁷⁵ Israel ratified the Protocol in July 23, 2008, see Official Treat Translations, vol. 56, at 1.

⁷⁶ Bernat & Zhilina, *supra note...*

⁷⁷ The Report of the Inter-Ministerial Team, *supra note...*, at 4.

⁷⁸ Decision 2806 of the 29 Government, “Establishment of a Shelter for the Victims of Human Trafficking for the Purpose of Prostitution” (December 1, 2002).

Israel's placement on the lowest tier in the first TIP Report published during the team's deliberation in July 2001, which prompted Israel to move from treating the foreign women working in the sex industry as unwanted criminal aliens to perceiving them as victims deserving shelter. Ada Pliel-Trossman, a member of the Inter-Ministerial Team on behalf of the Labor and Welfare Ministry⁷⁹, and who later supervised the shelters, reflected on the work of the team:

“The issue of women being trafficked for prostitution came up, and swiftly captured the public's imagination, along with the U.S. Department of State initiative that marked and graded countries concerning this. And we were awarded the lowest grading. [...] And then the matter of the U.S. Report came up, which stated that if we were not upgraded by at least one tier there will be economic sanctions on Israel. This was taken quite seriously.”⁸⁰

Similarly, when we asked other interviewees what motivated Israel to assist trafficking victims, there was a consensus among officials, professionals and activists that: “The treatment of victims of human trafficking started with American pressure that we do something about it”;⁸¹ “It started with the Americans, the Americans pressured us into establishing the shelter”;⁸² “Enormous pressure by the U.S. government. We were told that the Americans are threatening to reduce the foreign aid and that a shelter must be opened”.⁸³ Hanny Ben Israel, a lawyer from one of the leading NGOs campaigning for the rights of migrant workers, went as far as to argue that: “It started with the Americans. Only with the Americans. There was no internal motivation to assist immigrants in cases of severe exploitation”.⁸⁴

Interestingly, some of the interviewees who stated these and similar comments asked not to be mentioned by name in connection with this point, as though the Israeli fear of U.S. sanctions and the impact of the TIP Report on Israeli human trafficking policy is a secret or an embarrassment. This was so even though scholars reported their observations that Israeli anti-trafficking actions were first and foremost motivated by the fear of U.S. sanctions under the TVPA, long before the interviews with these informants took place.⁸⁵ Moreover, in the Inter-Ministerial Team Report itself, the team takes pride in the fact that due to the cooperation it initiated among different state organs and the information flow and new initiatives that this cooperation led to, the U.S. State Department upgraded Israel from Tier 3 to Tier 2 in its second report, published five months before the team's report was submitted.

⁷⁹ This Ministry was later split into the Ministry of Industry, Commerce and Employment (and is now called the Ministry of Economy), and the Ministry of Social Affairs and Social Services. As will be detailed below, the latter is now responsible for the shelters for victims of human trafficking.

⁸⁰ Interview conducted in December 20, 2010.

⁸¹ The interviewee asked to remain anonymous on this point.

⁸² Michal Yosef, the Head of the Border Control and Crossings Unit within the Population and Migration Authority, interview conducted on January 5, 2011.

⁸³ The interviewee asked to remain anonymous on this point.

⁸⁴ Interview conducted on November 25, 2010.

⁸⁵ Limor Gad, *From “Importing Prostitute” to “Women Trafficking”*: Glocal Discourse Patterns in the Struggle against Women Trafficking in Israel, MA Thesis, Hebrew University, Movement 2005, at 53; Hila Shamir in Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/ Sex Work and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29(2) *Harvard Journal of Law & Gender* 335, 362-364 (2006); Leevan, *supra note...*

Notwithstanding, the wish of several interviewees to keep their statements about U.S. pressure “off the record” correlates with Gad’s conclusion, informed by the 2002 Knesset discussions, that Israel’s elected representatives wished to portray the “conceptual revolution” in relation to the victims of sex trafficking as an independent Israeli development and as proof of its humanistic character, rather than the outcome of international pressure.⁸⁶ Moreover, the interviewees’ embarrassment in admitting the US impact corresponds with Efrat’s conclusion that the Israeli authorities’ response to the TIP report was motivated first and foremost by the fear of reputation coercion, i.e., the tarnishing of Israel’s image as an enlightened, democratic and law-abiding country that respects human rights.⁸⁷ According to Gallagher and Chuang, Israel is not alone in this, as “governments worldwide appear to be very concerned over how well they rank according to US standards and about the reputational impact of their respective ranking”.⁸⁸

U.S. involvement in the establishment of the shelter for trafficked women was not only through the “stick” of the TIP Reports, but also through a “carrot”. Member of Knesset Zehava Galon recalled in her interview that she fought reluctantly for the establishment of the shelter for victims of sex trafficking, and that she “pressed the Americans” to become more involved. Indeed, although the government agreed to the establishment of the shelter, “nothing happened until the Americans’ assistance, until the Americans gave \$200,000”.⁸⁹ Rachel Gershoni, National Anti-Trafficking Coordinator on behalf of the Ministry of Justice during the relevant period, also recalls that it was this sum given by the U.S. government that helped turn the Israeli governmental decision to establish the shelter in 2002 into a reality two years later, with the establishment of the *Ma’agan* (Harbor) shelter for trafficked women in 2004.⁹⁰

The strong impact of U.S. pressure on the Israeli authorities’ attention to victims of human trafficking emerged from the data once again in relation to the establishment of *Atlas* – the shelter for male victims of human trafficking. As mentioned above, in June 2006 the TIP Report cautioned Israel against falling back from Tier 2 to Tier 3 and placed it in the “Watch List”, due to its alleged failure to address the trafficking of foreign migrant workers.⁹¹ Indeed, since the 1990s, Israel has been a destination country for hundreds of thousands of labor migrants,⁹² some exposed to severe exploitation at the hands of their employers.⁹³ However, Israel only

⁸⁶ Gad, *supra* note...

⁸⁷ P. 205

⁸⁸ *Supra* note... at 340.

⁸⁹ Galon also recalls her “use of the Americans” to embarrass the Israeli government and to make it take the American sanctions threat seriously. She did so by inviting U.S. officials to discussions at the Parliament Investigation Committee on Women Trafficking. She especially recalls the media attention that the visit to the committee of the U.S. Ambassador to Israel received. See *supra* note...

⁹⁰ Interview conducted in November 30, 2010.

⁹¹ <http://www.state.gov/j/tip/rls/tiprpt/2006/index.htm>

⁹² In 2008, it was estimated that 115,000 documented and 107,000 undocumented migrant workers lived in Israel. See Gilad Natan, LABOR MIGRANTS AND VICTIMS OF HUMAN TRAFFICKING: GOVERNMENTAL POLICY AND THE ACTIVITIES OF THE IMMIGRATION AUTHORITY, Knesset Research and Information Center, 2009, available at <http://www.knesset.gov.il/mmm/data/pdf/m02294.pdf>. This is about 10% of the Israeli labor force, see

http://www.cbs.gov.il/reader/shnaton/templ_shnaton.html?num_tab=st12_01x&CYear=2013.

⁹³ Unlike in the case of victims of sex related trafficking – which are perceived as such by the mere fact that they are non-Israeli sex workers – the recognition of a non-sex related labor migrant as a victim of trafficking, slavery or forced labor, is a concrete factual one. Hence, unlike the estimates concerning

began to substantially address this problem after the 2006 TIP Report. Four months after the report, in September 2006, it enacted the Prevention of Human Trafficking Law, establishing the principal that the trafficking of humans, detention in conditions of slavery and forced labor would be deemed criminal offenses, with penalties ranging from seven to twenty years' imprisonment. The law also encourages the award of compensation for victims as part of criminal proceedings against the trafficker, and states that a fund is to be established to this end, into which the proceeds from property confiscated from traffickers are to be deposited, and thereafter distributed to victims who cannot execute a compensation decision received against their trafficker. The law further establishes that the state will provide victims of trafficking and slavery with free legal aid.⁹⁴ Moreover, in February 2007 the Israeli government agreed to adopt the National Plans to Combat Human Trafficking, prepared by a special committee of the General Managers of the relevant Ministries, including its recommendation to establish a rehabilitation shelter for victims of slavery, trafficking for slavery and trafficking for forced labor.⁹⁵

These substantial efforts did not go unnoticed by the U.S. government, who acknowledged them in the 2007 report. This report left Israel in Tier 2 but removed the country from the Watch List. Still, Israel was rebuked for not providing "forced labor victims with adequate protection services, such as shelter." It took an additional two years for the shelter for victims of slavery and trafficking for slavery and for forced labor to be established, and as in the case of Ma'agan, the interviewees stated that they doubt it would have been established without ongoing U.S. pressure. Ada Pliel-Trossman recalls:

"The American reports [stated] - you are taking very good care of women who were hurt by sex trafficking, you have done well, but what about slavery? - So we scored less points because of the slavery. So we had another brain storming session, and we concluded: if there are also women in slavery, and if the issue of sex trafficking lessens, then we will have one shelter for women that will cater to both kinds (of exploitation), and one shelter for men."⁹⁶

Interestingly, Nomi Levenkron, a leading anti-trafficking activist lawyer, argued in her interview that U.S. pressure harms women in prostitution since it leads to police raids and violence.⁹⁷ Furthermore, Adv. Hanny Ben Israel claimed that the

the number of women who were trafficked to Israel, there are no reliable estimates of the number of labor migrants who have been abused by their Israeli employers. Whether the abuse that does occur amounts to human trafficking or slavery is a point of contention between the Israeli authorities and NGOs, see Hacker & Cohen, *supra note*...., at 64-66; Letter from Hanny Ben Israel, Workers' Hotline, to Rachel Gershoni, National Anti-Trafficking Coordinator, January 17, 2010, on file with author.

⁹⁴ Prohibition of Trafficking in Persons Law (Legislative Amendments), 5767-2006, unofficial translation available at <http://www.hsph.harvard.edu/population/trafficking/israel.traf.06.pdf>.

⁹⁵ Government Decision 2670, February 2, 2007, available at <http://www.pmo.gov.il/Secretary/GovDecisions/2007/Pages/des2670.aspx>.

⁹⁶ *Supra note*...

⁹⁷ This argument is also made by Hila Shamir, "Anti Trafficking in Israel: Nationalism, Borders, Markets", in *GOVERNANCE FEMINISM: AN INTRODUCTION* (Janet Halley, Prabha Kotiswaran, Rachel Rebouche and Hila Shamir, Eds.), forthcoming at Minnesota University Press. As in other parts of the world, while most of the feminist Israeli movement opposes prostitution and calls for an uncompromising battle against it, there are alternative voices pointing to the harms caused to women in prostitution through its criminalization. While prostitution in itself is not criminalized under Israeli law,

focus of the U.S. on the extreme cases of trafficking allows for the abandonment and deportation of the many victims of the not so severe manifestations of labor migration abuse caused, among other factors, by the state itself.⁹⁸ Another interviewee – who asked to remain anonymous on this point – criticized the U.S. 2010 TIP Report for failing to recognize Israel’s success in stopping sex trafficking and the free legal aid provided to the victims. This interviewee – as well as Superintendent Raanan Caspi, who was responsible for the field of human trafficking in Israel on behalf of the Police National Investigations Office between 2002-2010 – also suggested that Israel is more harshly judged by the U.S TIP Reports when compared to other countries.⁹⁹ This anonymous interviewee explained that if the Reports were perceived by the Israeli authorities as unreliable, the authorities would be less motivated to comply with U.S. standards. However, these interviewees did not question the basic legitimacy of the US to interfere in Israel’s internal affairs; like the other interviewees, who voiced no criticism over the U.S. incentive pressuring regime, they accepted the rules of the framework of this transnational political game as a given.¹⁰⁰

And so, thanks to U.S. pressure, since 2009 Israel has operated two shelters for victims of human trafficking and slavery, one for women and one for men.¹⁰¹ The shelters are designated for non-Israelis, who can be admitted to their sanctuary if the

the criminalization of related phenomena such as trafficking, pimping and soliciting exposes women in prostitution to police raids and to detention. For a review of the different feminist positions towards prostitution and their normative, factual and strategic disagreements, as well as for a claim that Israeli authorities unintentionally create a hybrid attitude towards prostitution, of partial abolition and tolerating institutionalization, see Hila Shamir, *Feminist Attitudes to the Regulation of prostitution: A Sympathetic View on the Gap between Law on the Books and Law in Action*, in Regulations, David Levi Faur, Yishai Blank and Roy Kreitner (Eds.), Law, Society and Culture Series, (forthcoming, 2014)[Hebrew].

⁹⁸ This claim echoes the argument made by several scholars that singling out human trafficking while ignoring it being an extreme end of a spectrum of labor, gender and immigration related exploitations, to which nation states contribute by their labor and immigration laws, results in the assistance to the very few and the forsaking of the many to discrimination, exploitation, and oppression. See, for example, Catherine Dauvergne, Globalization Fragmentation: New Pressures on Women Caught in the Immigration Law-Citizenship Law Dichotomy, in *MIGRATION AND MOTILITIES, CITIZENSHIP, BORDERS, AND GENDER* (Seyla Benhabib and Jusith Resnik Eds.) 333-355, 342-344 (N.Y.Uni. Press, 2009); Hila Shamir, A Labor Paradigm for Human Trafficking, 60 *UCLA Law Review* 76 (2012-2013).

⁹⁹ Interview conducted on December 22, 2010.

¹⁰⁰ Following the completion of our field work, we heard, in informal conversations with activists, the argument that Israel’s upgrading to the upper tier in 2011 was not solely due to its anti-trafficking efforts, but rather a consequence of the U.S. political decision to upgrade Egypt and its political inability to leave Israel below Egypt. We have no information to validate or refute this claim, but it is an indication that some Israeli activists share the claim found in the literature on the politicization of the TIP Reports, see *supra note...*, and perceive both Israel’s and Egypt’s location at the upper tier inappropriate.

¹⁰¹ The 2007 governmental decision to establish a shelter for victims of slavery and trafficking for slavery and forced labor also included the decision to open three apartments in different parts of Israel. Each apartment was intended for five or six people capable of working, who were expected to remain in the apartment for up to 30 days, while an alternative employer was located, see Hacker & Cohen, *supra note...*, at 36. However, the apartments were closed after they remained empty for approximately one year. After the end of the research period, three apartments were reopened as part of the services provided for trafficking victims. As distinct from the target population noted in the 2007 government decision, the apartments are now intended for 18 women who have spent a considerable period of time in the Ma’agan Shelter, and are ready to lead independent lives. Moreover, as will be detailed in Part III, in mid-2013, a third shelter was established, for 18 female victims of human trafficking. See correspondence between Meirav Shmueli, National Anti-Trafficking Coordinator, and author, e-mail, January 19, 2014.

police decides there is preliminary evidence that they were trafficked. If the victim participates in legal proceedings against the alleged trafficker, s/he can stay at the shelter for as long as the investigation and trial are ongoing. If s/he does not participate, a one year rehabilitation permit will be issued. While victims of trafficking can receive a rehabilitation visa even if they do not enter a shelter, it will be much more difficult to obtain one as the applicant must demonstrate rehabilitation plans that must be supported by a therapeutic professional. Moreover, a rehabilitation visa will not grant the health and social services provided at the shelters.¹⁰² Hence, the shelters, rather than integration within the community, are the principal rehabilitation route open for victims of trafficking in Israel.

From interviews with women and men who stayed in the shelters, we learned that the shelters provide a comprehensive basket of services, including housing, adequate food, generous medical care and free legal aid across a wide range of issues relating to the residents' presence in Israel. From interviews with the shelter's staff, we learned about their intense efforts to secure the necessary work permits for the residents, to locate decent places of employment, and to accompany the residents as they settle into new positions within the labor market. Finally, in the women's shelter – but not in the men's – the residents are also provided with therapeutic assistance.¹⁰³

A review of the TIP Reports, as well as information found in the academic literature concerning rehabilitation services for victims of human trafficking around the globe, reveals that U.S. pressure on Israel yielded a unique, and relatively generous response. Whilst in Israel these shelters are distinctively designated to victims of human trafficking and are totally funded and supervised by the State, in most other countries there are no special shelters for victims of human trafficking, or only shelters for victims of sex-trafficking, and the existing shelters are not necessarily supervised or funded by the state. Moreover, unlike some other countries, Israel does not predicate the benefits of the shelters upon cooperation with the authorities and testimony against traffickers, and allows the residents freedom of movement with only limited restrictions.¹⁰⁴

Indeed, Rinat Davidovich, who managed the two Israeli shelters from when they were opened until the end of 2010 on behalf of the NGO appointed to this task by the State, takes pride in the shelters and argues that the Israeli experience can be inspirational to other countries, including the U.S.:

¹⁰² Procedure for Processing Victims of Trafficking in Women Who Wish to Testify, Ministry of the Interior – Population Administration 6.3.0006 (August 1, 2005), available at <http://www.piba.gov.il/Regulations/163.pdf>; Procedure for Granting Status to Victims of Trafficking in Women on Humanitarian Grounds, Ministry of the Interior – Population Administration 6.3.0007 (June 1, 2006), available at <http://piba.gov.il/Regulations/164.pdf>; Procedure for Granting Status to Victims of Slavery and Human Trafficking for Slavery and Forced Labor, Ministry of the Interior – Population Administration 6.3.0008 (June 15, 2010), available at <http://piba.gov.il/Regulations/165.pdf>.

¹⁰³ For a detailed description of all these services, and a critique of their unjustified gendered dimensions, see Hacker & Cohen, *supra note...*

¹⁰⁴ Both shelters have night curfew and the women's shelter also monitors unemployed residents' exit of the shelter during the day. For reviews of assistance services to victims of trafficking in other countries, see, for example, Segrave, Milivojevic & Pickering, *supra note...*; Ruth Rosenberg, *Best Practices for Programming to Protect and Assist Victims of Trafficking in Europe and Eurasia*, USAID Report (2008), available at www.usaid.gov/locations/europe_eurasia/dem_gov/docs/protection_final_121008.pdf; Rachel Shigekane, *Rehabilitation and Community Integration of Trafficking Survivors in the United States*, 29 Human Rights Quarterly 112 (2007).

“First of all, I look at the success in the sense that the state of Israel has all these services on offer. I can tell you, as someone who traveled to many conferences around the world, that people (in other countries) have much to learn from us. And you know, I have arrived at conferences expecting to learn, but found myself teaching. Even in the U.S. where the TIP Reports are produced, I was at a “Combat Trafficking” workshop in 2006, organized by the U.S. State Department,¹⁰⁵ which brings people from all over the world, about 30 representatives, and teaches them about human trafficking and the American experience. In many locations in the U.S., they put female victims of trafficking in shelters for battered women. Just amazing – no specific and tailored treatment.¹⁰⁶ And you know, I remember returning from there astonished! In 2006 – we had only existed for two years. So I think that this is a great achievement to the state of Israel, with the comprehensive treatment of victims, because all the authorities are recruited to assist. Medical, legal and social aspects now also [received] by victims of slavery.”

Returning to the five stages model of Risse and Sikkink presented in the Introduction, we can observe Israel’s move from the first stage of ignoring the phenomenon of trafficking during the 1990s, whilst beginning to be monitored by global and local NGOs; to the third stage, of cosmetic changes manifested by the establishment of a Parliament committee and by the amendment of the Penal Code in 2000; to the fourth stage, of a discursive transformation that shifts the authorities from perceiving trafficked persons as criminals that should be deported to perceiving them as victims deserving protection; and finally to the last stage, of behavioral change in the shape of the establishment of shelters. Moreover, it is clear that what moved Israel from commitment to compliance, i.e. to actual protective deeds, was U.S. pressure. Indeed, I will argue that at least when it comes to Israel, U.S. pressure is –to use Gramsci’s term¹⁰⁷– a hegemonic force; the country did not experience the second

¹⁰⁵ Indeed, part of the “carrot” side of the incentive regime used by the U.S. were anti-trafficking training programs to which Israeli officials and activists were invited to. Several of our interviewees participated in such programs and reported that no less important than the knowledge they were exposed to, were the connections among themselves that evolved during the trips to the U.S. and that contributed to the indispensable bridges between the relevant government ministries and NGOs.

¹⁰⁶ Indeed, not all states in the U.S. have designated shelters for victims of human trafficking; not all those that do fund them from public resources, and have shelters for both sex and labor related trafficking, and for women, men and children, see Shigekane, *supra* note...; REPORT CARD ON STATE ACTION TO COMBAT INTERNATIONAL TRAFFICKING, (Center for Women Policy Studies, 2007), available at www.centerwomenpolicy.org/documents/ReportCardonStateActiontoCombatInternationalTrafficking.pdf. The first shelter in the United States intended for trafficking victims was opened in 2004 by the Coalition to Abolish Slavery and Trafficking (CAST), which is based in Los Angeles. This shelter offers housing, clothing, food, information, legal advice, psychotherapy, health services, vocational training and other services, see <http://www.castla.org/client-services-program>. Polaris, an NGO working for victims of human trafficking, has recently conducted a survey on the availability of sheltered beds for victims of human trafficking offered by NGOs, concluding that all over the U.S., there are 527 beds designated exclusively to victims of human trafficking and additional 1,115 beds in shelters that serve victims of human trafficking together with other populations, see <https://na4.salesforce.com/sfc/p/300000006E4S9liF7eeqnpIT97HRFH4FvCSI5v4>.

¹⁰⁷ See, Robert W. Cox, “Gramsci, Hegemony, and International Relations: An Essay in Method”, in Gramsci, *Historical Materialism, and International Relations*, Stephen Gill (Ed.), Cambridge University Press, 1993. Pp. 49-66.

stage of Risse and Sikkink's model, of denying the legitimacy of attempts to interfere in its internal affairs. As demonstrated above, the transnational rules of the game, set by the U.S., are not substantially challenged by the local players within the Israeli field relevant to the protection of victims of human trafficking. Hence, the findings supports Efrat's findings regarding the US influence on Israel's anti-trafficking efforts,¹⁰⁸ as well as his general theory that emphasizes the significance of global power relations and the impact of superpowers, such as the U.S., on transnational and national regulations.

Notwithstanding, as will be detailed in the following sections, U.S. pressure by no means eases Israel's anxiety over preserving its borders from non-Jewish immigration, an anxiety that is at the heart of Israel's mission to preserve itself as the land of the Jewish people.¹⁰⁹ Since the victims of trafficking in Israel are non-Israeli non-Jewish "foreigners", their protection and rehabilitation might undermine the Israeli policy of setting clear borders between the Jewish-Israeli collective and those who do not belong to it. Hence, the challenge for Israel is how to satisfy U.S. demands for the protection of victims of human trafficking and to achieve compliance with its standards, whilst at the same time maintaining an exclusionary ethnin immigration policy. Based on the findings, I argue that the Israeli government does so through four compliance strategies: "over" compliance, "schizophrenic" and "hybrid" compliance, and "isolating" compliance. These strategies bring back to our attention Cardenas' warning, mentioned in the Introduction, not to forsake the significance of the national sovereign too quickly.

B. "Over Compliance"

As the TIP Reports rhetoric illustrates, establishing the shelters is not enough to satisfy the U.S. pressure to perform protection compliance - the state must demonstrate that the shelters are occupied. The TIP Reports not only detail how many beds there are in each shelter, but also how many women, men and children stayed at them during the reported year. It is evident from the reports that empty beds would probably be interpreted by the U.S. as a failure on the part of Israel in identifying victims and in assisting them. However, another possible interpretation for empty

¹⁰⁸ For a thesis emphasizing the influence of governance feminism, rather than U.S. pressure, on the Israeli response to human trafficking, see Hila Shamir, "Anti Trafficking in Israel: Nationalism, Borders, Markets", in GOVERNANCE FEMINISM: AN INTRODUCTION (Janet Halley, Prabha Kotiswaran, Rachel Rebouche and Hila Shamir, Eds.), forthcoming at Minnesota University Press.

¹⁰⁹ Israel was established in 1948, after the U.N. recognized the Jewish people's right for a nation state in Palestine. In its independent statement, as well as in later Basic Laws, Israel defines itself as a Jewish and democratic state. Its Jewishness, manifested in its immigration policy (one that grants automatic citizenship to Jews and make it extremely hard for non-Jews to immigrate), its treatment of its Arab minority (whom are discriminated against, and enjoy very few group rights), and its ongoing control of the Palestinians in the West Bank and the Gaza Strip, has sprang a heated debate between those who argue that Israel's ethnic preference is still manifested within a democratic framework – see, for example Sammy Smooha, *The Model of Ethnic Democracy: Israel as a Jewish and Democratic State*, 8(4) Nations and Nationalism 475 (2002); Ruth Gavison, *Jewish and Democratic? A Rejoinder to the "Ethnic Democracy" Debate*, 4(1) Israeli Studies 44 (1999); and those who argue that Israel is an ethnocracy rather than a democracy, see, for example, Oren Yiftachel, "Ethnocracy" and Its Discontent: Minorities, Protests and the Israeli Polity, 26(4) Critical Inquiry 725 (2000); Yoav Peled, *Citizenship Betrayed: Israel's Emerging Immigration and Citizenship Regime*, 8(2) TIL 603 (2007). See for a discussion of this debate, Yoav Peled & Doron Navot, *Ethnic Democracy Revisited: On the State of Democracy in the Jewish State*, 20(1) Israel Studies Forum 3 (2005).

beds could be that there is no longer severe human trafficking in Israel, at least as defined by the TVPA. Indeed, we will argue that Israel could have insisted that it has no eligible victims for sheltering under the minimum U.S. standards, but instead chose not to and to practice, instead, “over compliance”.

The residents in the shelters could be ascribed to three distinctive groups:

1) The most veteran residents in the shelters are women who came to Israel from the former USSR and who worked as prostitutes. While the TVPA mentions “force”, “fraud”, “coercion” or minority as a necessary component of severe sex trafficking, we learned from the interviewees that the Israeli authorities formulated an understating that every woman from the former USSR, unlawfully present in Israel, and who is found in a brothel or a “discreet apartment,” was almost certainly trafficked for prostitution and is entitled to enter the shelter and stay in it.¹¹⁰ Hence, an expansive interpretation became entrenched, according to which a woman who knew that she was coming to Israel for the purpose of prostitution is also a trafficking victim eligible for accommodation and care in a shelter, regardless of the circumstances in which she arrived in Israel.

Moreover, since Israel has managed to almost totally eliminate sex trafficking from abroad, all the women in this group who are currently at the shelter came to Israel before 2008, and arrived at the shelter after living in Israel for several years without being subordinated to trafficking. Hence, it could have been argued that the time that has elapsed since the incidence of trafficking is proof that these women are not currently victims and that they are already rehabilitated. Indeed, the Ministry of Interior brought up this exact claim in its attempt to block rehabilitation visas for a few of the women who arrived at the shelter. However, the Ministry’s policy has changed, and the current policy is that a woman is entitled to enter the shelter even if several years have elapsed since the trafficking, and that the passage of time in itself is not proof that she does not need rehabilitation services.¹¹¹

An example demonstrating the meaning of this expansive definition, is the case of Sonia,¹¹² who arrived in Israel in 1995 from Ukraine, at the age of 15. She told the staff at the shelter that prostitution traffickers tricked her into believing that she was coming to Israel to work as an *au pair*. She escaped from the traffickers and worked undocumented for five years, cleaning and caring for elderly people, until she was caught by the Migration Police and deported. After her deportation, she contacted an Israeli man who agreed to forge documents that allowed her to re-enter Israel, in return for her working in prostitution. She was sold to a brothel, escaped, was arrested and deported again. She then entered Israel illegally for the third time, and met a married Israeli man who informed on her to the Migration Police after she became

¹¹⁰ Interview with Raanan Caspi, *supra* note... ; Interview with Zehava Galon, *supra* note... Interview with Michal Yosef, January 5, 2011. This understanding was due, among other factors, to the position of the court, which stated that consent to prostitution does not negate the foundations of offenses related to trafficking for prostitution, *see* CA 1609/03 *Borisov v State of Israel*, *Piskei Din* 58(1) 55 (2003). *See* also the Guidelines of the State Attorney’s Office to the District Attorneys, January 1, 2003, *available* at http://www.knesset.gov.il/committees/heb/docs/sachar6_a.pdf.

¹¹¹ Interview with Sigalit Zohar, the Coordinator for Victims of Trafficking in Humans, from the Legal Aid Division, November 23, 2010.

¹¹² All the residents at the shelters have been given pseudonyms, to protect their privacy. Their stories are based on the interviews we conducted with them as well as on information we gathered from the social workers at the shelters. In order not to burden the residents with the need to retell their distressing stories, in the interviews with them we focused on their experience at the shelter and relied on staff to learn about their past. On the ethical dimensions of research of trafficking victims, including the need to guard their privacy, *see* Cwikel and Hoban, *supra* note....

pregnant by him. Whilst in prison, and after experiencing a miscarriage, Sonia went on hunger strike, and was only then referred to the shelter, underweight and in seriously impaired psychological condition. Thanks to the State Legal Aid she received, Sonia was given a permit allowing her to remain in Israel, at the shelter, for one year for the purpose of rehabilitation. During her stay at the shelter she became pregnant, and gave birth to a baby who suffered from a rare condition that would lead to death by the age of about two years. The baby was hospitalized in a vegetative state, and Sonia was allowed to remain in the shelter until her child's condition becomes clear, even though the rehabilitation year she was entitled to had ended and she was due to be deported to Ukraine.

As this tragic case demonstrates, not only did the Israeli policy changed from deportation to rehabilitation, the shelter is now open to women who were trafficked more than a decade ago, who entered Israel illegally with the intention of working in prostitution, and who required a relatively long stay at the shelter for humanitarian reasons. These women are not victims recently rescued from commercial sex induced by force, coercion or fraud, as suggested by the U.S. definition of victims of sex trafficking.¹¹³ Hence, the Israeli authorities could have argued that, currently, there are no women who had been trafficked for prostitution into Israel and who are eligible for protection under the minimum U.S. anti-trafficking standards; however, they chose not to promote this line of argument and rather allow these women entry to the shelter.

2) The largest population to receive services from the shelters during the research period were labor migrants who entered Israel legally from Asian countries (mainly Thailand and the Philippines), and who suffered severe abuse at the hands of their employers. A typical example of a labor migrant who came to Atlas Shelter is Santhat, born in 1980, who grew up in rural Thailand. Santhat has completed nine years' schooling, and is married with two children. His family remained in Thailand when he came to Israel. Santhat stated that he paid the equivalent of approximately \$4,500 on the black market in order to come to Israel. He was sent to work on a moshav (a cooperative agricultural village) in central Israel. During the nine months he spent on the moshav, he was required to work almost 17 hours a day, seven days a week. He was housed together with four other workers in a flimsy caravan, and had to share one toilet and one shower with all the other workers employed by the farmer. He received very little food from his employer and was obliged to purchase food with his own money. The employer was delinquent in paying his salary. One of the workers contacted a local NGO and requested assistance. The NGO contacted the police, who raided the place of work, took 11 workers and collected testimony from them against the employer, and later transferred them all to the shelter.

Among the female migrant workers at the shelter, there is no "typical" story, since the backgrounds of the residents vary widely, including the circumstances in which they came to Israel. The stories of Luciana and Lilia illustrate the differences between the female migrant workers who come to the shelter. Luciana was born in Brazil in 1964, and from the age of 12 worked in agriculture to support her impoverished family. She is divorced and has two sons. For twenty years, Luciana was employed as a domestic worker by a Jewish family in Brazil. In 2004, she was sent to Israel with a tourist permit to care for her employer's mother. She was

¹¹³ Supra note... and accompanying text.

promised a salary of \$600 a month (less than the minimum wage set by Israeli law).¹¹⁴ During the six months she spent in Israel – after which she returned to her employer in Brazil – she was not paid any wages, and was moved from house to house to serve members of her employer’s extended family, suffering humiliating treatment in the process. Thereafter, Luciana was repeatedly sent to Israel by her employer in Brazil in order to care for relatives, and each time the promised payment failed to materialize. On one occasion, a relative of Luciana’s employer who visited Israel discovered the conditions of slavery in which she was being held, and contacted the Brazilian embassy. When the other relatives learned of this, they abandoned Luciana and warned her not to go to the police. With the assistance of the Brazilian embassy and the NGO Hotline for Migrant Workers,¹¹⁵ Luciana was admitted to the shelter.

Lilia, who is the same age as Luciana, is married and has two children of her own, as well as the three children of her partner. She came to Israel from the Philippines with a tourist permit in order to work as a care-worker and domestic employee. She relates that her employer did not provide her with sufficient food, gave her a vegetable storeroom by way of accommodation, cursed her, and would not let her take a shower every day or use the washing machine to launder her clothes. When the elderly man she was caring for fell ill, Lilia met at the hospital another migrant worker from the Philippines, who gave her a telephone number to call for assistance. Lilia assumed that this was the number of an NGO, but it emerged that it was actually a police phone number. Her employer hid her, together with another employee, but the police found them, interviewed them as witnesses, and transferred them to the shelter.

In these three cases – as in all the other instances in which migrant workers came to the Atlas and Ma’agan shelters due to disgraceful working conditions – the employers were not prosecuted for human trafficking (at least up to the end of the research period). Indeed, except in a small number of cases, such as that of Luciana, it is not clear that the harsh employment conditions could be classed as “obtaining a person for labor or services, through the use of subjection to force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery”, as the TVPA defines severe non-sex related trafficking.¹¹⁶ Again, the Israeli authorities could have refused entry to the shelter or residency in the cases where they concluded that there was no human trafficking involved despite the exploitive working conditions, but rather chose to create a lower entry bar for sheltering than that needed for the prosecution of traffickers.

3) The newest group in the shelters is a small fraction of the thousands of people who have crossed into Israel from Sinai in Egypt, since 2010, seeking work and asylum due to poverty and war in their native countries in Africa. This flow of unauthorized immigration has diminished substantially only recently, after Israel constructed a wall along its border with Egypt.¹¹⁷ The few that reach the shelters are among those who have been tortured by kidnappers, go-betweens and border

¹¹⁴t ,2004 In he minimum wage in Israel per month was 3,335NS (about \$757 at that time). Today it is about \$1,200, see

<http://www.btl.gov.il/MEDINIYUT/GENERALDATA/Pages/%D7%A9%D7%9B%D7%A8%20%D7%9E%D7%99%D7%A0%D7%99%D7%9E%D7%95%D7%9D.aspx>;
<http://www.kantor.co.il/Tables/DollarExchangeRates.htm>.

¹¹⁵ This NGO is now called Hotline for Refugees and Migrants, see <http://hotline.org.il/>.

¹¹⁶ *Supra note...* and accompanying text.

¹¹⁷ -wall-border-new-east/131204/israel-<http://www.globalpost.com/dispatch/news/regions/middle> ,See <http://www.hourglass-project-immigration-terrorism-egypt>

smugglers en route to Israel. In many cases, torture was employed in order to pressure the victims into telephoning their families and asking them to forward money to the abusers' bank account. The forms of torture include shackling with chains for periods ranging from several days to months, intimidation, starvation, whipping, burns, and gang rape. The financial demands of the kidnappers and smugglers have been as high as \$30,000.¹¹⁸

The case of Ayoub illustrates the circumstances that bring members of this group to the shelters. Ayoub was born in Eritrea in 1992, and came to Israel via Sudan in an effort to help his parents and his eight siblings, who could barely survive on their father's work as a farmer. Ayoub relates that he paid \$2,500 to smugglers in Sudan, who then demanded a further \$2,500. Ayoub claims that in order to secure this payment from his family, the smugglers imprisoned him in a dark room for six months, during which period he was shackled in chains, beaten, and deprived of food and water. After finally crossing the border into Israel, he was seized and transferred to a custody facility. After a few days, and after the injuries on his body were noticed, he was referred to the shelter.

Another example is the case of Lamlam, born in Eritrea in 1986. Lamlam's young son remained in Eritrea. The child's father was abducted by the Eritrean army, and never returned. Lamlam lived in a small village and did not receive an education. She helped her family care for its herds, and later immigrated to Sudan in the hope of finding a livelihood. She explains that she was kidnapped in Sudan by smugglers, who handed her over to Bedouins in Sinai. The Bedouins demanded \$1,500 from her, and until she managed to secure this sum from a relative in Australia, she was imprisoned, raped, and forced to cook for her captors for six weeks. After crossing into Israel, Lamlam was caught and transferred to a prison-like custody facility. She spent eight months in this facility before she was transferred to the shelter.

It is unclear whether the TVPA's definition of severe human trafficking would apply to the individuals in this group, given that the instances of torture reported were not, in many cases, for "labor or services",¹¹⁹ but rather for ransom or the result of incomprehensible sadism. Moreover, all the abusive acts were conducted outside Israel's borders; hence, Israel can legitimately claim that it has no responsibility for the rehabilitation of people who entered its territory illegally and who were abused on their way into the country by people with no connection to Israel.¹²⁰ Still, some of the judges at the custody facilities recognized the tortured victims' need for shelter and convinced the police to remove them from the jail-like facility to Ma'agan and Atlas. Similarly to the "evading" arguments possible in relation to the first two groups, Israeli authorities could have argued that under the definition of the TVPA, Israel has no responsibility for the protection of individuals who entered Israel illegally and voluntarily, even if they were victimized along the way. However, at least in a few cases, the country chooses to allow such individuals entry to the shelters.

¹¹⁸ See, also, "THE DEAD OF THE WILDERNESS" TESTIMONIES FROM SINAI DESERT, 2010 (Hotline for Migrant Workers, 2010), available at www.hotline.org.il/english/pdf/Testimonies_from_sinay_122010.pdf.

¹¹⁹ Supra note...

¹²⁰ Indeed, in her interview, Sigalit Zohar mentioned her attempts to convince the relevant authorities that although the offences occurred outside of Israel, the victims' presence in Israel make it responsible for their rehabilitation, see, supra note... Moreover, the Police suspect that in some cases, the smugglers were assisted by Eritreans staying in Israel, CP (Jer. Mag.) 1172/10, *State of Israel v Habati* (pending).

It is important to note that I do not claim that the residents at the shelters do not need their services, or that they do not deserve them morally. If anything, the personal stories of the interviewees reveal the horrific abuse they have experienced, and points to the insufficiency of the minimalistic definition of human trafficking adopted by the VPTA and the arbitrariness of the attempts to create clear lines between human trafficking and other kinds of severe abuse.¹²¹ Indeed, both the Trafficking Protocol¹²² and Israeli law¹²³ address a wider variety of exploitation circumstances under the definition of human trafficking, and the latter also refers to other kinds of abuses in its anti-trafficking statute.¹²⁴ What I do argue, however, is that the definition of human trafficking under the TVPA is limited and vague enough to allow the claim that not all shelters' residents are victims of human trafficking. Notwithstanding, Israel does not offer such claim and prefers "over" compliance to the U.S. minimum standards over showing empty beds at the shelters or their closure altogether. This "over" compliance strategy is even manifested in the contract between the government and the NGO that operates the two shelters, which guarantees, for three years, 100 percent cover of personnel costs and 80 percent cover of other costs, irrespective of actual occupancy levels.¹²⁵ Hence, once the shelters are in existence, there is little additional cost for filling them to maximum capacity.

Hence, it seems that U.S. pressure is so powerful, that it motivates an ethno-democracy such as Israel to allow "aliens" to stay in its territory and receive substantial assistance, instead of being immediately deported as the state's immigration policy mandates. However, as shall be seen next, this "over" compliance strategy is possible due to the other three compliance strategies, which ensure that broadening the definition of victims eligible for protection will not threaten Israel's sovereignty and ethnic immigration policy.

C. "Schizophrenic", "Hybrid" and "Isolating" Compliance

According to the research findings, the policies and regulations related to the treatment of victims of human trafficking in Israel are shaped and managed mainly by

¹²¹ Supra note...

¹²² The Trafficking Protocol defines human trafficking as follows: "Trafficking in persons shall mean the 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. Exploitation 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...". See, supra note, article 3(a).

¹²³ Under Israeli law, human trafficking is defined as "selling or buying a person or carrying out another transaction in a person, whether or not for consideration" for the purpose of or with the endangering for: (1) removing an organ from the person's body; (2) giving birth to a child and taking the child away; (3) subjecting the person to slavery; (4) subjecting the person to forced labor; (5) instigating the person to commit an act of prostitution; (6) instigating the person to take part in an obscene publication or obscene display; (7) committing a sexual offense against the person. See, supra note... article 1(12) (article 377A to the Penal Code).

¹²⁴ The Israeli anti-trafficking law also criminalizes "holding in slavery conditions", "forced labor", and "making a person leave the country for prostitution or slavery", see supra note... articles 1(8)-(11) (articles 375A, 376, 376A to the Penal Code).

¹²⁵ See, Contract between the Israeli Government, represented by the Ministry of Welfare and Social Services, and Keshet (non-profit organization), tender no. 217/2008, March 18, 2009, on file with author.

seven authorities: The Knesset (Israeli parliament), the government as a whole, and five of its ministries: the Ministries of Justice, the Interior, Interior Security, Welfare and Social Services, and Health. Moreover, I will argue that these policies and regulations are organized along two competing axes: The “rehabilitation” axis that centers on the victims’ needs and rights, and the “borders” axis that centers on the State’s interest in preventing non-Jewish immigration. The table below summarizes the activities of each of the aforementioned authorities that affect the victims of human trafficking, in relation to each of the two axes:

Body	Rehabilitation Axis	Borders Axis
The Knesset (Parliament)	Anti-trafficking laws	No right to rehabilitation
Government	Two designated shelters	Strict ethnic immigration policy
Ministry of Justice	Bodies coordination; Legal aid; Professionals’ training; Traffickers’ prosecution	
Ministry of Interior (Population and Migration Authority)		Strict visa and working permits policy; Imprisonment; Deportation
Ministry of Internal Security (Police; Prison Service)	Rescue; Referral to shelters; Arrests of traffickers	Imprisonment; Refusal to refer to shelters
Ministry of Welfare and Social Services	Shelters	Insufficient community services
Ministry of Health	Free medical treatment within the shelters	Insufficient community services; Insufficient funding in cases of severe disease

The most important policy maker body in Israel, as in all democratic countries, is the parliament. The Israeli parliament, the Knesset, has played a central role in the struggle against human trafficking and in protecting and assisting its victims. Particularly thanks to the Sub-Committee for Combatting Trafficking in Women and the Special Committee on the Problem of Foreign Workers, dozens of discussions were conducted and information collected regarding trafficking victims and their needs.¹²⁶ Moreover, as mentioned above, comprehensive legislation relating

¹²⁶ For the protocols of the Sub-Committee for Combatting Trafficking in Women, *see* http://www.knesset.gov.il/protocols/heb/protocol_search.aspx?ComId=185. For the protocols of the Special Committee on the Problem of Foreign Workers, *see* http://knesset.gov.il/protocols/heb/protocol_search.aspx?comID=15. The Knesset Research and

to the subject has been enacted, granting the victims of human trafficking free legal aid and compensation from traffickers.¹²⁷ However, the Knesset has not enshrined in law the right of trafficking survivors to other kinds of assistance and rehabilitation services. Hence, the victims of human trafficking do not have a legal claim for welfare rights and are dependent upon ad-hoc government decisions in this regard. Moreover, whilst the Israeli government decided to establish the shelters, the majority of both the Knesset and the Government share an ongoing commitment to maintaining a strict policy aimed at preventing unlawful entry to Israel, and to deporting persons unlawfully present in the country.¹²⁸

The obvious tension between the mission to prevent non-Jewish immigration to Israel and assisting survivors of human trafficking is manifested in the actions of the relevant ministries. As can be seen from the table, the Ministry of Justice represents deep commitment to the rehabilitation axis, while the Ministry of Interior is most closely identified with the borders axis. The study found that this is due to each office's distinct habitus:¹²⁹ the Ministry of Justice's shaped by its responsibility to the law, including humanitarian and international law,¹³⁰ and the Ministry of Interior's shaped by its mission to guard the borders. It is also due to the individuals who occupy the relevant positions within each ministry.¹³¹

Indeed, during the research period, the Ministry of Justice employed two senior officials who devoted their full attention to victims of human trafficking. One was Rachel Gershoni, for many years and until recently the National Anti-Trafficking Coordinator; the other is Sigalit Zohar, the Coordinator for Victims of Trafficking in Humans, from the Legal Aid division of the ministry. Both were interviewed for the study, and demonstrated a deep commitment and personal devotion to the protection and rehabilitation of victims of trafficking. Moreover, the other interviewees mentioned Gershoni as a dominant figure in the field that pushed and struggled with others in order to secure protection and sheltering to trafficked victims. Member of Knesset Galon, a dominant figure herself, provides an example of the references to Gershoni made by others:

“There was a period during which there was a gap between Rachel Gershoni, the Coordinator, and the Ministries themselves or the responsible people within them. Rachel came with a lot of willingness... and she also made many changes, and she found herself

Information Center prepared several research summaries on human trafficking, see http://www.knesset.gov.il/MMM/heb/MMM_Google_Search.asp.

¹²⁷ Prohibition of Trafficking in Persons Law (Legislative Amendments), 5767-2006, and especially articles 1(12) & 3, (articles 377E to the Penal Code and Appendix to the Legal Aid Law).

¹²⁸ See supra note... and accompanying text.

¹²⁹ On the concept of habitus and its relevancy to the legal field, see Pierre Bourdieu, *The Force of Law: Towards a Sociology of the Juridical Field*, 38 *Hastings Law Journal* 814 (1987).

¹³⁰ See, for similar observation, Gad, supra note..., at 41.

¹³¹ The debate between the structuralists and the phenomenologists in sociology is one of this discipline's major rifts. Notwithstanding, in the past three decades there have been numerous theoretical attempts to synthesize understandings of the centrality of institutions and institutionalization together with those that grant individuals some independent agency. For a review, see Daphna Hacker, *Invitation to the Sociology of Law and a Preliminary Mapping of the Field in Israel*, 4(1) *Din Udvarim* 95 (2008) [Hebrew]. For a fascinating theory and study on the interrelations between international relations and domestic policy, which challenges the unitary state assumption and demonstrates the role of different bodies and individual actors in the polity, see Helen V. Miner, *INTERESTS, INSTITUTIONS, AND INFORMATION* (Princeton Uni. Press. 1997).

dealing with individual stories, which she heard at the Knesset Committee or from the NGOs. This was not at all part of her role, given that she was a policy coordinator. But suddenly, we saw that this woman was about to be deported – what about the money [she was entitled to, by law, from the trafficker]? And where she will go to if she is deported? So Gershoni found herself dealing [with such cases]. What I want to say is that her involvement went beyond that of a formal coordinator.”¹³²

Sigal Zohar was also positively mentioned as “a referent that lives and breathes the matter” and was also recalled by some of the victims we interviewed as the lawyer who assisted them whilst they were in the shelter.

In contrast, the Ministry of Interior in general and Michal Yosef – head of the Border Control and Crossings Unit within the Population and Migration Authority – in particular, were mentioned, especially by activists, as a major barrier to the victims’ rehabilitation. After describing her NGO’s good relationship with Sigalit Zohar’s Legal Aid Division, Hanny Ben Israel claimed:

“The Ministry of Interior – getting a visa for a victim of human trafficking is... to say that it is like splitting the Red Sea into two - does not even start to describe it. The attitude is very stingy, very literal. The Ministry of Interior see itself as the doorkeeper, yes? That there will not be labor migrants in fields that they cannot control, or that there will be a flood of people... I do not know exactly what it is. Sometimes it feels like zealotry for the sake of zealotry, pointless zealotry. It is very very hard to secure cooperation from the Ministry of Interior. It is really... words cannot describe.”¹³³

Rita Chaikin, an activist from a feminist NGO,¹³⁴ was also extremely critical of the Ministry of Interior:

“Cristina [a woman Rita assisted], was sent to the Ministry of Interior alone to get a visa. She cannot forget the fact that she was alone, and really, the Ministry of Interior – you should not send a woman there alone, even if you hate her [laughs]. You have to understand that the Ministry of Interior is the body where these women are hated. For them [at the ministry], the women are gentiles, their place is out of the country [...] very racist.”¹³⁵

The anger and frustration of activists who deal with the Ministry of Interior must be understood in light of this ministry’s crucial role in the rehabilitation of victims of human trafficking. All asylum seekers from Africa and victims of trafficking for prostitution, as well as a minority of migrant workers, entered Israel without residence and work permits, and are destined for deportation if they do not receive a rehabilitation visa from the Ministry of Interior. Moreover, most of the labor migrants in the agricultural sector came to Israel and are present in the country on the basis of a work permit, but many of them require extensions of the permit – again

¹³² Supra note...

¹³³ Supra note...

¹³⁴ The feminist organization is Isha L’isha, see <http://www.isha.org.il/eng/>.

¹³⁵ Interview conducted on December 23, 2010.

from the Ministry of Interior – in order to enable them to remain in Israel and free themselves from employers who violate their rights. Listening to the residents at the shelters, we learned that indeed the residence, work and rehabilitation permits are of great concern to them all, and that the process of trying to secure a permit is very frustrating. It is not just that without a permit from the Ministry of Interior, they face deportation; during the waiting period for a permit, they stay in the shelter without the legal capacity work for pay, and thus having no economic independence and no way of paying back loans they took to arrive to Israel or to send money to family members left in the country of origin.

Notwithstanding, Michal Yosef of herself said in her interview that she, and the Ministry of Interior people in general, underwent a process of change:

“There were disagreements. In the beginning there were disagreements, because each ministry comes with a different perspective. I came from the perspective that they [the permit applicants] are all illegal aliens that want to legalize their status. But as time passes you start to understand, you start to work on the subject matter and you begin to change your mind. I will give you an example: In the beginning, a woman was a victim here, was given a rehabilitation year and then was deported, then she entered the country illegally again! What is this? This cannot be done! Did she not know what she is coming for? The first time, she was cheated so she was brought as a victim, she was a victim. But the second time? How can that be?! So this was my position for a while but then when you start to read and hear, attend lectures, then you say – well, she feels she is a victim, she feels she is miserable, so you say I am not the Prisons Service, you change your perspective. In the beginning they were all suspects, now it is different. I see it differently.”¹³⁶

Sigalit Zohar reaffirms Yosef’s claim of change within the Ministry of Interior, observing that whilst at the beginning her clients were wrongly refused rehabilitation visas, after 2006 – when the Ministry published coherent regulations¹³⁷ – justified requests were approved:

“I no longer see refusals based on the reasoning that the woman was trafficked three times, or that she should go back to Romania and work at her parents’ dairy, or that since her boyfriend is a criminal she does not deserve a permit. Today, a victim of trafficking – whether she testifies or not – irrelevant, if she is in the shelter or supported by an NGO, she will get a rehabilitation visa.”

However, because trafficking for prostitution has diminished, the question of rehabilitation visas for its victims now only remains relevant to the very few who still live in Israel. Zohar describes the new threat to Israeli borders as that from African asylum seekers, and details her efforts to secure the Ministry of Interior’s recognition

¹³⁶ Supra note...

¹³⁷ Supra note...

of those among them who were tortured as victims of trafficking or slavery as entitled to a rehabilitation permit.

So, there is some evidence that even in the Ministry most identified with the “borders axis”, there has been some degree of internalization of anti-trafficking norms, though Yosef’s rhetoric centers on the applicants’ subjective feelings rather than on their objective rights. Still, it seems that Israel suffers from schizophrenia;¹³⁸ one ministry embodying the human rights ethos, with almost angelic officials who dedicate themselves day and night for the protection of human trafficking victims, and another ministry that takes its role as the gatekeeper of Israel extremely seriously, but at the expense of victims’ needs and interests. One could argue that this is but another example of Israel’s general schizophrenia stemming from an aspiration to be both Jewish and democratic.¹³⁹ While this might be very much the case, I would argue that this is not an uncontrolled “mental disorder” but rather a split, coordinated by the Parliament and the government as a whole, which allows Israel to demonstrate its commitment to international norms externally while internally reassuring its citizens of its antagonistic policy towards aliens. Indeed, my suggested interpretation of the schizophrenic strategy becomes clearer when the “hybrid” compliance, evident from Knesset and Government actions mentioned above, is examined more closely in relation to specific ministries, and connected to the fourth compliance strategy of isolation.

Returning to the table above, one can detect a hybridity not only within the Parliament and the Government as a whole, but also within three of the five ministries. The Ministry of Internal Security is the ministry that rescues, through the Police, victims of trafficking, as described in the examples above. The Police is also the only organ authorized to refer a person to the shelters, based on the assessment that there is prima facie evidence that the person was a victim of trafficking. The internalization of victim-centered anti-trafficking norms within the Police can be detected in the interview with Superintendent Adv. Yaacov Lopaz, deputy head of the Lahav Prosecution Unit, which is responsible – among other things – for prosecuting offences against labor migrants:

“When you think about slavery, you imagine the classic image of someone tied up in iron chains, held in a cage, and so forth. Modern slavery isn’t like that. Modern slavery is no less traumatic for the victims, even though, usually, it cannot be discerned externally. The victims look like anyone else walking along the street, and appear to be free people, but in fact their free will and freedom of choice has been taken away from them. This is mainly done by psychological and economic means; it isn’t something that can be seen from the outside.”¹⁴⁰

This notwithstanding, the Ministry of Internal Security’s exclusive authority to determine who is a victims of trafficking and who is not might obstruct assistance for those who need it. During the research period, we came across two cases in which the judge at the detention center issued a decision recognizing the arrested person as a

¹³⁸ I use here the “schizophrenia” metaphor in its popular meaning, which should actually be termed “split personality disorder”.

¹³⁹ Supra note...

¹⁴⁰ Interview conducted on July 3, 2011.

victim of trafficking according to the Trafficking Protocol ratified by the Israeli government. The judges concerned consequently asked the Police to consider the transfer of the detainee to the Atlas shelter. However, in both cases the Police refused the transfer, arguing that although the detainee suffered horrible torture en route to Israel, the offences against him took place in Egypt; as such he cannot be recognized as a victim of human trafficking, and so must be deported. In one of these cases, the victim was deported before he could receive assistance from a lawyer. In the other case, due to legal representations based on the U.N. Convention against Torture rather than on international and national anti-human trafficking laws, the authorities were willing to postpone the deportation and consider the case again.¹⁴¹ Indeed, according to the 2012 TIP Report, while the judges at the detention centers recognized 30 asylum seekers as possible victims of trafficking eligible for rehabilitation at the shelters, the police agreed to transfer only 15 of them to Ma'agan and Atlas, arguing the other 15 were tortured but not trafficked.¹⁴²

The hybridity of the two axes is also evident in the actions of the Ministry of Welfare and Social Services and the Ministry of Health. As mentioned above, the Ministry of Welfare and Social Services provides substantial assistance to those who stay at the shelters. However, during the research period, it did not extend substantial socio-economic assistance and therapeutic services to victims of trafficking that could not or did not want to stay at the shelters. Likewise, the Ministry of Health provided only very limited health services to victims who were not in the shelters. Two of the interviewed mothers resident at Ma'agan recalled that they might have preferred to live in the community, but entered the shelter in the realization that this would be the only way that their children would be able to receive essential medical treatment. Moreover, even when housed in the shelters, residents are not automatically guaranteed medical care in cases of prolonged or very expensive treatment, and are dependent upon special approval by the Ministry of Health. For example, one of the women interviewed at the shelter, was HIV positive and suffered from hepatitis and tuberculosis. Non-governmental organizations filed a Supreme Court petition in 2007,¹⁴³ demanding that the state finance all the health services required by her. The petition argued the resident acquired her medical condition while being trafficked for prostitution in Israel and that accordingly, the state is responsible for her treatment. After medical tests had clarified the woman's state of health and the treatment required, it emerged that this would be particularly expensive, amounting to thousands of dollars a year. During this period, the Inter-Ministerial Team for Medical Treatment for Victims of Trafficking in Women rejected the argument that the state accept responsibility for protracted treatment in such cases, and determined that medical treatment should be provided for up to one year only. The court accepted the state's position in full, and permitted the petitioner to receive treatment for only six months, before deportation, at a cost of some \$17,000. After our study ended, we were informed that following another petition, this woman recently received a permit allowing her to remain in Israel on humanitarian grounds. This permit must be renewed every year; after five years, the woman will be eligible for permanent residency status. This permit entitles the woman to full medical treatment.

Taken together, these hybrid actions on behalf of the Ministries of Internal Security, Welfare and Social Services, and Health, are not a result of confused or

¹⁴¹ Saharonim Detention Center, Case no. 1405989; Case no. 1400223, documents on file with author.

¹⁴² <http://www.state.gov/documents/organization/192595.pdf>, at p. 195.

¹⁴³ HCJ 5637/07 Anonymous et al. v Minister of Health and Ministry of Interior.

conflicting authorities in which the right and left hands are uncoordinated. Rather, a coherent policy can be detected, one which differentiates the shelters from the rest of the Israeli social fabric. Once a person is allowed entrance to the shelter, s/he is assisted generously; but those denied entrance are left with hardly any State-sponsored assistance and face possible deportation. This fourth kind of strategy, which I call the isolating compliance strategy, allows Israel to perform the protection of victims of trafficking without “endangering” its borders and society through the presence of non-Jews.

The all-or-nothing policy also highlights what might be perceived at first sight as an unplanned schizophrenic pattern of compliance with the U.S. minimum standards of protection on behalf of the Ministry of Justice and the Ministry of Interior. Their two very distinctive and allegedly contradictory discourses are actually a logical response on behalf of a state that wants to please the U.S. government, but at the same time is obsessed with preserving its borders from non-Jewish immigration. Moreover, it is these shelters that help these two discourses to co-exist with each other. According to the Government’s decisions, the shelter for victims of sex trafficking should hold 50 beds, and the shelter for victims of slavery and forced labor trafficking 30 beds.¹⁴⁴ In practice, during the research period, the NGO that run the two shelters on behalf of the Ministry of Welfare was obliged to serve no more than 35 people at each of them.¹⁴⁵ Hence, the Ministry of Justice can play the “good guy” without jeopardizing Israeli borders with more than 70 non-Jewish residents at the shelters, which, as mentioned above, the state will pay for in any case¹⁴⁶; and the Ministry of Interior plays the “bad guy”, by making sure that only very few will be recognized as victims of human trafficking, and will be allowed to remain in Israel for a while and receive assistance. Together, they can face U.S. pressure by showing that there are two distinctive frameworks for the rehabilitation of human trafficking victims, whilst at the same time ensuring that these victims – and other non-Jewish immigrants – will not be fully integrated into the Israeli society nor threaten the state’s Jewish identity.

III. “COMPLIANCE”, “SUCCESS” AND THE ROLE OF THE VICTIMS

Allegedly, the findings presented so far highlight the TVPA’s success. Indeed, the U.S. can be satisfied with its impact over Israel – it managed to motivate the Israeli authorities to replace their criminalization narrative with a victimization one, and to open and operate two shelters specially designated to victims of human trafficking, offering a comprehensive basket of services to their residents. Indeed, much of this success story is already told by the TIP reports produced by the US itself, which also highlight Israel’s compliance excellence when compared to the many countries ranked at the lower tiers. However, this study demonstrates the importance of Engle Merry’s claim that the common and growing use of quantitative indicators as part of global governance (which the TIP reports are part of), produces a world knowledge without the detailed particulars of social contexts.¹⁴⁷ In addition, she argues, the aura of

¹⁴⁴ Supra note...

¹⁴⁵ Supra note... article 5.

¹⁴⁶ Supra note... and accompanying text.

¹⁴⁷ Sally Engle Merry, *Measuring the World Indicators, Human Rights, and Global Governance*, 52(3) *Current Anthropology* S83, S84. See, also *Governance by Indicators: Global Power through Quantification and Ranking*, Kevin Davis, Angelina Fisher, Benedict Kingsbury and Sally Engle Merry (Eds.), 2012.

objectivity of these indicators masks the political role of the indicators themselves in shaping the transnational world.¹⁴⁸ Indeed, it is only through the kind of qualitative in-depth study reported here that one can fully understand the meaning of U.S. pressure in a particular context, and the relational and political nature of the definition of “success”.

Interestingly, the study shows that the success of the pressuring country does not necessarily imply failure on the part of the pressured country to preserve its sovereignty interests. The study shows that through four different compliance strategies, Israel manages to satisfy the U.S. minimal standards, while preserving sovereignty over its borders and maintaining an ethnic immigration policy. Hence, the findings corresponds with the critique of the global anti-trafficking regulation, which claim that it is aimed at strengthening borders rather than at relaxing them in the name of immigrants’ needs and human rights.¹⁴⁹ Moreover, the findings highlight the shortcomings of much of the literature on the VPTA’s success presented in part I of the paper, which assumes that the VPTA requirement are adequate, but only concentrate on the quantitative indicators developed by the US to measure its success. Hence, a confusion is created between “compliance” and “success”.

Indeed, as Nelken reminds us, the meaning of success of transnational legal transplants depends on one’s point of view.¹⁵⁰ I would like to end this paper by moving away from the U.S. as the superpower as well as from Israel as the pressured country, and to focus on the abused immigrants and their points of view and role within the transnational regulative system.

Actually, listening to the victims of immigration-related abuse uncover competing definitions of successful protective measures to those used by the U.S., Israel, and by the anti-trafficking literature. The interviews conducted with present and past residents of Ma’agan, as well as with the therapeutic staff of the shelter, reveal that for many of the sex trafficking victims, returning to their country of origin is perceived as a disaster which they are inclined to avoid at all costs. Strategies might include leaving the shelter and becoming an illegal alien, or marrying an Israeli citizen – even if he is abusive. For these victims, a successful protective measure will be the right to permanent stay and a work permit that will allow them and their children to remain in Israel. On the other hand, for many of the agriculture and care immigrants from Asia, Israel is but a temporary working destination, and the successful protective arrival and stay in the country is defined by not being extorted by middlemen upon arrival, and by earning enough money to send home while enjoying decent working conditions over a considerable period of time. Finally, for the asylum seekers from Africa who have been tortured en route to Israel, return to their countries of origin would mean extreme poverty and in some cases the risk of death. Successful rehabilitation, for them, can only occur in Israel or in another developed country, and a reintegration within the country of origin is not a safe option.

Indeed, introducing the perspectives of the victims of trafficking and of severe immigration-related abuse reminds us that the protection of victims is supposed to

¹⁴⁸ Sally Engle Merry, Id.

¹⁴⁹...note Supra

¹⁵⁰ David Nelken, *The Meaning of Success in Transnational Legal Transfers*, 19 Windsor Yearbook of Access to Justice 349 (2001); David Nelken, *Human Trafficking and Legal Culture*, 43(3) Isr. L. Rev. 479 (2010); David Nelken, *Transnational Legal Processes and the (Re)Constriction of the ‘Social’: The Case of Human Trafficking*, a paper presented at the Tel Aviv Law Faculty Seminar, January 2, 2012.

include a third R – a long term R – reintegration,¹⁵¹ which in most cases cannot take place in the country of origin. While the staff of the shelters visits past residents at their new agricultural employers to make sure that they are decently treated, this has no connection with the vast majority of survivors of sex trafficking who leave the shelter and live either in Israel or in their country of origin. As for the asylum seekers who are victims of torture, until very recently if they were not in the shelters, they were either deported to a very dangerous reality or allowed to stay in Israel but with no working permits and social services within the community.

Interestingly, the U.S. TIP Reports do not criticize Israel for the lack of information concerning past residents of the shelters, or for the policies that prevent their integration into Israeli society once outside the shelters. On the contrary, the last two TIP reports create the false impression of a full, long-term and supervised reintegration of victims of trafficking into the Israeli society after they leave the shelters.¹⁵² Here, it seems that the U.S. prefers to turn a blind eye, revealing its own weakness in regulating the long term protection of victims of human trafficking in a world that lacks a transnational consensus on the global allocation of the burden that this entails.

Notwithstanding, very recent and surprising developments that occurred after the research ended¹⁵³ – and that manage to crack Israel’s isolating compliance strategy – highlight the failure of the theories on compliance detailed in the Introduction, a failure to take into consideration the immigrants as active agents who change reality, and not only as victims of global circumstances and regulation.

In mid-2012, a large number of about 40-50 African women entered Israel illegally through the southern border, after suffering extreme and brutal abuse by the hands of kidnappers and smugglers. They were immediately arrested and detained until deportation. However, due to the horrible violence they had experienced, which included kidnapping, physical torture, and rape, the police acknowledged that there was preliminary evidence that they had been trafficked, and as such eligible for rehabilitation at the shelter. However, the Ma’agan shelter was fully occupied, and so they were left at the detention center. While the different ministries discussed possible solutions – including the establishment of an additional third shelter – one of the women asked to be released from the detention center to stay with relatives living in

¹⁵¹ Supra note....; Segrave, Milivojevic & Pickering, supra note... 174-190.

¹⁵² The lack of welfare community services for victims of trafficking outside of the shelters is mentioned only once, in the 2009 report, in relation to medical and psychological assistance, see <http://www.state.gov/documents/organization/123362.pdf>, at p. 166; The issue of maintaining contact with past residents is mentioned for the first time only in the 2012 report, which states: “The shelter staff maintained contact with trafficking victims after they had left the shelter to assist victims with long-term reintegration into Israeli society and to ensure future work conditions were not exploitative”, see <http://www.state.gov/documents/organization/192595.pdf>, at p. 195. This statement is not backed-up with examples or numbers. Indeed, as detailed above this was true, at least during the research period, only in relation to migrant workers employed in agriculture, who are expected to leave Israel after their work permit ends. In fact, the 2013 report repeats the exact phrasing of the 2012 report, though omitting the words “long-term”, while adding as an example, the assistance given to forced labor victims within the men’s shelter, see <http://www.state.gov/documents/organization/210739.pdf>, at p. 208. This is the same population identified in our study as the only one systematically followed-up after leaving the shelter. As demonstrated in this paper, Israel has no policy supporting a full, long-term and supervised reintegration of victims of trafficking into Israeli society, but rather the opposite.

¹⁵³ These developments are so recent and took place so rapidly that there are hardly any official sources that document them. Most of the information that is presented below was received from Meirav Shmueli, see, supra note..., and from Reut Michaeli, CEO of the Hotline for Refugees and Migrants, conversation, January 19, 2014.

Tel Aviv until her placement within the shelter will be possible. The judge at the detention center refused, arguing that rehabilitation can occur only within a shelter, and that until a vacancy at the shelter became available the woman must remain at the detention facility. The woman appealed against this decision to the District Court for Administrative Matters, with the assistance of the state legal aid department. The District Court accepted her petition, on the condition that an NGO will provide her with therapy and rehabilitation services, and that she will cooperate with her removal to the shelter once a vacancy became available.¹⁵⁴

Twenty similar requests followed and were granted. However, the NGO that volunteered to assist in the first case stated that it cannot guarantee the safety and rehabilitation of so many women.¹⁵⁵ Since the Ma'agan shelter was full, the Minister of Welfare decided in mid-2013 to establish a third shelter, and to fund a day center in Tel Aviv, for a period of six months, to provide food and counseling to the women waiting to be placed in the shelter. The day center was established with the assistance of Mesila, an immigration aid organization established by the Tel Aviv Municipality.¹⁵⁶

Staff at the day center soon learned that there were male survivors of trafficking living in the community, and that moreover, some of the trafficked women preferred to be served by the day center rather than enter a shelter. And so, while a third shelter was recently opened to serve an additional 18 women, the day center still operates within the community, serving both women and men (at different times of the day). Because Mesila serves the migrant community at large and not just victims of trafficking, it is very possible that the services provided at the day center will be offered to those in actual need, even if not identified by the police as victims of trafficking. Moreover, in the near future the day center can become a solution to the needs of those victims whose one-year rehabilitation visas at the shelter have expired but cannot return to their country of origin.

Though it is too early to tell whether the state-funded rehabilitation day center will remain open, for how long, and for whom, these very recent developments are remarkable since they succeed in compromising Israel's isolating compliance strategy. The female survivors of trafficking managed to recruit the assistance of the Ministry of Justice, the Ministry of Welfare and the Tel Aviv municipality, and this led to the establishment of the first community state funded welfare service for victims of trafficking. This happened at the same time as the Israeli government and Parliament decided to toughen the policy against asylum seekers from Africa and to force them to live in a special facility in the south of the country,¹⁵⁷ attracting much criticism from human rights activists,¹⁵⁸ scholars,¹⁵⁹ opposition members of

¹⁵⁴ AA 22981-02-13 Tosfay (prisoner) v. The Ministry of Interior, March 6, 2013.

¹⁵⁵ One of the fears is that these women will be exploited by the people with whom they are moving in, see Shmueli, *supra* note....

¹⁵⁶ <http://www.tel-aviv.gov.il/Tolive/welfare/Pages/Mesila.aspx>

¹⁵⁷ Gilad Natan, Government Decision no. 3936 – Preventing the Illegal Infiltration into Israel, Knesset Research and Information Center, 2011, <http://www.knesset.gov.il/mmm/data/pdf/m02988.pdf>, [Hebrew]; Prevention of Infiltration Act (Offences and Jurisdiction)(Amendment no. 3, and Temporary Order), 2012, Law Book 2332, p. 119.

¹⁵⁸ For example, <http://hotline.org.il/refugees-and-asylum-seekers/detained-asylum-seekers/>; <http://www.acri.org.il/he/wp-content/uploads/2013/11/histanenut2-151113.pdf>.

¹⁵⁹ For example, about 400 scholars signed a petition against the detention center and for the asylum seekers' right to work while in Israel, see <https://www.facebook.com/photo.php?fbid=1389033911359051&set=pcb.1389034191359023&type=1&theater>.

Parliament members,¹⁶⁰ the Supreme Court,¹⁶¹ and of course the asylum seekers themselves through unprecedented massive demonstrations that received global media coverage.¹⁶² While the Israeli government insists on this severe policy of isolation, female victims of trafficking from Africa have managed to change reality and to create a counter trend, which whilst on a very limited scale, blurs the borders between the Israeli Jewish white majority and the ultimate “Other”, i.e. African Muslims and Christians.

CONCLUSION

In his platform for future socio-legal research agenda of global norm-making, Halliday urges us to address, among many other important issues, two questions: under what conditions are various forms of global leverage more effective on local compliance, and what are the methods utilized by weaker states in the world system to obtain degrees of freedom from global pressure to converge to global norms?¹⁶³ The Israeli case study presented in this paper addresses these two questions: it demonstrates the effectiveness of a negative and positive incentive regime imposed by a powerful state with transnational normative ambitions over its relatively weak ally; and it extracts four compliance strategies used by the weak pressured country, which allow it to satisfy the superpower’s demands to protect trafficked “aliens”, while preserving its ethnic immigration policy. As the U.S. is experienced by other countries as a powerful global norm-maker,¹⁶⁴ and since Israel is not alone in its “borders anxiety”,¹⁶⁵ the Israeli case study is relevant to many other instances of

¹⁶⁰ For example, Knesset protocol, meeting 306 of the 18th Knesset, January 9, 2012, pp. 188-239.

¹⁶¹ In September 2013, the Israeli Supreme Court ruled that the recently enacted amendment to the Prevention of Infiltration Act that allows the detention for up to three years of a person who entered illegally to Israel, is unconstitutional and void since it violates human dignity. Following this decision, the Knesset amended the amendment, and limited the possible detention period to one year, see, Prevention of Infiltration Act (Offences and Jurisdiction)(Amendment no. 4, and Temporary Order), 2013, Law Book 2419, p. 74. However, the revised law allows the transfer of people staying in Israel illegally to a special facility for an unlimited time. Though this is an open facility, from which the detainees are allowed to exit during the day, its geographic isolation (the facility that was established, *Holot* (sands), is in the southern part of Israel, in the Negev desert), the demand that the detainees be present in it three times a day at times set by the authorities, and the prohibition on their employment, make it very much like a close facility. Several human rights organizations petitioned against this new amendment, see petition in H CJ 8425/13 Gavrisalasi and others v. The Knesset and others, <http://assaf.org.il/he/sites/default/files/%D7%A2%D7%AA%D7%99%D7%A8%D7%94%20%D7%9C%D7%97%D7%95%D7%A7%20%D7%94%D7%94%D7%A1%D7%AA%D7%A0%D7%A0%D7%95%D7%AA%20%D7%AA%D7%99%D7%A7%D7%95%D7%9F%204.pdf>. The Supreme Court refused to issue interim order, and so while the petition is still pending, the government started to execute the law and to send asylum seekers to the detention facility, see <http://www.haaretz.com/news/national/1.566328>.

¹⁶² For example, http://edition.cnn.com/2014/01/05/world/meast/israel-african-migrants/index.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+rss%2Fedition_meast+%28RSS%3A+Middle+East%29-against-http://businesshabit.com/news/protesters.knesset-towards-marching-detention-migrant ;

¹⁶³ *Supra* note..., at 274.

¹⁶⁴ Gallagher & Chuang, *supra* note....

¹⁶⁵ Notwithstanding Israel’s uncommon out-front acknowledgment of its discriminatory ethnic policy, the growing anxieties of receiving countries all over the globe regarding the economic, cultural, and ethnic implications of immigration indicates that Israel is not alone in its border’s anxiety and fear of the “other”, see, for example, on the U.S. anxiety, Linda K. Kerber, *The Stateless as the Citizen’s Other: A View from the United States*, in *MIGRATION AND MOTILITIES, CITIZENSHIP, BORDERS, AND GENDER* (Seyla Benhabib and Judith Resnik Eds.) (N.Y. Uni. Press, 2009), 76-123. Indeed, liberal and democratic countries such as Italy and Australia are willing to harm basic human rights of immigrants

possible tension between human rights norms and immigration. Hence, the detailed findings demonstrate the need to integrate, rather than separate, the theories detailed in the Introduction; and to include superpower states, and not only international bodies and NGOs, as well as weaker nation states,¹⁶⁶ as significant players in any theoretical model attempting to explain international and transitional norm-making and compliance. Moreover, the Israeli case study demonstrates the power of the “aliens” themselves, in changing reality and mobilizing other players to their advantage. By entering another country and by challenging its legal system, they can use the human rights discourse to encourage protective behavior by the host country. It is not only superpower pressure from the outside that changes discourse and behavior; it is also the underprivileged people who manage to turn the outside into the inside, and the uninvited stranger into a human subject entitled to rights.

Notwithstanding, the ability to satisfy U.S. demands concerning the protection of victims of human trafficking and at relatively low cost strengthens the argument that anti-trafficking global regulation is motivated more by the wish to preserve national borders than by the concerns for the victims’ human rights. It also strengthens claims regarding the arbitrariness and injustice of the attempts to separate human trafficking from other immigration-related abuses. Moreover, the findings of the competing definitions of “success” held by the U.S., Israel, and the different groups of victims, highlight the importance of distinguishing between “compliance” and “success”, often confused in the literature. Furthermore, while the rehabilitation and reintegration of victims of human trafficking are the most neglected aspects of anti-trafficking literature, the stories and voices of the trafficked reveal the immense challenge embedded in any attempt to take the protection of victims of immigration-related abuse seriously. This is particularly pertinent in a world with outrageous gaps between developing and developed countries, one that has not reached an understanding about the allocation of the burdens created by the need and wish of people to move from the first to the latter. In many cases, it is the conditions that trigger and support human trafficking,¹⁶⁷ which make its victims’ long term rehabilitation and integration in the country of origin impossible.

in the name of their right to secure their borders from illegal aliens, see, for example, model for Italy, <http://www.theguardian.com/world/2002/mar/09/philipwillan>; <http://www.euronews.com/2013/10/05/italy-immigration-law-prompts-lampedusa-rescue-row/>; and for Australia, <http://www.dailymail.co.uk/news/article-71424/Australia-blocks-second-immigrant-ship.html>.

¹⁶⁶ Indeed, Gallagher and Chuang argue that the officials drafting the TIP reports fail to recognize the growing capacity of many states to manipulate the compliance mechanism to their own ends, see *supra* note, ... at 341. Unlike Belarus, as analyzed by Zaloznaya & Hagan, *supra* note...., Israel does not manipulate the U.S., but rather shape strategies that allow, simultaneously, significant move from the first to the fifth stage, in Risse and Sikkink’s model, see *supra* note... and accompanying text, in relation to “aliens” victimized by severe immigration-related abuse, and the preservation of its alienating aliens immigration policy. Hence, the findings reported here bear the dichotomy between “manipulating” countries and countries genuinely impacted by global human rights norm-making.

¹⁶⁷ Gallagher & Chuang, *supra* note... at 317 (“Those who profit from exploiting the labor of others are reaping the benefits of inequalities within and between countries; the age-old human compulsion to move in search of a better life; and, in the case of cross-border trafficking, rapidly diminishing opportunities for safe, legal, and gainful migration”).