

## Editorial: Human rights at the border

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
  - (2) Everyone has the right to leave any country, including his own, and to return to his country.
- Article 13, Universal Declaration of Human Rights

The question of boundaries is the first to be encountered; from it all others flow. To draw a boundary around anything is to define, analyse and reconstruct it, in this case select, indeed adapt, a philosophy of history.  
— Fernand Braudel<sup>1</sup>

It is with great honour that I introduce the second issue of the *Anti-Trafficking Review* (ATR). The first issue received an overwhelming response and has placed the journal at the forefront of rigorous analysis and debate relating to human trafficking and human rights. It raised the topic of accountability in anti-trafficking. This issue hopes to further strengthen the ATR's position as a global, reputable journal on human trafficking.

Strengthening the quality of research, analysis, and reflexivity in the trafficking sector is much needed, and I echo Anne Gallagher's observation as guest editor of the first issue that standards in anti-trafficking research tend to be less rigorous than in other fields of study. My aim as a guest editor is to contribute to addressing this shortfall by bringing together a

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<sup>1</sup> Quoted in O Löfgren, 'The Nationalization of Anxiety: A history of border crossings' in U Hedetoft (ed.), *The Postnational Self: Belonging and identity*, University of Minnesota Press, London, 2002, p. 250.

set of diverse and insightful articles focussing on the nexus of borders and human rights. It is also my hope that this issue will work towards narrowing the divide between practitioners and academics in anti-trafficking. This is reflected in the varied range of contributors. The last few years have witnessed a significant increase in publishing relating to human trafficking worldwide. However, there is limited measured debate and appraisal of this literature within the anti-trafficking sector. For this reason we have decided to include a book review as a way of highlighting recent major publications.

The question of borders, migration control, trafficking and human rights raise contested and controversial questions. The editorial team has attempted to include different perspectives, reflected in the debate section in particular. Needless to say, all papers have been subject to double blind peer review.

### This Issue: Rights at the border

The central paradox is this: efforts to combat human trafficking are heavily premised on the importance of borders; yet, there is a dearth of specific empirical focus on borders in trafficking research and programming. The significance of this conundrum is reinforced by the fact that borders pose significant human rights implications for migrants and trafficked persons. Hence, the need for a special issue with a focus on human rights at the border.

Although human trafficking may not always involve cross-border mobility, there is no doubt that international borders are central to how trafficking is conceptualised and acted upon. For example, the Trafficking Protocol makes it clear that trafficking may not necessarily occur across international borders.<sup>2</sup> This point is often highlighted when contrasting human trafficking with people smuggling. Yet, Article 11 of the Protocol makes

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<sup>2</sup> United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, United Nations, New York, 2000.

specific stipulations requiring states to strengthen border control, a point that is reflected in the debate section in this special issue. Borders, it seems, are smuggled in through the backdoor. Borders are ubiquitous in trafficking discourse, which ranges from bilateral and regional Memorandum of Understandings (MOUs) (often focussing on borders through repatriation programmes and cross-border law enforcement) to cross-border programmes implemented by UN agencies and NGOs, and visual representation of trafficking (such as images of border check-points in awareness raising campaigns). Hence, there is arguably a conceptual excess in the focus on borders.

Although borders express the territorial power of the nation-state, they also play a significant role in creating meaning. Borders are material expressions of boundaries. And, as the epigraph by Fernand Braudel alludes to, boundaries allow social, economic and political practices to be made legible and thereby possible to act upon.<sup>3</sup> Yet, the practical translation of such formalisation is often much more opaque in practice.<sup>4</sup> Indeed, borders are often thought of as hazy no-man's-lands at the margins of the state, attracting a range of illicit activities. At the same time, borders constitute a technology for both expressing and acting out state power. International borders are often - in either real or imagined ways - heavily policed and militarised, albeit this has been 'decentred', as several of the issue contributors and others scholars have pointed out.<sup>5</sup> And the ways cross-border migrants act and are acted upon raise important implications for human rights.

This issue addresses the problematic of how borders in the context of anti-trafficking practice intersect with upholding

<sup>3</sup> J C Scott, *Seeing Like a State: How certain schemes to improve the human condition have failed*, Yale University Press, New Haven, 1998.

<sup>4</sup> M Baud and W van Schendel, 'Toward a Comparative History of Borderlands', *Journal of World History*, vol. 8, no. 2, 1997, pp. 211–242.

<sup>5</sup> 'Decentered' refers to how border control does not only take place at borders but also within a jurisdiction (e.g. deportation crackdowns) as well as abroad (e.g. visa applications and screening ahead of arrival). See also, N P De Genova, 'Migrant "Illegality" and Deportability in Everyday Life', *Annual Review of Anthropology*, vol. 31, no. 1, 2002, pp. 419–447; B Anderson, *Us and Them? The dangerous politics of immigration control*, Oxford University Press, Oxford, 2013.

human rights for migrants. Put simply: Do borders and border control contribute to the protection of migrants, or are borders part of the problem? The latter makes the nexus of human rights and borders an oxymoron; the former makes it tautological.<sup>6</sup> The essays in this special issue address this problematic in a range of ways.

### The Debate Section: The role of border controls in the response to human trafficking

Is border control central to the protection of trafficked persons' human rights? According to the Trafficking Protocol, it seems so. Article 11 on Border Measures makes this explicit by asserting: 'States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.'<sup>7</sup> This demand on states (and their adherence to it) has been the subject of considerable controversy. Many anti-trafficking campaigners and researchers have been rather hostile to the suggestion that border control is compatible with the principles of human rights protection, a point not missed by several of the contributors to this issue.

The debate section starts off with a thought-provoking essay by Miller and Baumeister titled 'Managing Migration: Is border control fundamental to anti-trafficking and anti-smuggling interventions?' They provide nuanced reflection upon Article 11 based on their engagement with the United Nations Office on Drugs and Crime (UNODC), which is the lead UN agency on law enforcement in anti-trafficking. Acknowledging the common criticisms of border control in anti-trafficking, they remind us

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<sup>6</sup> I borrow this analogy from David Chandler's analysis of the historical intersection of military operations and humanitarianism. See: D Chandler, 'The Road to Military Humanitarianism: How the human rights NGOs shaped a new humanitarian agenda', *Human Rights*, vol. 23, no. 3, 2010, pp. 678–700.

<sup>7</sup> United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, United Nations, New York, 2000, pp. 6–7.

that any analysis of anti-trafficking must be based on the existence and enforcement of border controls, as opposed to a hypothetical scenario of open borders. Any examination of anti-trafficking, they suggest, needs to take the realpolitik of border control as a premise for discussion. Miller and Baumeister suggest concrete ways in which anti-trafficking, in the context of border control, can be moved forward (such as appointing an independent, bi-partisan trafficking commissioner, as has been recommended in the UK). They also point out that UNODC's engagement with border control and law enforcement has opened up a space where a UN agency has been able to engage sections of governments which have traditionally had minimal exposure to human rights norms.

In contrast, in 'Who's Who at the Border? A rights-based approach to identifying human trafficking at international borders', Marika McAdam points to the difficulty of identifying trafficked persons at borders given that their status is premised on an exploitative outcome of their migration, which, in most cases, has not yet taken place. Although victim identification may appear as a technical question of methods (i.e. how do you identify a trafficked person?), McAdam points out that it has a direct human rights impact due to the high risk of misidentification. Despite an astonishing increase in victim identification manuals, training and procedures, the actual operationalisation of these often do not address inherent problems. A key challenge is that many of these guidelines place emphasis on the 'exploitative' phase of trafficking, thereby significantly reducing its application to border policing efforts. Yet, it is precisely border officials who are often tasked with identifying trafficked persons. Furthermore, she argues that strengthened border control can exacerbate risk for migrants, and consequently result in a possible increase in trafficking (a point echoed by several other contributors). Rather than attempting to equip border guards with victim identification procedures, McAdam argues that human rights protection ought to apply more broadly.

## Thematic Articles Section

The politics of victim identification is explored further by Ham, Segrave and Pickering in their article ‘In the Eyes of the Beholder: Border enforcement, suspect travellers and trafficking victims’. They base their analysis on the micro-social politics of how border officials in Australia and Thailand carry out screening of potential trafficking victims. In this process, there is an important dichotomy which operates between two subjectivities: trafficked persons and irregular migrants. Through numerous interviews with immigration officials, Ham, Segrave and Pickering show that not only is such victim identification often contingent upon racialised and gendered stereotypes, but it also involves a highly subjective process where individual border officials deploy considerable discretion in the ways in which they determine migration status and identify possible victims of trafficking. This can include interpretations of intent and agency based on suitcase contents – an issue which often surfaces in cases related to suspected sex work.

The ways in which victim identification privileges objects as opposed to persons is further elaborated by Smith and Marmo in ‘Examining the Body through Technology: Age disputes and the UK border control system’. The concern here is not material possessions but how the body becomes a key concern in victim identification. Focussing on the UK, they examine the use of x-ray in border policing in order to determine age in the identification of refugees and trafficked persons. Not only does this reflect an important shift in the ways ‘truth’ and evidence are produced, where there is a shift from biography (testimony) to biology (the body), but it also raises important questions regarding the motivations behind such technologies of knowing. Smith and Marmo argue that rather than being a mechanism for ensuring human rights for trafficked persons, it serves as an anti-immigration control. They also highlight how such technologies are not new but constitute a longer trend of UK border control that has used x-ray. As such, they are not merely critiquing this from a human rights point of view, but with historical analysis they also point out that this recycling of governance technologies over the years raises important

questions in terms of change and continuity of border control over time.

Moving away from examining instrumental ways in which victim identification is operationalised, the next essay is more concerned with the ways in which the border produces victim subjectivities. In 'Shaping the Victim: Borders, security, and human trafficking in Albania', James Campbell considers the ways in which border control and anti-trafficking have emerged in Albania in the context of regional integration into the European Union. Campbell places emphasis on how the border is productive, arguing that the border enables a differentiated articulation of migrants. Through border-focussed anti-trafficking measures, a 'trafficked person' identity is produced as people from 'outside' the border come back, whereas a 'sex worker' subjectivity is produced and applied to people with similar characteristics 'inside' Albania itself. It is important to consider the context of pre-EU ascension, Campbell shows, where several international organisations (such as the IOM and OSCE) have contributed financial and technical support for anti-trafficking. As such, Campbell draws attention to how border control and anti-trafficking emerge discursively where the border allows for cascading, differentiated identity making.

Policy reform is addressed by Avendaño and Fanning in 'Immigration Policy Reform in the United States: Reframing the enforcement discourse to fight human trafficking and promote shared prosperity'. In the recent immigration reform bill passed by the U.S. Senate (the Border Security, Economic Opportunity, and Immigration Modernization Act), Avendaño and Fanning note, as others have, the awkward simultaneous move towards stronger protection for workers, such as pathways to citizenship, with a renewed emphasis on border control. Drawing on their extensive advocacy work, they illuminate how the strengthening of border control in fact can result in more precarious migration. Rather than providing a general argument against border control, they frame their discussion in terms of a detailed analysis of the new bill. Acknowledging that border-enforcement is unlikely to go away entirely, they argue that advocacy needs to focus on more open conduits for migrants, coupled with improved protection and labour standards.

In the next essay ‘Health and Rights at the Margins: Human trafficking and HIV/AIDS amongst Jingpo ethnic communities in Ruili City, China’, Elena Shih examines the context in which anti-trafficking has emerged as a key policy concern along the China-Myanmar border. Focussing on Ruili in Yunnan Province, China, she reminds us to appreciate the broader political context in which anti-trafficking emerges as it intersects with well-established, often punitive, campaigns to curb HIV/AIDS and drugs. Shih’s ethnographic focus on Jingpo minority women brings to light the precarious and marginalised status of minority groups in this border area where a focus on border control contributes to a willed lack of effort in addressing the social, economic and health problems the Jingpo face. Shih reminds us how a specific focus on anti-trafficking obfuscates broader human rights concerns for men and women as well as ethnic minorities.

The significance of contextualising border control and anti-trafficking is further explored by Lijnders and Robinson in their paper ‘From the Horn of Africa to the Middle East: Human trafficking of Eritrean asylum seekers across borders’. Focussing on Eritrean migration to Israel, they document in great detail the commonality of abduction, forced movement and often highly exploitative migration processes. Their numerous interviews with Eritrean migrants in Israel and Ethiopia do not only document human rights violations but also illuminate how international borders contribute to the structuring of mobility as well as abuse. This well-researched paper places specific focus on how the border area contributes to trafficking as it becomes a gathering place for Eritrean refugees in search of refugee camps. This has created a context where local borderlanders are able to target these migrants for kidnapping and extortion which can amount to trafficking. Eritrean respondents point to the involvement of members of the Rashaida ethnic group involved in abductions and kidnappings. Due to their historical positioning in the border region and cross-border political ties, members of the group are able to freely straddle the border region and engage in such conduct with impunity. Lijnders and Robinson’s data point to the prevalence of border officials’ complicity in the violations and abuse.



## Book Review

Finally, in ‘Who are the “Us” and Who are the “Them”?’ Biao Xiang provides an analytical and insightful review of Bridget Anderson’s recent book *Us and Them? The dangerous politics of immigration control*. As he points out, this book is of utmost importance not only to anti-trafficking practitioners and scholars but everyone engaged with migration and migration policies more broadly. Focussing on the UK, Anderson provides a history of migration control. A key claim the book makes is that migration politics and border control are underpinned by notions of a community defining itself with values, as opposed to membership based on civic criteria like citizenship. Biao Xiang suggests in his review that ‘us’ and ‘them’ (now defined as values) can be taken further, as it seems to imply not division, but universalising claims of belonging. The relevance of this is clear in relation to trafficking: Xiang suggests that the ‘us’ defined by compassion for trafficked persons does not refer to a particular identity (in this case, British), but a universal humanity. At the same time, as Anderson so eloquently shows, it is precisely border control that allows an awkward consensus amongst the state and citizens, making it possible to react morally to a political problem without acknowledging how border control is complicit in the marginalisation, as well as actively producing the violations that it claims to combat. The book is important for practitioners and scholars on human trafficking because it shows how a broader, historicised analysis of border control allows for fresh insights into what underpins such policies. I wholeheartedly agree with Xiang that all students of migration studies should read this book at least once.

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Several themes shine through the contributions. All engage with the question of how border controls structure migration and their implications for human rights. As such, the central question pertains to policy, i.e. what are the appropriate policy options? Although several contributors are critical of the ways in which borders and immigration control affect human rights of migrants and trafficked victims, they all differ in demonstrating why this is so. Many consider policy

as technology. A key concern lies in the practicality of victim identification in the context of border control (Ham, Segrave and Pickering: it's biased; McAdam: it's inherently contradictory; Smith and Marmo: it constitutes a recycling of old failed methods; Campbell: it produces poly-directional, different subjectivities). Within this discussion, we get the closely-related problem of the relationship between the production of truth and identity. Testimonials by migrants are increasingly seen as dubious, thus redirecting border control officials towards scrutiny, not only of documents but also luggage possessions (Ham, Segrave and Pickering), as well as the body itself (Smith and Marmo). Hence, what many contributors in this issue demonstrate is not just the importance of how the border works spatially (Lijnders and Robinson, Campbell) but also how victim identification relies less on the spoken word (testimony, interview) and privileges material objects (travel documents, luggage possessions) and the body itself (x-ray scans).<sup>8</sup> The human rights implication of this is highly problematic as thresholds for victim identification are increasingly moved away from person to matter. That is to say, the human person is paradoxically obliterated through a language of protection, care and human rights.

Finally, all contributors collectively show the ways in which anti-trafficking at the border is highly contested, yet its dynamics not very well understood. Collectively, the essays illuminate human rights at the border by drawing on social science theory, different methodological approaches as well as grounded policy analysis. In doing so, they bring to light how controversies regarding border control and human rights for trafficked persons should not be framed polemically but opened up to a range of questions which require careful empirical,

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<sup>8</sup> The emergence of bioglegitimacy (embodied truth telling) where the biographical is moving to the material and biological has been analysed in the context of asylum seekers but has not been extensively examined in human trafficking literature. See: D Fassin and E d'Halluin, 'The Truth from the Body: Medical certificates as ultimate evidence for asylum seekers', *American Anthropologist*, vol. 107, no. 4, 2005, pp. 597–608; D Fassin, 'Another Politics of Life is Possible', *Theory, Culture & Society*, vol. 26, no. 5, 2009, pp. 44–60.

methodological and analytical consideration. It is precisely such a mix which makes the ATR such an exciting focal point for serious and thoughtful analysis and discussion regarding human trafficking.

By way of conclusion, I would like to thank the Editorial Board for their assistance in putting together this special issue. A very special thanks goes to Rebecca Napier-Moore who has been extremely helpful throughout our collaboration on this issue. I would also like to thank Bandana Pattanaik and Alfie Gordo for their continuous support of the publication. Vijaya Vanamala was essential to publication, as a tireless copyeditor. Appreciation goes to the authors for the considerable patience they have shown throughout the review process. Finally, a big thanks goes out to the anonymous peer reviewers who devoted considerable time in reviewing submissions.

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